

GUIDELINES

SELF EVALUATION AND TRANSITION PLAN

As required by the American with Disabilities Act 1990

Regulatory Reference; 28 CFR 35-105-35.107 35.150(c) and (d)

SELF EVALUATION

- a) **A public entity shall, within one year of the effective date of this part, evaluate its current services, policies and practices, and effects thereof, that do not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required. The public entity shall proceed to make the necessary modifications.**
- b) **A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in self-evaluation process by submitting comments.**
- c) **A public entity that employs 50 or more persons shall for at least three years following completion of the self-evaluation maintain on file and make available for public inspection:**
 - 1) **A list of interested persons consulted;**
 - 2) **A description of areas examined and any problems identified; and**
 - 3) **A description of any modifications made.**

The regulations state that if a self-evaluation was implemented under Section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous evaluation.

Actions that were taken to comply with Section 504 may not have been implemented fully or may no longer be effective.

In addition 504's coverage has been changed by statutory amendment, particularly the Civil Rights Restoration Act of 1987 which expanded the definition of a covered program or activity. Therefore, public entities should ensure that all programs, activities and services are examined fully, except where there is evidence that all policies were previously scrutinized under Section 504.

Title II Administrative Requirements also dictate that the self-evaluation include the following:

- 1) Develop a grievance procedure;**
- 2) Designate an individual to oversee Title II compliance;**
- 3) Develop a transition plan if structural changes are necessary for achieving program accessibility; and**
- 4) Retain the self-evaluation for three years.**

The self-evaluation should identify and correct those policies and practices that are inconsistent with Title II's requirements. As part of the self-evaluation, a public entity should;

- A) Identify all the public entities programs, activities, and services, and**
- B) Review all the policies and practices that govern the administration of the public entities programs, activities, and services.**

Normally, a public entities policies and practices are reflected in its laws, ordinances, regulations, administrative manuals or guides, policy directives and memoranda.

Once a public entity has identified its policies and practices, it should analyze whether these policies and practices adversely affect the full participation of individuals with disabilities.

The following instructions are taken from the Department of Justice Technical Assistance Manual II:

- 1) A public entity must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan.**
- 2) A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified, unless they are necessary for the operation or provision of the program service or activity. The self-evaluation should identify policy modifications to be implemented and include complete justifications for any exclusionary or limiting policies or practices that will not be modified.**
- 3) A public entity should review its policies to ensure that it communicates with applicants, participants, and members of the public with disabilities in a manner that is effective as its communications with others. If a public entity communicates with applicants and beneficiaries by telephone, it should ensure that TDDs are installed or equally effective telecommunication systems are used to communicate with individuals with impaired hearing or speech. Finally, if a**

public entity provides telephone emergency services, it should review its policies to ensure direct access to individuals who use TDDs and computer modems.

- 4) A public entity should review its policies to ensure that they include provisions for readers for individuals with visual impairments, interpreters or other alternative communication measures, as appropriate for individuals with hearing impairments and ananueses for individuals with manual impairments. A method for securing these services should be developed including guidance on when or where these services will be provided. Where equipment is used as part of a public entities program, activity or service, an assessment should be made to ensure that the equipment is usable by individuals with disabilities, particularly with hearing, visual, and manual impairments. In addition, a public entity should have policies that ensure that its equipment is maintained in operable working order.**
- 5) A review should be made of the procedures to evacuate individuals with disabilities during an emergency. This may require the installation of visual and an audible warning signals and special procedures for assisting individuals with disabilities from a facility during an emergency.**
- 6) A review should be conducted of a public entities written and audio-visual materials to ensure that individuals are not portrayed in an offensive or demeaning manor.**
- 7) If a public entity operates historic preservation programs, it should review its policies to ensure that it gives priority to methods that provide physical access to individuals with disabilities.**

- 8) **A public entity should review its policies to ensure that its decisions concerning a fundamental alteration in the nature of a program, activity, or service, or a decision that an undue financial and administrative burden will be imposed by Title II, are made properly and expeditiously.**
- 9) **A public entity should review its policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings.**
- 10) **A public entity should review its employment practices to ensure that they comply with other applicable nondiscrimination requirements, including Section 504 of the Rehabilitation Act and the ADA regulations issued by the Equal Employment Opportunity Commission.**
- 11) **A public entity should review its building and construction policies to ensure that the construction of each new facility or part of a facility or the alteration of existing facilities after January 26, 1992 conforms to the standards designated under the Title II regulations.**
- 12) **A review should be made to ascertain whether measures have been taken to ensure that employees of a public entity are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.**
- 13) **If a public entity limits or denies participation in its programs, activities or services based on drug usage, it should make sure that such policies do not discriminate against former drug users, as opposed to individuals who are currently engaged in illegal use of drugs.**

Note

Once a public entity has identified policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities and services, it should take immediate remedial action to eliminate the impediments to result in full and equivalent participation. Structural modifications that are required for program accessibility should be made as expeditiously as possible but not later than January 26, 1995.

Note

Particular attention should be given to the above mentioned Section 10 relating to employment practices. Such practices should be reviewed in detail and although not mandated, should be included in your self evaluation:

- A) Job application and recruiting procedures
- B) Hiring and discharge
- C) Employee compensation and fringe benefits
- D) Job assignments
- E) Promotion and demotion

Here are a few safe-guards:

1) **Recruitment and Advertising**

- A) Review all advertising
- B) Review Internal job postings
- C) Review outside recruitment agencies

2) **Interviews**

- A) Review standard questions asked of all job applicants

B) Ensure that applicants are not asked about health or disability directly or indirectly.

3) Job Descriptions

Remember the ADA does not require that the employer develop or use job descriptions. However, job descriptions do become important when the need arises to establish the “essential and non-essential” functions of the job.

TRANSITION PLAN

Where structural modifications are required to achieve program accessibility, a public entity with 50 or more employees must do a transition plan by July 26, 1992, that provides for the removal of these barriers: Any structural modifications must be completed as expeditiously as possible, but in any event by January 26, 1995.

The elements of an acceptable transition plan should contain at a minimum the following:

- 1) A list of physical barriers in a public entities facilities that limit the accessibility of its programs, activities or services to individuals with disabilities.**
- 2) A detailed outline of the methods to be utilized to remove these barriers and make the facilities available.**
- 3) The schedule for taking the necessary steps to achieving compliance with Title II. If the time period for achieving compliance is longer than 1 year, the plan identified in the interim steps will be taken during each year of the transition plan and;**
- 4) The name of the official responsible for the plan’s implementation.**

**PLEASE BE ADVISED THAT THIS INFORMATION CONCERNING THE
SELF EVALUATION SHOULD NOT BE SUBSTITUTED FOR
INDEPENDENT LEGAL COUNSEL. INFORMATION SUPPLIED SHOULD
NOT BE CONSTRUED AS LEGAL ADVICE. THESE ARE GUIDELINES
ONLY.**

**Each Self Evaluation will differ according to an entities programs and
services. The following Appendix is a typical example of what is required to
conform with the Administrative Requirements of Title II. Also included are
examples of staff training material for complaint procedures and job
interviewing.**

C. J. Cousins

ADA Compliance Officer

Monmouth County

APPENDIX NUMBER 1
(NAME OF TOWNSHIP)
SELF-EVALUATION AND TRANSITION PLAN

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(NAME OF TOWNSHIP)
AMERICANS WITH DISABILITIES ACT 1990
PUBLIC LAW 101-336, U.S.C. 12101, ET SEQ.

