

Resolution Agreement between the Office for Civil Rights and  
Massachusetts Department of Transitional Assistance  
Docket No. 98-00101

RESOLUTION AGREEMENT

between the

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS

and the

MASSACHUSETTS DEPARTMENT OF  
TRANSITIONAL ASSISTANCE

Complaint Number: 98-00101

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Appendix A: Compliance Plan Regarding Resolution Agreement

## I. Introduction

This Resolution Agreement (hereinafter Agreement) is entered into by the United States Department of Health and Human Services, Office for Civil Rights (OCR) and the Massachusetts Department of Transitional Assistance (DTA). This Agreement resolves Complaint No. 98-00101, which was filed with OCR on April 28, 1998, alleging that DTA discriminated against persons with learning disabilities by denying them an equal opportunity to participate in DTA's Employment Services Program (ESP).

### A. Parties to Agreement

1. United States Department of Health and Human Services, Office for Civil Rights (OCR).
2. Massachusetts Department of Transitional Assistance (DTA) is the state agency responsible for administering the Massachusetts Transitional Aid to Families with Dependent Children program (TAFDC), a family human services and cash assistance program funded in part by the Temporary Assistance for Needy Families (TANF) Block Grant. 42 U.S.C. § 601, et. seq.

### B. Jurisdiction

1. OCR has jurisdiction over this complaint pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504), 29 U.S.C. § 794, and its implementing regulations at 45 C.F.R. Part 84. Section 504 and its implementing regulations prohibit discrimination on the basis of handicap by recipients of Federal financial assistance. All entities that receive Federal financial assistance from the U.S. Department of Health and Human Services (HHS) either directly or indirectly, through a grant, contract, or subcontract, are obligated to comply with Section 504 and its implementing regulations. DTA receives Federal financial assistance from HHS in the form of a TANF Block Grant.
2. OCR also has jurisdiction pursuant to Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131, et seq., and its implementing regulations at 28 C.F.R. Part 35. The ADA prohibits discrimination on the basis of disability in State and local government programs and services. OCR is the designated agency responsible for investigating ADA complaints against State and local governments with regard to the administration of social service programs or activities. *See* 28 C.F.R. § 35.190(b)(3).

C. Complaint, Investigation, Finding of Discrimination

1. Complaint No. 98-00101 (formerly OCR Complaint No. 01-98-3055) alleges that DTA discriminated against eligible persons with learning disabilities by denying these persons an equal opportunity to participate in DTA's Employment Services Program (ESP). ESP is one component of Transitional Aid to Families with Dependent Children (TAFDC).
2. Based on its investigation, OCR made a finding of discrimination and issued a letter of findings on January 19, 2001. OCR found that DTA violated the ADA and Section 504 and implementing regulations by: (1) failing to provide individuals with learning disabilities an opportunity to participate in or benefit from the TAFDC program that is equal to the opportunity provided to persons without disabilities; (2) employing methods of administration that have the effect of subjecting persons with learning disabilities to discrimination on the basis of disability; and (3) failing to make reasonable modifications necessary to avoid disability-based discrimination against persons with learning disabilities.
3. DTA denies that it has violated the ADA and/or Section 504, but agreed to work with OCR on a Resolution Agreement to ensure current and future compliance with these laws.

D. Purpose of Agreement

1. In order to resolve these matters expeditiously and without further burden or expense of administrative proceedings or litigation, DTA accepts the terms stipulated in this Agreement and affirms its assurance of compliance with all provisions of the ADA and its implementing regulations. DTA also affirms its assurance of compliance with all provisions of Section 504 and its implementing regulations.
2. This Agreement incorporates and includes the attached Compliance Plan, which describes specific actions DTA has taken or will take as part of the resolution of this matter.
3. Subject to the continued performance by DTA of the stated obligations and required actions contained in this Agreement, OCR shall suspend administrative action on Complaint No. 98-00101 against DTA.
4. This Agreement applies to services DTA provides to persons who are considered disabled under the ADA and/or Section 504, and specifically addresses the issues raised by OCR Complaint No. 98-00101 and discussed in OCR's letter of findings of January 19, 2001.

5. This Agreement shall not be construed as an admission or as evidence that DTA has not complied with the ADA, Section 504, or their respective implementing regulations, with respect to the allegations in the administrative complaint.

## II. General Provisions

- A. **Facilities covered by this Agreement.** This Agreement covers all DTA offices and facilities, including Central and Local Transitional Assistance Offices.
- B. **Effective Date and Duration of Agreement.** This Agreement shall become effective on the date it is signed by DTA ("Effective Date") and shall remain in effect for four years from the Effective Date, at which point if DTA is substantially in compliance with this Agreement, OCR's review and monitoring of this Agreement shall terminate. Notwithstanding the aforementioned time limitation, DTA agrees that it will comply with Section 504 for so long as it continues to receive Federal financial assistance and with Title II of the Americans With Disabilities Act for so long as it is a public entity within the meaning of the ADA.
- C. **State Agency's Continuing Obligation.** Nothing in this Agreement is intended to relieve DTA of its obligation to comply with other applicable nondiscrimination statutes and their implementing regulations.
- D. **Effect on Other Compliance Matters.** The terms of this Agreement do not prejudice any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be currently pending before OCR or any other Federal Agency. Any unrelated compliance matters arising from subsequent reviews or investigations will be addressed and may be resolved separately. This Agreement also does not preclude further OCR complaint investigations or compliance reviews related to the subject matter of this agreement. Nothing in this paragraph shall be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews.
- E. **Prohibition Against Retaliation and Intimidation.** DTA shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint or participated in any manner in the investigation of the matter addressed in this Agreement. *See* 45 C.F.R. § 80.7(e).
- F. **OCR's Review of DTA's Compliance with Agreement.** OCR may, at any time, review DTA's compliance with this Agreement. As part of such review, OCR may require DTA to provide written reports, permit inspection of its offices, interview witnesses, and to examine and copy documents. DTA agrees to retain

