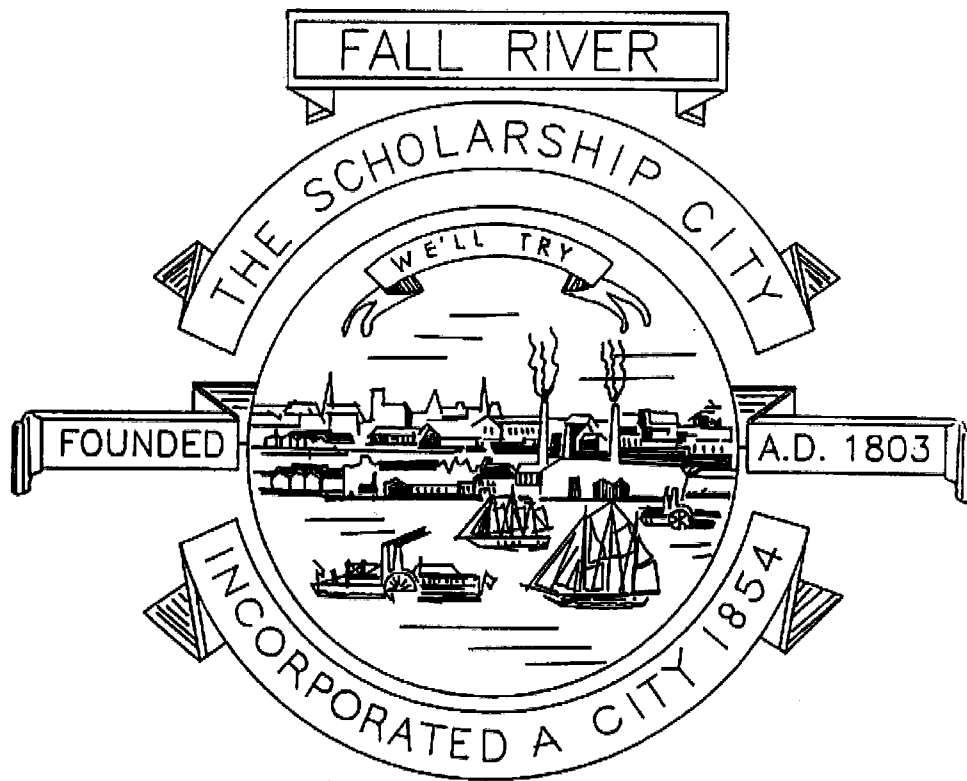


Fall River Community Development Agency

City of Fall River, Massachusetts



Americans with Disabilities Act Policy

December 2015

City of Fall River
Americans with Disabilities Act Policy

I. **Overview**

This document describes the FRCDA's policy and procedures for compliance with the Americans with Disabilities Act (ADA), a Federal law enacted in 1990.

Because the FRCDA is an employer, its employment activities are covered under Title I of the ADA. In addition, Title II of the ADA covers state and local governments, including the City, and this includes its departments, divisions, agencies, and programs.

This document reflects the state of the law as of its publication. It is intended to be used solely as a guideline and its applicability to specific programs or employment within the FRCDA. This document is not intended to create additional rights or remedies than those rights and remedies that the ADA is intended to address.

II. **ADA Definition of Disability**

In order to understand who is covered under the ADA, one first must understand how the ADA defines "disability." The ADA has a three-part definition; under the ADA, an individual with a disability is someone who either:

1. Has a physical or mental **impairment** that **substantially limits** one or more **major life activities**; or
2. Has a **record** of such an impairment; or
3. Is **regarded** by others as having such an impairment.

Each of these parts will be explained in the following paragraphs.

1. **Physical or Mental Impairment That Substantially Limits One or More Major Life Activities**

An "impairment" under the ADA is physiological or mental disorder.

A "physical impairment" is defined as:

"[a]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine."

A "mental impairment" is defined as:

"[a]ny mental or psychological disorder, such as an intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities."