TAKE NOTICE that the (Name of Township) is currently conducting a Self-Evaluation and preparing a Transition Plan in accordance with the Department of Justice regulation 35.105.

All interested persons and organizations are invited to comment or participate by contacting (name), (Name of Township) ADA Coordinator by mail or telephone.

(name) is located at the Administrative Offices of (Name of Township), (address) (telephone #).

AMERICANS WITH DISABILITIES ACT

THE (NAME OF TOWNSHIP) does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities.

(NAME), (NAME OF TOWNSHIP) ADA COORDINATOR has been designated to coordinate with the non-discrimination requirements contained in Section 35.130 of the Department of Justice Regulations.

MR. (NAME) MAY BE LOCATED AT THE ADMINISTRATIVE OFFICES OF (NAME OF TOWNSHIP), (ADDRESS), (TELEPHONE #).

Information concerning the provisions of the AMERICANS WITH DISABILITIES ACT, and the rights provided thereunder are available from the above named coordinator.

(NAME OF TOWNSHIP) GOVERNMENT POLICY
ON THE
AMERICANS WITH DISABILITY ACT

DISTRIBUTION

Copies of this Policy will be available in the Administrative Offices and Library facilities under the administration of (Name of Township) government and will be distributed to all employees.

COMMITMENT AND POLICY STATEMENT

The (Name of Township) is committed to implementation of the Federal Americans with Disability Act (ADA) which was signed into law on July 26, 1990. Enactment of the ADA reflected deeply held American ideals which treasure the contributions which individuals can make when free from arbitrary, unjust, or outmoded societal attitudes and practices that prevent the realization of their potential.

Therefore, no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination; be excluded from participation in, or be denied the benefits of the services, programs or activities of the (Name of Township). Nor shall any such individual be subject of discrimination in employment, either directly or through contractual arrangements entered into by the (Name of Township).

COORDINATION

The Administrative Offices of (Name of Township), located (address), (telephone #), coordinates ADA compliance activities, inquiries, accommodation requests and complaints through (name), ADA Coordinator. (Name and title) may be reached at (telephone #).

COMPLIANCE ACTIVITIES

An ADA Self-Evaluation and Transition Plan is available for inspection and comment at the (Name of Township) Administrative Office cited above. These are working documents, continuously being refined and revised.

INQUIRIES

ADA inquiries may be made at the (Name of Township) Administrative Office cited above. A list of Compliance Officers for other municipalities within Monmouth County is also available so that individuals can be directed to appropriate persons at the municipal level.

ACCOMMODATION REQUESTS

Any individual who wishes to request a specific accommodation (including communication aids or services) in order to facilitate the delivery of services or participation in programs or activities provided by (Name of Township) government, should contact the (Name of Township) Administrative Offices cited above.

Any employee who wishes to request a reasonable accommodation in order to perform the essential duties of his/her job, should contact (name and title), (telephone #).

GRIEVANCE/COMPLAINT PROCEDURE

Any individual who wishes to file a complaint with the (Name of Township) government which alleges noncompliance or any actions that would be prohibited by this Policy or by the Americans with Disabilities Act should contact (name), ADA Coordinator cited above to request a Complaint Form. It is unlawful for any form of retaliation or coercion to take place against any complainant, witness or person involved directly or otherwise following the filing of a complaint.

There are two forms: one for service, program or activity issues, one for employment issues. The ADA Coordinator will forward the complaint to the (Name of Township) Administrator, (name), who will monitor the timeliness of subsequent review, investigation and report to ensure a response to the complainant, in most cases within forty-five (45) days of receipt of the complaint. In the event that the response will take longer than forty-five (45) days, the complainant will be notified.

At the discretion of the (Name of Township) Administrator, (name), when appropriate, ADA issues will be reviewed and determined in cooperation with the Monmouth County Office on Disabilities, located at 1 East Main Street, Freehold, New Jersey.

**THE (NAME OF TOWNSHIP) IS AN
EQUAL OPPORTUNITY EMPLOYER**

(NAME OF TOWNSHIP)
LIST OF ORGANIZATIONS CONSULTED

FOR EXAMPLE

**Monmouth County
Division of Social Services
279 Broadway
Long Branch, NJ 07740**

**Monmouth County Association
for the Blind
PO Box 1033
Belmar, NJ 07719**

**Association for Retarded
Citizens, Monmouth Unit
1158 Wayside Rd.
Tinton Falls, NJ 07712**

**The Salvation Army
4 Gary Rd.
PO Box 3170
Union, NJ 07083**

**Multiple Sclerosis National
Society of Mid Jersey
1500 Lawrence Ave.
Ocean Township, NJ 07712**

**Department of Human Services
Office on Disabilities
1 Main St.
Freehold, NJ 07728**

**Cystic Fibrosis Foundation
119 Cherry Hill Rd.
Parsippany, NJ 07054**

**Easter Seal Society of New Jersey
4900 Collinswood Plaza, Rd. #33
Neptune, NJ 07753**

**American Red Cross,
Jersey Coast Chapter
830 Broad St.
PO Box 7101
Shrewsbury, NJ 07702**

**Muscular Dystrophy Association
55 Hartz Way
Secaucus, NJ 07094**

**United Way of Monmouth County
1415 Wyckoff Rd.
Farmingdale, NJ 07727**

ORGANIZATION/AGENCY
MONMOUTH COUNTY OFFICE ON DISABILITIES
FINAL REPORT

At the request of Administrator (Name), the (Name) County Office on Disabilities was consulted regarding the preparation and Justice Department requirements for a Self-Evaluation and completion of a Transition Plan.

A committee was formed and consisted of the following members for example:

- (name) - (organization/agency) Administrator
- (name) - Director of Public Works
- (name) - Director of Operations
- (name) - Code Enforcement Officer
- (name) - (name) Engineer
- (name)- (firm of attorney)
- (name) - (Name) County Office on Disabilities
- (name) - (Name) County Compliance Officer

Each committee member was assigned duties to inspect and examine programs and services conducted by the (Organization/agency) to ensure that non-discriminatory practices are in place.

A preliminary examination of the main facilities by (Name), (Title), and (Name), (Title), was conducted. The findings being that when taken in its entirety, the (Name) had an existing high degree of compliance with regard to the removal of architectural barriers. Therefore, no interim measures were considered necessary pending development of the final Transition Plan.