records required by OCR to assess DTA's compliance with the Agreement and to submit the requested reports to OCR as specified herein. OCR shall maintain the confidentiality of all documents, files, and records received from DTA and shall not disclose their contents except where necessary in formal enforcement proceedings or where otherwise required by law.

- G. **Failure to Comply with the Terms of this Agreement.** If at any time OCR determines that DTA has failed to comply with any provision of this Agreement OCR shall notify DTA in writing.
1. The notice shall include a statement of the basis for OCR's determination and will allow DTA 15 business days to either:
    - a. explain in writing the reasons for its actions and describe the remedial actions that have been or will be taken to achieve compliance with this Agreement; or
    - b. dispute the accuracy of OCR's findings.
  2. On notice to DTA OCR may shorten the 15 business day period if it determines that a delay would result in irreparable injury to the complainant or to other affected parties.
  3. If DTA does not respond to the notice or if OCR determines that it is not possible to obtain voluntary compliance, OCR may issue a Letter of Finding documenting the area of noncompliance and may initiate enforcement proceedings in accordance with applicable Federal regulations.
- H. **Non-Waiver Provision.** Failure by OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision shall not be construed as a waiver of OCR's right to enforce other deadlines or any provision of this Agreement.
- I. **Entire Agreement.** This Agreement, which incorporates the commitments set forth in the Compliance Plan, constitutes the entire understanding between DTA and OCR regarding the resolution of Complaint No. 98-00101. Any statement, promise or agreement not contained herein shall not be enforceable through this Agreement.
- J. **Modification of Agreement.** This Agreement may be modified by mutual agreement of the parties in writing.

- K. **Effect of DTA Program Changes.** DTA reserves the right to change or modify its programs, so long as DTA ensures compliance with Section 504 and the ADA and their implementing regulations, and with the provisions of this Agreement. Significant program changes that may affect compliance with this Agreement or any applicable statutes and regulations must be reported to OCR on a quarterly basis. DTA may amend any of its regulations or sub-regulatory materials, including those specifically referenced herein, provided that any amended materials are consistent with the requirements of Section 504, the ADA, and this Agreement.
- L. **Publication or Release of this Agreement.** OCR places no restrictions on the publication of the terms of this Agreement. In addition, OCR may be required to release the Agreement and all related materials to any person upon request consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522, and its implementing regulations, 45 C.F.R. § 5.
- M. **Authority of Signer.** The individual who signs this document on behalf of DTA represents that he/she is authorized to bind DTA to this Agreement.
- N. **Third Party Rights.** This Agreement can only be enforced by the parties specified in this Agreement, or their legal representatives and/or assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.
- O. **Confidentiality:** DTA will continue to comply with all applicable State and Federal laws and regulations including M.G.L. c. 66, § 17A, and c. 66A governing the confidentiality of certain personal data concerning program applicants and participants.

### III. Certifications

- A. Within 90 days of the Effective Date of this Agreement, DTA will provide to OCR written certification and include appropriate documentation that DTA has, consistent with the Compliance Plan:
  - 1. developed, implemented, and posted revised written policies;
  - 2. developed and implemented uniform procedures for receiving and responding to grievances;
  - 3. conducted staff training in relevant provisions of this Agreement and copies of all training materials; and
  - 4. developed a self-monitoring mechanism.

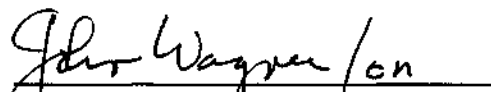
#### IV. Notice of Complaint Settlement

Within ten (10) days of the Effective Date of this Agreement, DTA shall cause to be posted, in all local offices in which participants wait for service a *Notice of Resolution Agreement* attached to the Compliance Plan as Attachment 7. Notice shall remain posted for a period of one year after screenings for learning disabilities are implemented pursuant to Section II.F of the Compliance Plan.

#### V. Signatures



\_\_\_\_\_  
Peter K. Chan  
Regional Manager  
Office for Civil Rights

  
\_\_\_\_\_  
John A. Wagner  
Commissioner  
Massachusetts Dept. of Transitional  
Assistance

Signed this <sup>th</sup> 28 day of *December*, 2006.