Simple physical characteristics, therefore, such as eye or hair color, left handedness, or height or weight within a normal range, are not impairments. A physical condition that is not the result of a physiological disorder, such as pregnancy, or a predisposition to a certain disease would not be an impairment. Similarly, personality traits such as poor judgment, quick temper or irresponsible behavior, are not themselves impairments. Environmental, cultural, or economic disadvantages, such as lack of education or a prison record also are not impairments.

To be a disability covered under the ADA, an impairment must substantially limit one or more "major life activities." These are basic activities, including major bodily functions that most people in the general population can perform with little or no difficulty. Examples include, but are not limited to:

Walking	learning
Seeing	performing manual tasks
Speaking	working
Hearing	caring for oneself
Breathing	

Under the ADA, the determination of whether an individual's impairment significantly limits a major life activity should be made without regard to any "mitigating measures," e.g. assistive device or medication that s/he may use. In other words, an individual is considered to have a disability even if medications, assistive devices, or other mitigating measures reduce or eliminate the affected impairment below that of a substantial limitation of a major life activity. The second and third parts of the ADA definition of disability include people who may or may not actually have such an impairment, but who may be subject to discrimination because they have a record of or are regarded as having such an impairment.

2. **Record of a Substantially Limiting Impairment**

People who have a history of an impairment that substantially limits one or more major life activities may fall within the protections afforded under the ADA, whether or not they currently are substantially limited. For example, people with a history of cancer, heart disease, or other debilitating illness, whose illnesses are either cured, controlled or in remission, are covered under the ADA, as are people with a history of mental illness. People who may have been misclassified or misdiagnosed as having a disability are also covered under the ADA. For example, a person who may at one time have been erroneously classified as having mental retardation or having a learning disability is covered. These individuals have a record of disability.

3. **Regarded as Having a Substantially Limiting Impairment**

People who are not substantially limited in a major life activity are covered under the ADA if they are subject to discriminatory treatment because they are perceived to have such a limitation. Such protection is necessary because society's myths and fears about disability and disease are not at least as restricting as the physical limitation that flow from actual impairments. For example, a person with a prominent facial disfiguration, or a person rumored to be infected with HIV (even though he or she does not have such infection), may be subject to discriminatory treatment, even though he or she is not substantially limited. The legislative history of the ADA Congress intended this part of the definition to protect people from a range of discriminatory actions based on "myth, fears and stereotypes" about disability, which occur even when a person does not have a substantially limiting impairment.

Current Illegal Drug Use Is Excluded under the ADA

A person who currently uses drugs illegally is not protected by the ADA as an "individual with a disability" when an employer acts on the basis of such use. However, former drug addicts who have been successfully rehabilitated may be protected by the ADA.

Discrimination Based on a Relationship or Association with a Person with a Disability Is Prohibited under the ADA

Finally, discrimination against any individual, based on the individual's relationship or association with a person with a disability, is also prohibited under the ADA. For example, it would be illegal for an employer not to hire a job applicant who has a partner, child, or parent with a disability, based on a fear of absenteeism.

III. **General Nondiscrimination**

Under the ADA, FRCDA cannot refuse to allow a person with a disability to participate in any service, program, or activity solely because the person has a disability. The FRCDA must provide a reasonable accommodation to a person with a disability who meets essential eligibility requirements of the service, program or activity unless the provision of such accommodation would fundamentally alter the nature of the services, program or activity or would be an undue hardship. Generally, the FRCDA must provide all programs and services in an integrated (mixed) setting (rather than creating special programs just for people with disabilities). Separate or different measures may under limited circumstances be appropriate to ensure equal opportunity. All FRCDA-sponsored public meetings and hearings must be held only in locations that are accessible to people with disabilities, including people who use wheelchairs.