Description of Areas Examined

A study of all divisions and departments has now been completed. For this purpose, an Audit Questionnaire was developed. A copy of this questionnaire can be found attached hereto (Section # 6).

Areas of examination included but were not limited to:

- 1) Notice and Communication
- 2) Contract Agreements and Sub-grants
- 3) Program Marketing
- 4) Public Information
- 5) Program Eligibility
- 6) Admission Requirements
- 7) Post-Admission Orientation
- 8) Medical Examinations
- 9) Provision for Reasonable Accommodations
- 10) Hearing and Sight Accommodations
- 11) "Outside" Persons and Organizations
- 12) Social and Recreational Activities
- 13) Transportation
- 14) Emergency Egress

The following areas of employment practices were also reviewed:

- A) Job Application and Recruitment
- B) Hiring and Discharge
- C) Compensation and Benefits
- D) Job Assignment
- E) Advancement

- F) Annual and Sick Leave**
- G) Job Training**
- H) Employment Criteria and Tests**

Remedial steps and modifications are listed in Section #7 of the Self-Evaluation and department heads have been advised of their obligations accordingly.

Booklets and other publications regarding rights and protection under the Americans with Disabilities Act are available upon request from the local librarian who will order these booklets/publications through the (Name) County Office on Disabilities.

Having completed our review of the Self-Evaluation and Transition Plan, we are satisfied that all programs and services conducted by the (Organization/agency) comply fully with the mandated requirements of the Americans with Disabilities Act 1990 and Sections #503 and #504 of the Rehabilitation Act of 1973.

(Name)

(Title)

(Name)

(Title)

(NAME OF TOWNSHIP)

**DEPARTMENT OF JUSTICE REGULATION 35.105
SELF-EVALUATION**

- A. A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part, and to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.
- B. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in self-evaluation process by submitting comments.
- C. A public entity that employs fifty or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:
1. A list of the interested persons consulted;
 2. A description of areas examined and any problems identified; and
 3. A description of any modifications made.

- D. If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

(NAME OF TOWNSHIP)

DEPARTMENT OF JUSTICE REGULATION 35.106

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

(NAME OF TOWNSHIP)

DEPARTMENT OF JUSTICE REGULATION 35.107

Designation of responsible employee and adoption of grievance procedures.

A. Designation of responsible employee

A public entity that employs fifty or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

B. Compliant procedure

C. A public entity that employs fifty or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

(NAME OF TOWNSHIP)
SELF-EVALUATION
As required by the Rehabilitation Act
&
Americans with Disabilities Act

Program Information

Give the name of the programs and generally describe its purpose, scope, general activities and participants or beneficiaries.

Notice and Communication

- 1) **Describe how your agency and/or your program staff notifies the public about its policy of non-discrimination, including how and where to file complaints and what special assistance is available to people with disabilities.**
- 2) List the steps taken to ensure that all employees and staffs involved are informed and understand fully your agency's policy of non-discrimination. If appropriate, identify training or orientation that is provided.
- 3) List auxiliary aids that are available (or sources where they can be obtained) for individuals with speech, vision or hearing impairments. This can include qualified readers, interpreters, taped, brailled or large- print materials, or closed-caption programs.
- 4) Are auxiliary aids provided to individuals with hearing, speech or vision impairments when needed to ensure effective participation in a

program or activity? If no, list steps to ensure that auxiliary aids are provided.

- 5) Does your agency (office) provide services or information to the general public over the telephone? TDD's must be available for 911 emergency services.

If yes, is a telecommunication device for the deaf (TDD) available so that public entities can communicate with persons with hearing and speech impairments.

If no, list steps to ensure effective communication with persons with hearing and speech impairments. This can include providing a TDD or relying on a third-party relay service.

(The Justice Department encourages entities that have extensive phone contact with the public to have TDD's to assure more immediate access.)

Contracts, Agreements, and Sub-Grants

- 1) Does your agency use outside persons or organizations (e.g. referral agencies, educational institutions, medical staff, training providers, volunteers, etc.) to deliver its program activities or services?

Yes [] No []

- 1) **Have these outside persons or organizations been required to complete a self-evaluation of the activities they conduct for your program?**

Yes [] No []

- 2) List the steps taken to ensure that outside persons or organizations involved in the programs are informed and fully understand your agency's policy of non-discrimination including any procurement or contractual language provisions.

- 3) List the steps taken to ensure that new, promoted or reassigned staff are aware of and fully understand the accessibility provisions made within your program to accommodate the needs of applicants and participate with disabilities.

Program Marketing and Public Information

- 1) **Does your agency engage in any of the following activities to recruit program participants, solicit planning input, or otherwise inform persons about services provided?**

- Public meetings and/or oral presentations. Yes [] No []
- Printed recruitment materials. Yes [] No []
- Printed informational materials. Yes [] No []
- Advertisements (newspapers, radio, TV). Yes [] No []
- Telephone information/inquiry response. Yes [] No []

Program Eligibility and Admissions Requirements

- 1) Are there any limitations or exclusions on the number or type of qualified people with disabilities who may participate, receive benefits or be admitted to the program?
- 2) Are any of the following criteria or tests used in the screening or admissions process?

(Check if applicable)

- * Physical or emotional fitness _____
- * Physical performance requirements _____
- * Educational requirements _____

- * Work experience _____
- * Residency requirements _____
- * Insurability requirements _____
- * Economic disadvantage status _____
- * Age _____
- * Disability requirements or status _____
- * Written or oral tests _____
- * Letters or recommendations _____
- * No dependence on drugs _____
- * No dependence on alcohol _____
- * Others (specify) _____

- 3) For each criterion (other than tests) checked above, explain briefly how each relates to the program and its potential (if any) for a disproportionate and/or adverse impact on program applicants with disabilities.
- 4) For each criterion or test cited above as having potential for a disproportionate and/or adverse impact, describe briefly alternative criteria or tests that will be used to ensure non-discrimination. This would include, in limited instances, not using a criteria or tests.
- 5) List the approaches taken to inform potential program applicants with disabilities that alternative test criteria, administration and formats are available and that the testing facilities are accessible to and usable by people with disabilities.
- 6) Are any “outside” persons and organization involved in testing, collecting or evaluating admissions criteria?

Yes [] No []

Participation in the Program

- 1) If post admission inquiries regarding disability are made to accommodate persons with disabilities, list the steps taken to ensure the information is gathered voluntarily, kept confidential and not used to adversely affect any person with a disability.
- 2) Describe all steps taken, other than orientation, for participants with disabilities to make voluntary requests for accommodation to bring their special needs to the attention of supervisory program staff.
- 3) List all steps taken to ensure that information concerning program schedules and activities is effectively communicated to all program participants, particularly those with vision, hearing and/or speech impairments.
- 4) List specific activities and services that comprise the program (e. g. application intake, orientation, counseling, training, referrals, etc.), and indicate those that are, or have the potential to be inaccessible.
- 5) For each activity or service cited as inaccessible, or potentially inaccessible, describe the actions taken to achieve and/or maintain accessibility, including provisions of auxiliary aids, alternative materials, special tools or equipment, equipment modifications, facility renovations, moving the program to an accessible location, etc.
- 6) If program participant sits on boards, councils or similar bodies, list steps to ensure that participants with disabilities have equal opportunity to be selected for participation.
- 7) List the steps taken to ensure that participants with disabilities are made aware of and fully understand the provisions made for them if

an emergency arises or an evacuation of the program area is necessary.