**APPENDIX A: DTA COMPLIANCE PLAN  
REGARDING RESOLUTION AGREEMENT**

**Complaint Number 98-00101 (Massachusetts Department of Transitional Assistance)**

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Attachment 7: Notice of Resolution Agreement

## I. Definitions

In this Compliance Plan, the terms listed below shall have the following meaning:

### A. Disability:

1. The term "disability" in this document is synonymous with the definition of disability in the ADA and Section 504. 42 U.S.C. § 12102(2); 29 U.S.C. § 705(20)(B). *The regulations implementing these statutes are attached as Attachment 2.*
2. Under the ADA, Section 504, and the DTA regulation at 106 C.M.R. § 701.390, disability is defined as: a physical or mental impairment that substantially limits one or more of the major life activities of a person; a record of having such an impairment; or being regarded as having such an impairment. *See* 28 C.F.R. § 35.104 and 45 C.F.R. Part 84 § 84.3(j). The definition of disability or incapacity found in the Massachusetts TAFDC program regulations relating to the disability exemption process is not applicable to the Agreement. *See, e.g.*, 106 C.M.R. § 203.530 (physical or mental incapacity).
3. The term "impairment" shall not include current, illegal use of a controlled substance.

### B. Learning Disability(ies):

"Learning disabilities" is a generic term that refers to a heterogeneous group of disorders manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities, or of social skills. These disorders are intrinsic to the individual and presumed to be due to central nervous system dysfunction. Even though a learning disability may occur concomitantly with other handicapping conditions (e.g., sensory impairment, mental retardation, social and emotional disturbance), with socioenvironmental influences (e.g., cultural differences, insufficient or inappropriate instruction, psychogenic factors) and especially with attention deficit disorder, all of which may cause learning problems, a learning disability is not the direct result of these conditions or influences. *See* Interagency Committee on Learning Disabilities, Learning Disabilities: A Report to the U.S. Congress, p. 222 (1987).

### C. The term "program" in this document refers to:

1. DTA's TAFDC program and its component parts, including the Employment Services Program.
  - a. A "program participant" is someone who is receiving TAFDC benefits.
  - b. A "program applicant" is someone who has applied for TAFDC benefits.

D. Screening:

Screening is an initial procedure for identifying persons who may have learning disabilities. Screening does not detect the presence of a learning disability; instead, it identifies indicators for learning disabilities, and thus suggests whether a program participant should be referred for further diagnostic assessment to determine if he or she has one or more learning disabilities.

E. Assessment:

Assessment is the diagnostic process of determining whether a person has a learning disability(ies). Assessments are conducted by clinical diagnosticians who are qualified to perform diagnostic evaluations for learning disabilities.

F. Reasonable Modification/Accommodation:

1. The ADA requires that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such an entity. 42 USC. § 12132.
2. The ADA requires that public entities provide "reasonable modifications" or "reasonable accommodations" for qualified persons with disabilities. These terms are often used interchangeably in practice and are used interchangeably in this document.
3. Public entities shall make reasonable modifications in program policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.
4. Providing a reasonable accommodation/modification may take many forms, including but not limited to, modifying certain activities, rules or deadlines, providing auxiliary aids, providing assistance in collecting verifications or completing forms, etc.

5. If an "accommodation" or "modification" is necessary and reasonable, and the program participant is a qualified disabled person, DTA must provide an accommodation unless DTA can demonstrate that making an accommodation/modification would fundamentally alter the nature of the TAFDC program and/or its component part at issue. *See* 28 C.F.R. § 35.130(b)(7) and 106 C.M.R. § 701.390 (D).

G. Eligibility Review:

An eligibility review is a periodic review by DTA of a program participant's circumstances in relation to the TAFDC program eligibility requirements. *See* 106 C.M.R. § 702.200.

H. Work Program Requirement:

A program participant may be required to participate in the TAFDC Work Program. Activities that may satisfy this requirement are set forth in St. 1995, c. 5, § 110 and the DTA regulations at 106 C.M.R. § 203.400(A).

I. Employment Services Program (ESP):

The Employment Services Program (ESP) is administered by DTA pursuant to St. 1995, c. 5, § 110(h) and 106 C.M.R. § 207.000-207.190 and 106 C.M.R. § 207.210. ESP provides a variety of employment-related services, which may include skills training, education, job readiness, job advancement and job retention activities, as well as support services necessary to allow the individual to accept or maintain employment or participate in an ESP activity in accordance with 106 C.M.R. § 207.210.

J. ESP Participant:

An ESP participant is anyone who is participating in an ESP activity or who is currently volunteering in or currently mandated to participate in an ESP activity within the meaning of 106 C.M.R. § 207.110(A)(1)(a),(b),(c),(f), and (g).

K. Employment Development Plan (EDP):

An Employment Development Plan (EDP) is developed with all program participants who participate in ESP, as defined above, and any other program participants as determined by DTA, pursuant to St. 1995, c. 5, § 110(h) and 106 C.M.R. § 207.110(A). Among other things, the plan records a program participant's employment goal, the planned activities, and the support services necessary to reach that goal. *See* 106 C.M.R. § 270.110(A)(4).

L. Transition Plan Review:

A Transition Plan Review is a contact between the program participant and the caseworker conducted at regular intervals to discuss the number of months remaining in the participant's program eligibility period (24-month time limit). In this review, the caseworker and program participant discuss and document the program participant's plans and current efforts to become self-sufficient and the opportunities and services available to the program participant.

M. Field Operations Memo:

A Field Operations Memo (FOM) transmits information and instructions from DTA's Assistant Commissioner of Field Operations to DTA field staff regarding new procedures and/or clarification to, or modifications of, current procedures.