Reasonable Modifications in Policies and Procedures

Additionally, the FRCDA must make reasonable modifications to policies, practices, and procedures that create barriers to equal access for individuals with disabilities, unless such modifications would fundamentally alter the nature of the program or services or cause an undue hardship. The FRCDA adheres to the principle that eligible individuals with disabilities must be provided an equally effective opportunity to participate in or benefit from the FRCDA's programs and services subject to the requirements discussed above. The ADA provides for equality of opportunity, but does not guarantee equality of results. The FRCDA may not impose eligibility criteria for participation in its programs, services or activities that tend to screen out persons with disabilities, unless it can show that such requirements are necessary for the provision of the service, program, or activity. For example, a FRCDA recreational program could not impose a blanket requirement that all wheelchair users bring an attendant in order to participate in the program.

Safety Issues and Surcharges

The FRCDA may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the FRCDA must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities. Although compliance may result in some additional cost, the FRCDA will not place a surcharge on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses. For example, a FRCDA program could not charge extra for a participant who is deaf, in order to cover the cost of sign language interpreters.

Contracts, Licenses, and Certifications

The FRCDA will not discriminate on the basis of disability in contracting for the purchase of goods and services. FRCDA contracts should contain civil rights and nondiscrimination language that includes disability as a protected category. The FRCDA will not discriminate on the basis of disability in its licensing, certification, and regulatory activities. A person is a "qualified individual with a disability" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification.

Undue Hardship and Fundamental Alteration of the Program

The FRCDA is not required to make an accommodation if it would impose an undue hardship on municipal operations. An undue hardship is an action that requires "significant difficulty or expense" when considered in relation to certain factors including the size of the employer, the resources available, and the nature of the operations. Whether or not a particular accommodation will impose an undue hardship on the FRCDA must always be determined on a case by case basis.

The FRCDA is not required to modify its policies, practices or procedures if it can demonstrate that such modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations involved.

IV. Building Accessibility

Under the ADA, the FRCDA is required to operate all its activities, services and programs so that, when viewed in their entirety, they are readily accessible to and usable by qualified individuals with disabilities. Consequently, qualified individuals with disabilities cannot be excluded from FRCDA programs, services, and activities because buildings are inaccessible. However, the FRCDA need not remove physical barriers, such as stairs, in all existing building, as long as it makes its programs accessible to individuals who are unable to use an inaccessible existing facility.

The FRCDA can provide the services, programs, and activities offered in an inaccessible building to individuals with disabilities through alternative methods, if physical barriers are not removed, such as by relocating a service to an accessible facility, e.g., moving a public information office from the third floor to the first floor of a building, or providing benefits or services at an individual's home, or at an alternative accessible site.

Notwithstanding this, all FRCDA-sponsored public meetings and hearing must be held in locations that are accessible to people with disabilities, including people who use wheelchairs.

V. Communication Accessibility

The FRCDA is committed to ensuring that its communications with individuals with disabilities are as effective as communications with others. In order to provide equal access, the FRCDA will make available appropriate auxiliary aids and services where necessary to ensure effective communication. Auxiliary aids and services include a wide range of services and devices that promote effective communication. As further set forth below, the FRCDA is not required to provide a particular auxiliary aid or service if to do so would result in a fundamental alteration of the service, program, or activity or an undue hardship.

Examples of Auxiliary Aids and Services for Effective Communication

Examples of auxiliary aids and services that may be effective for individuals who are deaf or hard of hearing may include, but are not limited to:

qualified sign language interpreters
note takers
computer aided real-time
transcription (CART)
telephone handset amplifiers

individuals assistive listening devices
open and closed captioning
telecommunications devices for deaf
persons (TTYs or TDDs)
exchange of written notes

Examples for individuals with vision impairments may include, but are not limited to:

qualified readers
taped texts
audio recordings

Braille materials
large print materials
screen readers

Examples for individuals with speech impairments may include, but are not limited to:

TTYs or TDDs

speech synthesizers

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the needs of the individual and the length and complexity of the communication involved. A simple exchange of written notes may be all that is necessary for a brief transaction with a deaf person. Sign language or oral interpreters, for example, may be required when the information being communicated in a transaction with a deaf individual is complex, or is exchanged for a lengthy period of time (e.g., a lecture or meeting). Factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.