Program Employment Practices

(Check yes, no or not applicable for each of the following questions:)

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Recruitment			
* Are employees with disabilities included in promotional and recruitment advertising?	[]	[]	[]
* Are contacts maintained with educational institutions which train people with disabilities?	[]	[]	[]
* Does all recruitment literature indicate that the program does not discriminate on the basis of disability?	[]	[]	[]
* Have all questions about the existence of (or nature/severity of) a disability been eliminated from job application forms?	[]	[]	[]
Job Vacancies			
* Are all vacancy announcements reviewed to ensure that all mental and communication requirements are job related and accurately reflect essential functions?	[]	[]	[]
* Are program managers aware that they must provide reasonable accommodations to qualified applicants with disabilities?	[]	[]	[]

Job Interviews

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
* Is every hiring supervisor aware that all questions asked in the job interview must be related to the essential duties and functions of the job?	[]	[]	[]
* Is every hiring supervisor aware of where and how to obtain assistance to interview an applicant with a vision, hearing or speech impairment?	[]	[]	[]
* Is the interviewing area accessible to an applicant using a wheelchair?	[]	[]	[]

Employment Criteria and/or Tests

* Are written and/or oral tests or other criteria used to judge applicants prior to making offers of employment?	[]	[]	[]
* If yes, are procedures in effect which ensure that these tests and criteria do not discriminate against people with disabilities unless the criteria are shown to be related to essential duties and functions of the job?	[]	[]	[]

Physical or Medical Examinations

- * Is every hiring supervisor aware that before a job offer is made:

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
* No medical exams can be required?	[]	[]	[]
* No information about Worker's Compensation claims can be asked to be provided?	[]	[]	[]
* Are any medical exams conducted or Worker's Compensation claims inquiries made after a job offer is made?	[]	[]	[]
* If yes, are all entering employees subject to the exam?	[]	[]	[]
* Are offers of employment conditionally based on the results of the exam?	[]	[]	[]
* Are the medical results <u>not</u> used in a discriminatory manner?	[]	[]	[]
* Are the medical results kept in confidential medical files and separate and apart from general personnel records?	[]	[]	[]
* Is every hiring supervisor aware that no offer of employment may be withdrawn on the basis of medical conditions that are not related to essential job functions?	[]	[]	[]

Reasonable Accommodations

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
* Has a procedure been implemented for soliciting voluntary indications of a person's disability so that accommodation can be made?	[]	[]	[]
* Has any program supervisory staff ever denied a request for reasonable accommodations to perform essential job functions within the last five years?	[]	[]	[]
* If a reasonable accommodation is denied or limited in some way not acceptable to the person with a disability, is the appeal process communicated to the person with a disability?	[]	[]	[]

On the basis of the collective responses given above, list all the actions taken, modifications made and safeguards implemented. This ensures that program employment practices and decisions are made without discrimination on the basis of disabilities, that they are related to the essential job functions, and do not limit, segregate or classify applicants or employees based on a disability in a way that adversely affects their equal opportunity or status.

Other Areas Examined

List below any other program areas that are not covered elsewhere in this self-evaluation.

List all managers and personnel staff who undertake the following duties: pre-employment inquiries, interviewing, training, job allocation, timekeeping and vacation scheduling.

* Has the <u>(Name of Township)</u> ADA Complaint/Grievance Procedures been brought to the attention of all staff members?	<u>Yes</u>	<u>No</u>	<u>N/A</u>
	[]	[]	[]

Prepared by:
Cyril J. Cousins
Monmouth County ADA Compliance Officer

Department Head

Date

EXAMPLE OF CHANGES

1. Statement of ADA Policy
2. Communications and Introduction of TDD's
3. Revised Job Application
4. Appointment of ADA Coordinator and Compliance Officer
5. Introduction of Grievance Procedures
6. Rules for Filing Grievances
7. Complaint Procedures
8. Investigations – Check List
9. Training Material and Employment Practices
10. Public Notice
11. Dissemination of Information
12. Facilities Audit and Review
13. Structural Changes – Time Frame
14. Schedule of Curb Ramps Produced

Resolution No._____

**RESOLUTION APPOINTING GRIEVANCE OFFICERS
AND THE ADOPTION OF GRIEVANCE PROCEDURES
REQUIRED BY
THE AMERICANS WITH DISABILITIES ACT 1990**

offered the following resolution

and moved its adoption.

WHEREAS, the U.S. Department of Justice has promulgated regulations pursuant to the Americans with Disabilities Act 1990: and

WHEREAS, section 35.107 (A) of the said regulations establishes a requirement that a public entity with fifty (50) or more employees designate one or more grievance officers to comply and carry out its responsibilities including any investigation of any complaint: and

WHEREAS, the public entity is required to make available to all interested individuals the name, office address and telephone number of the employees or employees designated pursuant to this paragraph: and

WHEREAS, the public entity under section 35.107(B) is required to publish grievance procedures providing for prompt and equitable resolution of complaints alleging discrimination or violation of the Americans With Disabilities Act 1990: and

NOW, THEREFORE, BE IT RESOLVED by the Township Committee that

be hereby appointed as Grievance Officers in compliance of the mandates of the Americans with Disabilities Act and that notices be given that both officers can be reached at the (name of office), (address), (telephone #) and that these officers are to serve at the pleasure of the Administrator: and

BE IT FURTHER RESOLVED that the attached Attachment No. 1 relating to grievance procedures and outlining the rules and regulations adopted by this committee and promulgated pursuant to the authority of 42 USC 12101 et. Seq. And 28 CFR §35.107 to remain in force at the pleasure of the Administrator and to be available to any individual by simple request: and

BE IT FURTHER RESOLVED that the attached Attachment No. 1 be identified and known by the following titles:

(NAME OF TOWNSHIP) DISCRIMINATION PROCEDURE FORM NO. 1 consisting of eight (8) pages consecutively numbered; and

BE IT FURTHER RESOLVED that the Administrator forward a certified true copy of this resolution to each person herein appointed and to the (office) of the (Name of the Township).