N. Local Transitional Assistance Office (TAO) Accommodation Teams:

1. The TAO Accommodation Teams function in each local office and are responsible for making initial decisions on and implementing reasonable accommodation requests.
2. In each local office, these teams are made up of two specifically assigned staff members, including the TAO Director (or designee) and another staff member appointed by the Director, both of whom are trained with respect to DTA's obligations under the ADA, Section 504, and the Agreement. The third member of the team will be the caseworker assigned to the case of the individual who has requested the accommodation.

O. Central Office (CO) Accommodation Team:

1. This team is comprised of Central Office staff members designated by the Commissioner, all of whom are trained with respect to DTA's obligations under the ADA, Section 504, and the Agreement. This team will:
  - a. advise and support the TAO Accommodation Teams; and
  - b. respond to requests for reconsideration of TAO Accommodation Team or ESP Contractor denials of requests for reasonable accommodations as set forth in Section II.Q. of the Agreement.

P. Extension Agreement and Extension Plan:

A program participant who is approved for an extension of time-limited benefits is required to enter into an extension agreement and, in some cases, an extension plan, pursuant to Field Operations Memos 2000-25A and 2000-29A.

## II. Specific Provisions

- A. Notification of DTA Obligations and Program Applicants' and Participants' Rights under the ADA and Section 504
  1. DTA will notify program applicants and participants orally and in writing that:
    - a. program applicants and participants with disabilities (including learning disabilities) are entitled under the ADA and Section 504 to equal access to all DTA programs and services;
    - b. DTA is obligated to make reasonable accommodations and/or modifications to its programs, practices, and procedures to enable disabled persons to have equal access;
    - c. DTA contractors have the same obligations; and
    - d. any program applicant or participant who informs DTA that he or she is having difficulty meeting program requirements and/or may need an accommodation to meet DTA's requirements or access DTA services will be encouraged to discuss the issue and request an accommodation at any time with the assistance of his or her caseworker, a TAO Accommodation Team member, or DTA's Equal Opportunity Officer.
  2. Notification to program applicants and participants as described above in Section I.A.1. will be implemented in the following manner:
    - a. DTA will provide written information regarding individuals' rights under the ADA and Section 504 to request assistance and/or reasonable accommodations regarding all TAFDC program activities, including but not limited to, application processing, obtaining verifications, participation in the ESP and/or the work program and the disability determination review process. This written information will be provided through the poster and client notice form attached as *Attachment 3*.

- b. The client notice form referenced above will be provided at application, eligibility reviews, when a participant requests a disability exemption, at the establishment or revision of an EDP, when extension agreements/plans are prepared, and at Transition Plan reviews. DTA employees shall orally explain the contents of and offer to read the notice to all program applicants and participants. *See* 106 C.M.R. § 702.115(A).
  - c. There will be English and Spanish versions of these notification materials available. In order to prevent discrimination based on race, color or national origin, DTA will assess whether these informational materials need to be translated into other languages, and will provide the materials in those languages consistent with the requirements of Title VI of the Civil Rights Act and existing DTA policies and practices. *See* 42 U.S.C. § 2000d and 45 C.F.R. § 80.3; *see also* 106 C.M.R. § 701.360.
    - i. Interpreter services will be made available when necessary to provide effective communication and to afford meaningful access to information about applicants' and participants' rights with regard to participation in DTA programs.
  - d. Posters describing the rights addressed by the Agreement will be prominently displayed in all TAO waiting areas. Each office will display an English and Spanish version of this poster. These posters will be placed near a poster advertising, in multiple languages, the availability of free language assistance services. Each Office Director or designee will be responsible for making sure these posters remain displayed.
  - e. These notices and posters will be distributed and posted within 60 days of the Effective Date of the Agreement.
- B. DTA Staff Training on DTA Obligations and Program Applicants' and Participants' Rights Under the ADA and Section 504.
- 1. DTA has issued Field Operations Memo (FOM) #2003-19 to all DTA staff who have client contact or who supervise staff with client contact reminding them of their obligation to provide equal access and reasonable accommodations to disabled applicants and participants pursuant to the ADA and Section 504. This memo is attached as *Attachment 4*. This FOM, along with any necessary updates or revisions, will be reissued 30

days after the Effective Date of the Agreement and at least annually thereafter for the duration of the Agreement.

2. Other reminders of DTA's ADA and Section 504 obligations will be communicated at least twice yearly through such vehicles as office-wide e-mail, TAO staff meetings, or DTA's monthly newsletter.
3. All DTA staff who have client contact or who supervise staff with client contact will be trained on DTA's and its contractors' legal obligations under the ADA, Section 504, and the Agreement.
  - a. Training began in January 2002 and was completed in September 2002. Training on the ADA and Section 504 will be conducted for new DTA hires within four months of their start date. Training for employees who missed the initial training will be conducted within 180 days of the Effective Date of the Agreement. This training may be accomplished through various methods, including, but not limited to, in-house small group training, video, teleconference, and/or review of written materials.
  - b. DTA will provide staff with ongoing education on DTA's legal obligations under the ADA, Section 504, and the Agreement. Ongoing training for workers on these obligations will be provided using Field Operations Memoranda, TAO staff meetings and state-wide directors' meetings.