Seconded by
and adopted on the roll call by the following vote:

(NAME OF TOWNSHIP) DISABILITY DISCRIMINATION

GRIEVANCE PROCEDURE

AUTHORIZED BY: THE TOWNSHIP COMMITTEE OF THE

(NAME OF TOWNSHIP)

AUTHORITY: 42 U.S.C. S12101 ET SEQ., AND 28 C.F.R §35.107

PREAMBLE

The ADA prohibits a public entity from discriminating against a qualified individual with a disability, or from excluding that person from participation in, or denying the person the benefits of, the services, programs or activities of the Township. Regulations of the United States Justice Department (found at 28 C.F.R. Part 35) require that such governmental agencies maintain and publish a procedure to be followed when someone wishes to complain of a violation of the law. Under this procedure anyone, including an employee or applicant for employment, who believes he or she had been discriminated against in any program, service or activity of (Name of Township), may require the Township to review and, if appropriate, to investigate the grievance. These rules set a forty-five (45) day objective for the completion of the inquiry by the Township and the issuance of a written determination by the Administrator or a designee; also set a thirty-day (30) day limit following the incident complained of in which the individual may file the grievance.

The rules also identify by title, with address and telephone number, the grievance officers of (Name of Township). They will be the individuals authorized to receive the grievances in the first instance and, who will pass information on to the department head or an appropriate designee, for the purpose of the initial inquiry and the decision making process. These rules will also contain a form for filing a grievance and a Notice of ADA Procedure, a copy of which will be made available to interested persons.

Chapter I

DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

SUBCHAPTER 1. DEFINITIONS

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“ADA” means the Americans with Disabilities Act, 42 U.S.C.

Sec. 12101 et. Seq.

“Township” means the (Name of Township).

“Agency” means any department, division or entity controlled by the administration of the government of (Name of Township).

“Designated Grievance Officers” means the Township ADA Coordinator and the Township ADA Compliance Officer.

In addition the ADA Coordinator identified in the rule for this Township is:

SUBCHAPTER 2. GENERAL PROVISIONS

Purpose

These rules are adopted by the Township in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35. 107.

The purpose of these rules is to establish designated grievance officers whose duties shall include assuring that the Township complies with and

carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaints filed with the Township.

REQUIRED ADA NOTICE

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans With Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be obtained by contacting the Township ADA Coordinator or the Township ADA Compliance Officer. As those rules indicate, complaints should be

addressed to the agency designated ADA Coordinator or the Township ADA Compliance Officer, who have been designated to coordinate ADA compliance efforts, at the following address:

A complaint may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA Compliance Officers. In case of employment related complaints, the same procedures will be adopted.

A complaint should be filed promptly within thirty (30) days after the complainant becomes aware of the alleged violation.

An investigation, as may be appropriate, will follow the filing of a complaint. The investigations will be conducted by the agency's designated ADA Grievance Officers. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

In most cases a written determination as to the validity of the complaint and the description of the resolution, if any, will be issued by the designated

decision makers a copy forwarded to the complainant no later than forty-five (45) days after its filing.

The ADA Grievance Officers will maintain the files and records of the agency relating to the complaints filed.

The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible federal department or agency or the New Jersey Division of Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

The rules are construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing federal rules.

SUBCHAPTER 3. DESIGNATED GRIEVANCE OFFICERS

Designated ADA Grievance Officers

The designated coordinators of ADA compliance and complaint investigation for the Township are:

All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated grievance officers identified in (a) above.

All complaints alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated grievance officers identified in this section, in accordance with the procedures set forth.

SUBCHAPTER 4. ADA COMPLIANT PROCEDURE

Complaint Procedure. Internal Grievance.

A complaint alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA grievance officers.

Complaint Contents:

A complaint submitted pursuant to this subchapter may be submitted either in or on the forms set forth; Form No. 1, ADA 2 or ADA 3.

A complaint submitted pursuant to this subchapter shall include the following information:

The name of the complainant, and/or any alternate contact person designated by the complainant to receive communication or provide information for the complainant.

The address and telephone number of the complainant or alternate contact person.

A description of manner in which the ADA has not been complied with or has been violated.

Date and time of incident.

Name of any federal or state agency to which this incident has been reported.

Name and address and position of any Township employee involved.

Name and address of any facility involved.

Name of department involved.

Name, address and telephone numbers of all witnesses.

Description of proposed remedy to satisfy the complainant.

Additional relevant information.

These rules and regulations will be effective as of the _____ and confirmed by resolution of the Township Committee of the (Name of Township).

Employment Complaint ADA 2
Enforced by E.E.O.C.

(NAME OF TOWNSHIP)

COMPLAINT FORM NO: ADA No. 2

Americans with Disabilities Act Grievance Form

- 1) Date: _____
- 2) Name of Grievant: _____
- 3) Address of Grievant: _____
- 4) Telephone number of Grievant: _____
- 5) Name, address & telephone number of alternate contact person:

- 6) Describe the manner in which the ADA has not been complied with or has been violated:

7) Give date and time of incident:

8) Give name of any federal or state agency to which this incident has been reported:

9) Give name and address and position of any Township employee involved:

10) Give name, address and telephone number of all witnesses:

11) Describe any proposed remedy to satisfy your complaint:

12) Supply any additional information that you feel would help to expedite this investigation:

Signed

Dated

Services, Programs, Access Etc., Complaint ADA 3
Enforced by Department of Justice

(NAME OF TOWNSHIP)

COMPLAINT FORM NO. ADA No. 3

Complainant: _____

Address: _____

City, State & Zip Code: _____

Telephone: Home: _____ Business: _____

Person Discriminated Against: (if other than the complainant)

Address: _____

City, State & Zip Code: _____

Telephone: Home: _____ Business: _____

Government, organization or institution you believe has discriminated:

Name: _____

Address: _____

City, State & Zip Code: _____

Telephone: _____

When did the discrimination occur: Date: _____

Describe the acts of discrimination providing the name(s) where possible of the individuals who discriminated (use space on last page if necessary):

Have efforts been made to resolve this complaint through the internal grievance procedure of the government, organization or institution?

Yes _____ No _____

If yes, what is the status of the grievance?

Has this complaint been filed with another bureau of the Department of Justice or any other Federal, State or local civil rights agency or court?

Yes _____ No _____

Agency or Court: _____

Contact person: _____

Address: _____

City, State & Zip Code: _____

Telephone number: _____

Do you intend to file with another agency or court?

Yes _____ No _____

Agency or Court: _____

Address: _____

City, State & Zip Code: _____

Telephone Number: _____

(NAME OF TOWNSHIP)
TRANSITION PLAN
AS REQUIRED BY THE AMERICANS WITH DISABILITIES ACT
1990

Public entities that employ fifty (50) or more people must develop a Transition Plan detailing the structural changes necessary to achieve program accessibility (35.150 (d)). Disabled individuals and disability groups must have the opportunity to submit comments concerning the Transition Plan, which must also be available to the public. There is no requirement, however, that the plan be submitted to the Justice Department.

The Transition Plan must be completed by July 26, 1992.

Other than addressing the need for curb cuts, the Title II rules do not specify the types of information that must be included in a Transition Plan. As a general guide, a public entity can use the Transition Plan to:

- Identify the physical barriers that hinder a disabled person's ability to participate in a program;
- Describe ways to make the facility accessible;
- Set up a schedule for removing barriers; and
- Designate a person to be responsible for overseeing the process.