C. Equal Opportunity to Participate in an ESP Component

DTA will ensure that all program participants with learning disabilities have access to the entire range of ESP activities for which they are qualified, with or without reasonable accommodations. For purposes of the agreement, DTA must ensure that an ESP activity in which a program participant with a learning disability seeks to enroll has staff with the requisite expertise to meet the participant's needs in light of the learning disability(ies) when such specific expertise is necessary.

D. DTA Staff and Contractor Training on Learning Disabilities

1. Notice regarding this Agreement will be sent to all ESP contractors within 60 days of the Effective Date of the Agreement. DTA provided basic training to ESP providers, contract monitors, and a designee from each DTA local office on identifying individuals with learning disabilities, understanding behavioral indicators for learning disabilities, and understanding the impact of learning disabilities on adults. Training began



in October 2001 and was completed in December 2001. In addition, whenever DTA conducts trainings or general meetings with ESP contractors, the agenda will include a component discussing ADA and Section 504 legal obligations.

2. Within 30 days of the Effective Date of the Agreement, DTA will provide notice to staff regarding the terms of this Agreement in the form of a Field Operations Memo (FOM).
  - a. DTA will post on its website notice of the signing of the Agreement and the availability of learning disability screening and assessment for eligible program participants.
3. A separate FOM is to be issued within 60 days of the Effective date of the Agreement, which will include specific information on the screening and assessment procedures as described in Section II.D.4., below. Within 30 days of the Effective Date of the Agreement, DTA will provide a draft of the content of the FOM for review and comment to OCR.
4. Prior to implementation of screening for learning disabilities, as discussed in Section II.F below, DTA will train staff who have client contact or who supervise staff with client contact on the use of the tool that will be used to screen for learning disabilities.
  - a. The training will include information about the use of the tool to identify individuals with learning disabilities as well as general information regarding behavioral indicators for learning disabilities, the impact of learning disabilities on adults, and how to sensitively address the issue and offer the screening to clients.
  - b. Training methods may include training classes, state-wide Directors' meetings, TAO staff meetings, or some combination of these methods, in addition to Field Operations memoranda.
5. DTA, in consultation with OCR, will determine annually whether to provide further training for DTA staff and contractors on learning disability issues, including the provision of reasonable accommodations. Upon request, a written analysis of this determination will be submitted to OCR. In making its determination, DTA will consider:
  - a. the time elapsed since the last active training (i.e., rather than training through issuance of written material);

- b. the percentage of staff who have never been trained regarding learning disabilities;
- c. the results of the participant survey described in Section III.R.3.;
- d. the expressed need of contractors and/or DTA staff for training; and
- e. complaints, grievances, or contract reviews indicating the need for further training.

E. Central Office Resource Coordination

- 1. DTA will monitor to ensure that its ESP contractors are providing equal access to services for program participants, as discussed in Sections II.O.-Q. below.
- 2. DTA will designate Central Office staff who will regularly collect and disseminate to local TAO staff up-to-date information identifying those ESP providers who have staff and/or other programmatic capacity to serve the specific needs of persons with learning disabilities.
  - a. The designated Central Office staff person(s) will also compile information about programs funded by the Department of Education and other relevant agencies which have available services and supports, including qualified staff, for persons with learning disabilities.
  - b. The designated Central Office staff person(s) will provide technical assistance, confer with local office staff regarding appropriate referral recommendations, and address specific questions about available services for persons with learning disabilities.

F. Screening Program Applicants and Participants for Learning Disabilities

- 1. Offer of Free Screening
  - a. DTA caseworkers or other appropriate TAO or contracted staff will offer, orally and in writing, the opportunity to be screened for learning disabilities to program participants who participate in an ESP activity or who volunteer for or are mandated to participate in an ESP activity within the meaning of 106 C.M.R. § 207.110(A)(1).

- i. Screening will be offered before an ESP participant's Employment Development Plan (EDP) is created. Thereafter, caseworkers or other appropriate TAO or contracted staff will offer the opportunity to be screened when a participant's EDP is revised, except when the revision is related solely to the provision of support services, when eligibility reviews are conducted and transition plan[s] are developed, and extension plans/agreements are developed. *See* 106 C.M.R. § 207.110 (A)(2).
    - ii. Caseworkers or other appropriate TAO or contracted staff will document the offer of screening on the consent form attached hereto as *Attachment 6*.
  - b. With respect to current ESP participants who, as of the Effective Date of the Agreement, are already subject to an EDP or an extension plan/agreement, DTA will send written notice within 30 days of the Effective Date of the Agreement offering the opportunity for screening for learning disabilities.
  - c. Upon request of any program applicant or participant who is not an ESP participant, screening will also be provided.
  - d. Screening will be conducted by TAO staff or contracted staff and will be provided at no cost.
  - e. The availability of free learning disability screening will be noted in the informational materials described in Section II.A.2.a.
  - f. Posters advertising the availability, upon request, of free screening to all program applicants and participants, shall be posted in the waiting area of each DTA local office.
2. Validated Screening Tool

DTA will initially use the Washington State Screening Tool (attached as *Attachment 5*), a recognized and validated screening tool, to screen for learning disabilities. Another tool may be used upon mutual agreement of the parties.

3. Alternative Documentation of Learning Disability(s) in Lieu of Screening and/or Assessment.

- a. DTA will inform program participants, orally and in writing, that if they provide DTA with documents that show a diagnosis of a learning disability, and that provide adequate information upon which to determine appropriate reasonable accommodations, DTA will accept these documents as a basis for determining whether the applicants or recipients at issue are entitled to reasonable accommodations and/or modifications to DTA policies, practices, and procedures.
  - i. If DTA determines that such documents do not adequately establish the diagnosis of a learning disability or give inadequate information upon which to determine appropriate reasonable accommodations, DTA will offer the program participant at issue the opportunity to participate in the DTA screening and assessment process.

G. Consent to Screening and/or Assessment for Learning Disabilities

1. A person shall be screened only upon his or her consent. At the time that screening is offered, DTA staff will inform program participants of the potential advantages of screening and assessment, and also that participation in screening and assessment is completely voluntary on the part of the participant.
2. If the program participant is willing to be screened and/or assessed for learning disabilities, he or she will be asked to sign a consent form that the caseworker or other appropriate TAO or contracted staff will review orally with him or her. The consent form is attached as *Attachment 6*.
  - a. The consent form will inform the participant that the results of the screening and/or assessment will be shared with appropriate DTA staff and specific ESP contractors after the participant has enrolled and been accepted in the ESP component.
  - b. Pursuant to the program participant's consent, DTA will release to ESP contractors only the portion of the assessment containing the actual diagnosis and any recommendations for accommodations/strategies for instruction.
3. If the program participant is not willing to be screened and/or assessed for learning disabilities, he or she will indicate waiver on the consent form described above.

- a. Program participants shall be informed orally and in writing that they may withdraw the waiver and request screening and assessment at any time.
- b. DTA will continue to provide informational materials in accordance with Section II.A.2. to persons who have declined screening.
- c. DTA will continue to provide services and the most appropriate ESP referral based on the information it has.

H. Assessment Protocol

1. Offer of Assessment

- a. ESP participants whose screening indicates a potential learning disability(ies) shall be promptly provided the opportunity to participate in a diagnostic assessment at no cost to the applicant or participant, administered pursuant to Section II.H.2. below, and shall be encouraged to do so.
- b. Program applicants and participants who are not ESP participants but whose screening indicates a potential learning disability shall be referred to the Massachusetts Rehabilitation Commission (MRC) for learning disability assessment if eligible for MRC services, as determined by MRC.
- c. DTA will maintain a protocol with MRC regarding processing these referrals.

2. Learning Disability Assessment Process

- a. DTA may contract out the assessment process to qualified persons or entities.
  - i. DTA will ensure that diagnostic learning disabilities evaluations are administered to DTA clients by clinical diagnosticians who are qualified to perform such assessments.
  - ii. The assessment tools used will be consistent with industry standards.

- iii. DTA will provide OCR with copies of its contracts for learning disability assessment services.
  - iv. The assessment process will be implemented within 120 days of the Effective Date of the Agreement.
- b. The written report of each individual's assessment will include:
- i. diagnostic test results, including the nature of the learning disability(ies), if diagnosed, and a description of the effect such disabilities may have on the individual's ability to fully benefit from and participate in ESP activities;
  - ii. if diagnosed, a description of the accommodations and/or modifications that may be necessary to help the individual fully participate in the TAFDC program, including meeting the goals of his or her EDP, and to provide an equal opportunity to reach the same level of achievement as the opportunity provided to other program participants; and
  - iii. when applicable, the report will describe how instructional styles should be modified to address the diagnosed learning disability(ies).
- c. The written report of the assessment, including the kinds of accommodations from which the program participant may benefit, will be provided to the participant and explained orally by the assessor, if possible, or if not, by a member of the TAO Accommodation Team, TAO employee or contracted staff, who has been trained as necessary to present such information.
- d. The report will be placed in the program participant's case file and a copy will be provided to the individual upon request.
3. Providing Assistance Prior to Result of Assessment

Pending the issuance of the diagnostic assessment report, DTA will continue to assist the program applicant and participant and provide equal access to DTA programs and services as required by DTA regulations, policies, and procedures. *See* 106 CMR 702.125.

- I. Evaluation of the Need to Offer and Provide Screening and Assessment to All Program Participants.
  1. At the conclusion of the first year after the Effective Date of the Agreement, DTA, in consultation with OCR, will determine whether DTA should affirmatively offer and provide both screening and assessment to program participants who are not ESP participants. In making this determination, DTA will consider information generated through the self-evaluation described in Section II.U. DTA will also review and consider at least the following information concerning TAFDC program participants who are not ESP participants:
    - a. the number of applicants and participants who request a screening;
    - b. the number of applicants and participants to request an assessment and/or who are referred to the Massachusetts Rehabilitation Commission (MRC) for assessment;
    - c. the number of program participants who requested reasonable accommodations due to learning disabilities; and at what point in the process they requested such accommodations (e.g., at application, at EDP development, at sanction; after initiation of appeal, etc.); and
    - d. whether DTA staff determine that they could better serve program applicants and participants if formal screening and assessment for learning disabilities were provided to this population.
- J. Notice to Former Program Participants of Opportunity for Assessment
  1. Within 30 days of implementing the screening process, DTA will send written notice to those individuals whose TAFDC benefits have been terminated since January 19, 2001 for failure to comply with their EDP and/or work requirement. The notice will inform the individual:
    - a. of the availability of screening and assessment for learning disabilities;
    - b. of the continuing right to reapply for TAFDC, and to request an extension of time-limited benefits if the program participant had some time remaining under the two year time limit at the time benefits were terminated;