CURB RAMPS MUST BE INSTALLED

In addition to ensuring accessible facilities, the Title II rules require public entities that have authority over streets and walkways to provide curb ramps at

existing sidewalks (35.150 (d) (2). A parallel requirement is imposed for new construction.

A schedule for installing curb ramps must be included in the Transition Plan, with priority given to walkways that serve entities covered by the ADA. This includes state and local government offices and facilities, transportation, public accommodations and employers. Walkways serving other areas would be next on the list.

In the preamble to the Title II rules, the Justice Department defines pedestrian walkways to include areas needed to access public transportation, such as bus stops that are not located at intersections or crosswalks.

Similarly, a public entity should provide an adequate number of accessible parking spaces in its existing parking lots and garages.

TIES TO SECTION 504

State and local governments that receive federal financial assistance should be familiar with developing Transition Plans, because they have been required of federal funds recipients under Section 504 of the Rehabilitation Act for quite some time. Indeed, the Title II rules provide that a public entity need not include policies and practices in an ADA Transition Plan that were already covered by a section 504 Transition Plan (35.105 (d) (3). This is similar to the way self-evaluations are handled.

The Justice Department notes that public entities might find it easier to include all of their operations in an ADA Transition Plan rather than attempt to identify and exclude those addressed by a previous review.

The Department also points out that public entities that receive federal funds are not shielded from their responsibilities under section 504 because they have completed an ADA Transition Plan.

**Prepared by:
C.J. Cousins
County Compliance Officer**

(ORGANIZATION/AGENCY)
TIME FRAME FOR STRUCTURAL CHANGES

After due consideration and having regard to budget constraints and the practical aspects of bid response, the following time frames for structural changes were agreed upon:

- 1) That which is readily achievable - within six months.
- 2) All changes within the scope of Public Works - within one year.
- 3) All changes subject to Public Contract - within two years.

All projects regardless of classification will commence immediately.

(NAME OF TOWNSHIP)
TRAINING MATERIAL

CHECKLIST FOR DISCRIMINATION INVESTIGATIONS

I. PRELIMINARY CONSIDERATIONS

- A. Use two (2) investigators, if possible.
- B. Conduct interviews in a private room.
- C. Insure there will be no interruptions.
- D. Eliminate the possibility of telephone calls.
- E. Create a confidential file.
- F. Ask if you may record on tape.

II. GATHERING THE FACTS

- A. Review relevant personnel files and Township policies.
- B. Interview the complainant.
 - 1. Take the complaint seriously.
 - 2. Explain the investigation but don't promise complete confidentiality.
 - 3. Find out what happened: ***Get Details!***
 - 4. Find out the effects of the discrimination on the complainant.

5. Find out names of all witnesses.
6. Ask the complainant to specify what he or she would consider to be an amicable settlement.
7. Assess credibility by reviewing history of complainant.
8. Take a statement, if warranted.
9. Type the notes of the interview from the recorder or notes taken.

C. INTERVIEW THE ACCUSED (Use only if applicable)

1. Explain the purpose of the interview but state that no decision has been made on the truthfulness of the allegations.
2. Identify the complainant and inform the accused of the basic specifics of the discriminatory complaint.
3. Ask he or she to respond to the charge by giving their account.
4. Establish the names of any witnesses.
5. Assess credibility of accused by reviewing personnel file history.
6. Take a statement, if warranted.

7. Type the notes of the interview from the recorder or notes taken at the time.

D. INTERVIEW CORROBORATION WITNESSES

(Use only if applicable).

1. Try to elicit identity of the complainant and accused from the witness as opposed to identifying the complainant and accused to the witness. This should be done at the beginning of the interview.
2. Find out what he or she knows: *Get Specifics!*
3. Distinguish between firsthand and secondhand knowledge.
4. Assess the credibility of the witnesses from file history.
5. Take a statement, if warranted.
6. Type the notes of the interview.

III. EVALUATING THE FACTS AND MAKING THE DECISION

- A. Evaluate the facts from a reasonable person's perspective.
- B. Draft a thorough, even-handed report.
 1. Make the report chronological.
 2. State when first informed of the complaint.

3. Provide exact details of the complaint.
4. Note the documents reviewed.
5. Describe the interviews.
6. For all witnesses, distinguish between firsthand knowledge and rumor.
7. State conclusion as to whether discrimination occurred and provide details of any specific justification.
8. Recommend corrective action if discrimination occurred.

The corrective action should:

- a. Be reasonably calculated to prevent further discrimination.
- b. Not punish the complainant.
- c. Be consistent with the discipline imposed in the past in similar situations.

- C. Submit the report to the decision-making official.

THAT OFFICIAL SHOULD:

1. Not be a rubber stamp, review the facts in the report;
2. Point out deficiencies in the report;
3. Ask follow-up questions;
4. Conduct interviews with him or her if necessary;

5. Document his or her actions.

D. Follow-up with the complainant and the accused after the decision has been made.

(NAME OF TOWNSHIP)
TRAINING MATERIAL

Authority: Rehabilitation Act 1973
Americans with Disabilities Act 1990

Subject: Employment Practices

GUIDELINES AND INFORMATION

INTRODUCTION:

Prior to the passing of the Americans with Disabilities Act (ADA), employment applications and interviews historically have requested information concerning an applicant's physical and mental condition. This information was often used to exclude applicants with disabilities from securing a job before their ability to perform the job was even evaluated.

In consequence, when the applicants did not succeed in securing a job, he or she did not necessarily know whether the rejection was due to the disability or due to lack of skills and experience.

With the passing of the statutory and regulatory framework of the aforementioned Acts, an employer now may not ask about the existence, nature or severity of a disability. He/she may not conduct medical examinations until after the employer determines that the applicant is qualified for the job and also makes a conditional employment offer to the applicant.

The following guidelines and information are intended to be of help to those who deal with employment practices. Accordingly, the content covers certain practical aspects and application.

EXPLANATION OF STANDARD LANGUAGE

“INDIVIDUALS WITH DISABILITIES:”

The Americans with Disabilities Act protects those who meet the requirements of the definition of “individuals with disabilities.”

“An individual with a disability” is one who has a mental or physical disability that substantially limits one or more of his or her major life activities.

There are a further three (3) categories of individuals that are afforded protection:

1. Those who have a record of a disability even though the particular illness is under control by medication or is in remission.
2. Those who are perceived to have a disability such as an obvious disfigurement or deformity.
3. Those who have a relationship or an association with an individual who has a disability.

The reason why these last three (3) categories are included may be explained in the following way:

1. The Act intends that those who have a record of catastrophic illness remain “an individual with a disability” on the theory that their disability is only in remission.
2. Those who are perceived to have a disability are included on the theory that due to their physical condition and appearance others may view them as disturbing and distracting to normal business functions.
3. Those who are related or have an association with “an individual with a disability” are protected on the theory that

disclosure may tend to affect the possible job placement on the basis that care of the qualified individual will result in excessive absence from the job.