- c. that, if screening indicates a potential learning disability and the individual wishes to participate in an ESP activity (and accepts referral for such activity), he or she will be offered the opportunity for a free learning disability assessment, and his or her case will be reopened without the need to first come into compliance with the work requirement or the EDP; and
    - d. that, after reopening, the individual will have to comply with the terms of his or her EDP, but can request reasonable accommodation(s) to facilitate compliance.
  2. In addition to this individualized notice, within 60 days of implementing this screening process, DTA will provide general notice to the public of the availability of screening and assessments for current and future program participants, including former participants who reapply, and the provisions of Section II.K.(Extension Procedures).
    - a. General notice will be provided:
      - i. in the Massachusetts Register;
      - ii. by posting notice in DTA local offices;
      - iii. by posting notice at ESP contractor sites; and
      - iv. by mailing written notice to the F.O.R. Families Program and to all Massachusetts Legal Services offices.
  3. DTA will provide a draft of the content of these notices for review and comment to OCR within 30 days of the Effective Date of the Agreement.

K. Extension Procedures

Current DTA regulations allow persons to receive extensions for up to 6 months if they need time to complete an education or training program in which they are enrolled prior to reaching the time limit. *See* 106 C.M.R. § 203.210(A)(2). Persons who have a learning disability may request and receive additional extensions beyond the 6 months as a reasonable accommodation if they need more time due to their learning disability.



L. Effect of Positive Screening and/or Learning Disability Diagnosis on Sanctions

1. If an ESP participant is notified of DTA's intention to sanction for failure to comply with an EDP or the work requirement regarding participation in an education or training program, community service site, structured work program, or supported work program, and the person:
  - a. claims that his or her learning disability caused the failure,
  - b. positively screens for a learning disability, or agrees to be screened for a learning disability and then screens positively, and
  - c. agrees to participate in and completes a learning disability assessment,the participant shall be informed that if these conditions are met, DTA shall hold any sanctions in abeyance, pending the outcome of the learning disability assessment. DTA shall so inform the program participant of this action in writing.
2. If effective accommodations can be implemented prior to completion of the assessment process, DTA may require the ESP participant to work with his or her current program or start a new program prior to the completion of the assessment process. In making an alternative placement, DTA shall take into consideration the participant's stated placement preference. If possible, DTA shall arrange or allow a placement in another program that is within the same ESP component, that is geographically accessible to the participant, and that provides the same kind of instruction or experience as the program that the participant has selected, but that can provide appropriate accommodations prior to the completion of the assessment process.
3. If the participant does not screen positively for a learning disability, or does not cooperate with the assessment process, refuses to participate in a program when effective accommodations are possible and/or made, or is found not to have a learning disability or one that requires accommodation in the ESP components listed above in Section II.L.1, the sanction can proceed subject to DTA appeal rights as described in 106 C.M.R §343.000.
4. If the individual is determined to have a learning disability(ies) that require a reasonable accommodation to participate in ESP, the pending sanction will be expunged.

M. Modifying DTA Regulations and Procedures to Accord with Agreement

1. Within 120 days of the signing of the Agreement, DTA will modify its regulations and internal procedures
  - a. to incorporate the screening and assessment provisions in Sections II.F. and H., and
  - b. to incorporate the time limit extension provisions in Section II.K., and
  - c. to incorporate the sanction provisions found in Section II.L.

N. Tracking System

1. The Department will develop a tracking system to collect data from each local office on:
  - a. the number of program applicants and participants screened, and the number of program applicants and participants found to have potential learning disabilities and offered an assessment;
  - b. the number of program participants who agreed to participate in an assessment;
  - c. the number of program participants who completed the assessment process;
  - d. the reasons given by the program participant for not attending the assessment appointments, if provided;
  - e. the results of the assessment, including the diagnosis of the disability, if indicated;
  - f. the ESP activity to which the assessed participant was referred;
  - g. accommodations recommended to help the program participant;
  - h. whether the accommodations were provided, and

- i. whether the program participant successfully completed the program to which she/he was referred and, if available, the employment outcome for each program participant assessed.
2. The tracking system will be implemented within 60 days after the first assessments are completed and reported to DTA.

O. ESP Contractor Obligations Under the ADA and Section 504

DTA's contracts with ESP contracts will contain specific language regarding the contractors' legal obligations under the ADA and Section 504, including notification that DTA will require contractors to develop and submit for approval protocols for handling reasonable accommodation and modification requests. DTA will notify contractors that they may contact DTA for technical assistance regarding compliance with anti-discrimination obligations. *See Attachment 1.*

P. Technical Assistance to ESP Contractors

DTA will designate a Central Office administrator to provide ongoing technical assistance to contractors regarding the provision of reasonable accommodations and/or modifications of policies, practices and procedures.