The regulations relating to the practices are, therefore, built around the need to protect this class of individuals.

“A QUALIFIED INDIVIDUAL WITH A DISABILITY”

A “qualified individual with a disability” is one who satisfies the requisite skill, experience, education and other job related requirements of the employment position that the individual holds or desires, and who, with or without reasonable accommodation can perform the essential functions of the position.

Reasonable accommodation is defined as follows:

“REASONABLE ACCOMMODATION”

ADA dictates that where an individual’s functional limits impede job performance that the employer must take measures where and when possible to give what is known as reasonable accommodation.

Reasonable accommodation may involve but is not limited to the following:

- 1. Restructuring of a job.**
- 2. Modifying work schedules.**
- 3. Acquiring or modifying equipment.**
- 4. Modifying examinations.**
- 5. Reassigning a current employee to a vacant position.**

Reasonable accommodation must be tailored to match the needs of the individual according to the circumstances and evaluated on a case by case basis.

Reasonable accommodation may be required for pre-employment practices or on site job performance.

Reasonable accommodation will at times be in conflict with collective bargaining agreements. A Texas court has already held that ADA may override a collective bargaining agreement when other factors outweigh the agreement in determining reasonableness of the accommodation.

The essence of reasonable accommodation is EFFECTIVENESS. Therefore, guidance and information should be obtained by consulting the Administrative Offices.

“PRACTICAL APPLICATION”

We will now deal with the practical aspects of their application:

JOB DESCRIPTION:

Most supervisors are familiar with the Civil Service job descriptions applicable to each recognized and established work title. The job description usually contains a wide range of duties to allow some flexibility of application. In many cases not all of the duties listed are required to be performed. Reading a job description, therefore, does not always help in separating the essential functions and the marginal functions of the job.

You will recall that a qualified individual with a disability is one who with or without reasonable accommodation can perform the essential functions of the position. It is, therefore, necessary that before interviewing a prospective employee that you have the essential functions clearly defined.

The marginal functions, when found to be difficult to perform, can be substituted for other duties that the disabled person can, in fact, negotiate.

When evaluating which are the essential functions of any job the following guidelines may be of help:

- A. The amount of time spent performing any one function.**
- B. The work experience of individuals who have previously performed the job.**
- C. The work experience of individuals who are currently performing similar jobs.**
- D. The consequences of not having the position filled.**

The ADA does not assume that the essential function of a job remains static. For legitimate reasons an employer may reorganize the functions of the job. For example, the employer may combine the essential functions of two (2) jobs.

In such instances an individual with a disability to acquire or hold a reconstituted job would be expected to perform the essential functions of the new job. Such changes may require reconsideration of the existing reasonable accommodation.

Analyzing job functions in terms of the reason for and evidence of “essentiality” should help a supervisor distinguish between essential and marginal functions of a job.

PRE-JOB OFFER CONDUCT:

It is important for all supervisors to understand that no questions or conversation should take place regarding an individual’s medical history or disability. This includes questions or conversation that would elicit a response or declaratory statement from the applicant.

Inquiries about impairments are treated differently than inquiries about disabilities because the impairment may not be a disability. Supervisors should bear in mind that an impairment is a disability only if it substantially limits one or more major life activities. Thus, inquiries about impairments are unlawful at the pre-offer stage only if they are likely to elicit information about the applicant’s disability.

EXAMPLE 1:

An applicant enters your office using crutches with a cast on the lower leg. In situations such as this it is difficult for an interviewer to ignore the condition entirely. In such circumstances, questions such as, “How did you break your leg?” will elicit a reply concentrated only on the manner in which the leg was broken (e.g., skiing, rollerblading).

Sequential questions such as the extent of the break, the duration of the healing, would tend to elicit responses that may indicate a permanent disability.

It would, therefore be wise to not go beyond the answer to the question, “How did you break your leg?”

EXAMPLE 2:

The interviewer asks the applicant, “Do you have 20-20 corrected vision?” This inquiry is not likely to elicit information about whether an applicant has a disability because many persons who do not have 20-20 corrected vision do not have a disability. The interviewer may take this inquiry at the pre-offer stage. However, if an applicant answers, “No,” the interviewer may not follow up this permissible question with questions such as, “What is your corrected vision?” or “What is your uncorrected vision?” Either of these inquiries is likely to elicit information about whether an applicant has a disability because they will need to disclose whether they have more than a severe vision impairment.

VOLUNTEERED INFORMATION:

Information volunteered by an individual in response to a non-disability-related inquiry would not be a basis for an investigator to conclude that the inquiry was disability-related.

EXAMPLE 1:

The interviewer asks an applicant whether he can perform a particular job function and in answering the inquiry the applicant states that he has Multiple Sclerosis. The interviewer has not made a prohibited pre-offer inquiry. Rather, the applicant has volunteered information about the disability which was unsolicited.

However, where an individual voluntarily discloses a disability, an interviewer may not make follow-up inquiries concerning the disability at the pre-offer stage.

Rather than being forced into any conversation or discussion at the pre-offer stage, do not be reluctant to tell the applicant that you are not permitted to discuss any disabilities or medical history regarding them or their family.

It is interesting to note that under the Equal Employment Opportunity Commission (EEOC) regulations relating to the ADA that job descriptions are not

mandated. However as you will observe, essential functions and marginal functions are still necessary to implement the procedures dictated.

It is also interesting to note that job descriptions written after the day of employment cannot be used and will not be recognized as objective evidence in the event of a dispute.

TOPICS

“ATTENDANCE”

An interviewer may state the Township’s attendance requirements and also ask whether the applicant can meet the hours required.

EXAMPLE 1:

The interviewer may state, “Employees” regular work hours are from 8:30 AM – 4:30 PM, Monday through Friday. Are you able to meet these requirements? Are you also able to work any overtime should the occasion arise?

An interviewer may also make inquiries as to the applicant’s previous attendance record:

EXAMPLE 2:

“ How many days were you absent from your job last year?” or even “How many Mondays and Fridays were you absent from your job last year?”

These questions are permissible as they do not and are not considered likely to elicit information about a disability; rather the rationale being that there are many reasons unrelated to disability why an applicant was absent from the job e.g., weather conditions, transportation problems, jury duty, etc.

“HEIGHT & WEIGHT”

Casual conversation relating to height or weight is permissible and even conversation regarding foods and how many times a person eats daily. This area of conversation is not considered to be of a nature that it will elicit disability-related answers. However, taken to any depth the situation will change.

ADA court-related decisions now recognize what is know as Morbid Obesity.

Morbid Obesity is defined as being either more than twice or more than one hundred pounds (100 pounds) over an individual’s optimal weight. This condition may be caused by a voluntary conduct or a metabolic dysfunction. Extremely thin or underweight individuals may also be suffering a “hidden” medical disability. It is, therefore, unwise to enter into these areas of conversation if either condition is apparent.

“CERTIFICATION”

An interviewer may ask at the pre-offer stage whether an applicant has certification or licenses related to essential or marginal job functions.