Q. Grievance Procedures for Denials of Accommodations and/or Modifications

1. In cases where a reasonable accommodation is requested of DTA:
  - a. DTA shall inform the applicant or participant of its decision in writing, and shall, orally and in writing, inform the applicant or participant of the process by which he or she can request reconsideration of that decision by the Central Office Accommodation Team, and
  - b. If the Central Office Accommodation Team upholds the TAO Team's determination, the program applicant or participant will be informed orally and in writing that he or she can appeal the decision through DTA's Fair Hearing Process pursuant to 106 CMR 343.300.

2. In cases where a reasonable accommodation is requested of a DTA contractor:

If an ESP participant requests an accommodation from an ESP contractor and that request is denied by the contractor, the ESP contract manager, with the assistance of the TAO Accommodation Team, will attempt to negotiate a

reasonable accommodation. The TAO Accommodation Team, with the assistance of the Contract Manager, will, if necessary, assist the participant in securing an appropriate alternate placement. DTA will notify the ESP participant that complaints regarding a contractor's failure to provide a requested reasonable accommodation may be directed to OCR for investigation. If it is alleged that the contractor's failure to provide an accommodation resulted in an adverse action by DTA (e.g. termination or sanction), that adverse action is appealable through DTA's Fair Hearing Process in accordance with DTA regulations.

R. Monitoring Contractor Compliance

1. DTA will require ESP contractors to provide a copy of their ADA and Section 504 protocols for DTA approval. DTA will evaluate these protocols to ensure that the contractor understands its ADA and Section 504 obligations.
2. DTA will monitor and review ESP contractors' compliance with the ADA and Section 504. The ongoing contract monitoring process includes at least annual site visits, staff interviews, internal control reviews, and document reviews.
  - a. In addition, the standard site visit form will be amended to specifically require a review of the contractor's policies, including ADA and Section 504 grievance policies, regarding reasonable accommodations and records of accommodations requested.
3. DTA will survey ESP program participants as to whether their education, training, and job preparation needs were met by ESP contractors, including whether they were met on a timely basis. DTA will consult with OCR regarding the method by which the surveys will be conducted.
  - a. This survey will be implemented nine months after the Effective Date of the Agreement. Surveying will be done in some form no less than every two years thereafter to coincide with the DTA self-evaluation described in Section II.U. below, so long as the Agreement is in effect (*see* Agreement at Section II.B. "Effective Date and Duration of Agreement.").

S. Local Office Compliance

1. TAO Accommodation Teams will be responsible for:

- a. documenting and making decisions on reasonable accommodation requests from program applicants and recipients assigned to that local office; and making sure that the approved reasonable accommodations are implemented;
  - b. assisting the ESP contract managers in negotiating reasonable accommodation requests with ESP contractors;
  - c. working with the ESP contract managers to ensure that any approved reasonable accommodation requests made of ESP contractors are implemented and/or securing alternate appropriate placements; and
  - d. reviewing local office policies, practices, and procedures, and making recommendations to ensure local office compliance with the ADA, Section 504, and the Agreement.
2. Local office staff will use such information and resources as compiled in accordance with Section II.E., and any other appropriate resources, to assist them in making referrals and developing EDPs to appropriately serve program participants with learning disabilities.
- a. Local staff will consult with the specifically assigned staff members of the local office TAO Accommodation Team as necessary to assist participants.
  - b. Local staff will provide notice to program participants whose screening indicates a possible learning disability, or who otherwise identify themselves as having or possibly having a learning disability, of the availability of current information/resource lists for use in self-initiating enrollment in programs that qualify as an ESP activity.
3. All local office staff who have client contact will have received training, in accordance with Section II.B. and D., about DTA's obligations under the ADA, Section 504, and the Agreement.
4. The names and contact information for the specifically assigned members of the TAO Accommodation Teams will be posted in each local office and on the DTA website.
- T. Central Office Monitoring of Local Office Compliance

1. The Commissioner or designee will monitor local office compliance with the ADA, Section 504, and the Agreement. This will be done in part through Central Office Accommodation Team review of the activities of the TAO Accommodation Teams, including a review of the reasonable accommodation request determinations and implementations.
  - a. The Commissioner or designee will review this information, as well as the local office tracking data listed in Section II.N. of the Agreement to ensure each local office's compliance with the ADA, Section 504, and the Agreement.
  - b. Each TAO Director or designee will be responsible for reviewing and recommending revisions to local office procedures on an ongoing basis to ensure compliance with the ADA, Section 504, and the Agreement.
2. Contact information for the Central Office Accommodation Team will be posted in each local office and on the DTA website.

U. Self-Evaluation

1. DTA will use the results of the monitoring in Sections II.R. and T., the survey noted in Section II.R.3., as well as the tracking system noted in Section II.N. to conduct a self-evaluation by the Commissioner or designee of how well DTA is meeting its obligations under the ADA, Section 504, and the Agreement.
  - a. This self-evaluation, including any recommendations, will be completed one year from the Effective Date of the Agreement and every two years thereafter. This self-evaluation obligation continues so long as the Agreement is in effect (*see* Agreement at Section II.B. "Effective Date and Duration of Agreement.").
  - b. The Commissioner will review the results of the self-evaluation and will take further action, if warranted.
  - c. Within 90 days of the completion of the self-evaluation, the Commissioner shall report to the Office for Civil Rights any actions taken or the decision that no action is necessary based on the result of the self-evaluation.