An interviewer may even ask the applicant why he or she does not have a particular certification or license.

EXAMPLE 1:

The supervisor asks, “Why don’t you have a commercial driver’s license?” The applicant replies, “Because I have epilepsy.”

As you will see, this question did create a disability-related discovery. The interviewer did not violate the regulations.

There may be many reasons why a person does not have a commercial driver's license other than a disability-related problem. Regulations do allow such questions, as they are considered not likely to elicit information about a disability.

“PROHIBITED QUESTIONS”

The following examples of inquiry are considered to be in total violation of permissible discovery at the pre-offer employment stage:

1. How many days were you sick last year?
2. Have you ever filed for Worker's Compensation?
3. Have you ever been hurt on the job?
4. How much alcohol do you drink?
5. What prescription drugs are you taking?

This list is not by any standards complete, but you will observe that the answer to each question will always result in obtaining knowledge of an individual's disability. Therefore, such direct questions must be avoided.

From all your previous and above-mentioned examples it is important that you understand that questions during the interview session cannot and should not elicit information directly or indirectly relating to current, past or even family disabilities.

“DOCUMENTATION”

Supervisors should be aware that it is permissible to ask for documentation to support any request for reasonable accommodation.

However, due to the many sensitivity issues involved, such requests should be made through the Administrator's Office.

Such documentation is permissible to avoid abuse of the intent of the legislation.

EXAMPLE 1:

An applicant makes a request for a reader to assist for the purpose of a written test stating that he suffers from dyslexia.

This could be true but it could also be that the individual cannot read due to lack of education.

EXAMPLE 2:

An entering employee states that she will need a break every two hours to eat a snack in order to maintain her blood sugar level. This may or may not be true. Accordingly, documentation from the doctor should reflect that she has insulin dependent diabetes and that she actually needs the food breaks.

Requesting documentation verifying the person's status as an individual with a disability is consistent with the employer's obligation to provide reasonable accommodation only to those protected individuals and also to ascertain to the extent of such accommodations.

"DISCIPLINARY ACTION"

As you are aware, the first step of the disciplinary action is the verbal reprimand. Such reprimands frequently become the subject matter of

interrogatories in future litigation. It is, therefore, important that the following be observed:

- 1. Reprimanded in private only unless there is an imminent safety hazard involved.**
- 2. Say no more than necessary to stop the infraction.**
- 3. Ensure that the reprimand is an immediate outgrowth of the infraction.**

By doing so you are preventing distorted versions of the incident arising at a later time. Many lawsuits are built on what is regarded as a pattern of discrimination and at a certain point the employee involuntarily leaves his or her employment and commences an action for what is known as Constructive Discharge.

“CONSTRUCTIVE DISCHARGE”

Constructive Discharge is an employee’s involuntarily resignation resulting from the working conditions becoming so intolerable that a reasonable person feels compelled to resign to avoid further deterioration of the relationship.

Examples would be open chastisement regarding absences for treatment, unnecessary comments and remarks concerning frequency or need for treatment; embarrassing comments regarding the individual’s condition and threats or veiled threats which would make the individual believe that he or she will be denied time off for treatment.

Constructive Discharge can result in serious penalties being assessed against the employer plus other appropriate sanctions as the court may order.

“ALTERNATIVE DISPUTE RESOLUTION”

The ADA does not encourage litigation; in fact, it is one of the few federal statutes that in its actual statutory construction encourages the use of Conciliation, Arbitration and Alternative Dispute Resolution.

The drafters of the legislation took great care to encourage creativity in resolving issues even to the point that employer and employee must communicate with each other, sharing their respective views on what constitutes a reasonable accommodation.

To allow this process to occur it is necessary to request that in the future the complainant be told to visit the Administrative Offices to pick up or obtain a (Name of Township) Grievance form or a Department of Justice form. Completing either form at the initial stage creates a formal complaint that must be subject to certain established procedures.

Please, therefore, encourage the procedure of making an appointment with the Grievance Officer for the purpose of discussion and negotiation.

Should the complainant not care to negotiate, he or she will probably be denied the “Right To Sue letter” from EEOC. This letter is a necessary requirement before he or she can proceed through the courts.

Please be reminded that there are no quotas or preferences intended under the regulations of ADA. The intent is to afford equal opportunity in the workplace.

ADA seeks to ensure access to employment opportunities based on merit and competition.

Individuals with disabilities can be hired, fired, bumped, disciplined, promoted and demoted just as all others.

Finally, hiring supervisory should also be informed that the Office of Administration does aid in giving the appropriate advice on how to obtain assistance to interview an applicant with visual, hearing, or speech impairment.

If you have any questions, please be sure to consult the ADA Coordinator.

Prepared by:

**Cyril J. Cousins
Monmouth County ADA Compliance Officer**

(ORGANIZATION/AGENCY)
OPERATIONS DEPARTMENT EVALUATION
**(As required by the Rehabilitation Act and
Americans with Disability Act)**

PROGRAM INFORMATION

1) List of programs/activities

a) See attached

2) Purpose

a) Ensure youth, adults and senior with the opportunity to experience various recreational activities.

NOTICE AND COMMUNICATION

1) Notification of policy to public

a) (Name) letter describes general information pertaining to activities, programs, and procedures. All (Name) policies are posted and made accessible through public knowledge information/literature.

2) Notification of Policy to Employees/Staff

a) Employees/staff are provided with the (Name) Employee Handbook Staff Rules and Procedures.

b) In addition to workshop, etc.

3) N/A

4) No. TDD System to be installed.

5) See Number 4. Relay services have been used in previous situations.

CONTRACTS, AGREEMENTS AND SUB-GRANTS

- 1) **No**
- 2) **No**
- 3) **N/A**
- 4) **N/A**

PROGRAM MARKETING AND PUBLIC INFORMATION

- 1) **Yes - Public Meetings**
- Yes - Printed Material (Recruitment)**
- Yes - Printed Material (Informational)**
- Yes - Advertisements**
- Yes - Telephone Information**

PROGRAM ELIGIBILITY AND ADMISSIONS REQUIREMENTS

- 1) **N/A**
- 2) **N/A**
- 3) **N/A**
- 4) **N/A**
- 5) **N/A**
- 6) **No.**

PARTICIPATION IN THE PROGRAM

1) **Through 7 - Not applicable to this point**

PROGRAM EMPLOYMENT PRACTICES

Recruitment

- a) Yes
- b) N/A
- c) Yes
- d) Yes

Job Vacancies

- a) Yes
- b) Yes

Job Interviews

- a) Yes
- b) Yes
- c) Yes

Employment Criteria and/or Tests

- a) Yes

- b) Yes

Physical or Medical Examinations

- a) Yes
- b) No
- c) N/A
- d) Yes

Reasonable Accommodations

- a) Yes
- b) No
- c) N/A

As per Department and ADA Requirements and Guidelines, we do not discriminate against an individual's disability.