



DISABILITY RIGHTS NEW YORK

New York's Protection & Advocacy System and Client Assistance Program

REPORT AND RECOMMENDATIONS **ON AMERICANS WITH** **DISABILITIES ACT COORDINATORS** **AT NEW YORK STATE AND LOCAL** **GOVERNMENT ENTITIES**

JULY 2017

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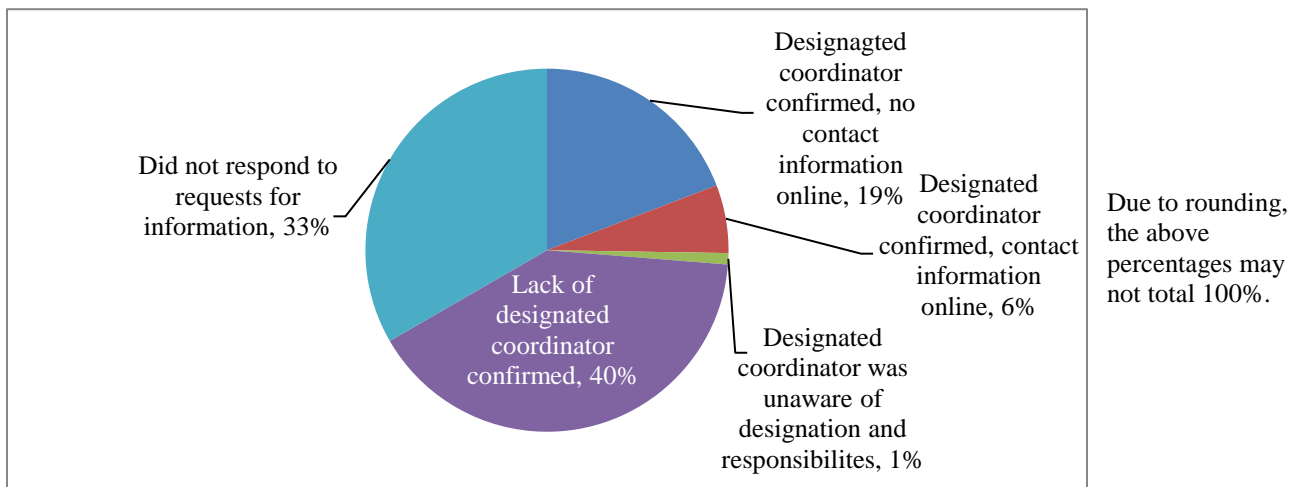
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EXECUTIVE SUMMARY

Disability Rights New York (DRNY) is the designated federal Protection and Advocacy system (P&A) for individuals with disabilities in New York State, as set forth in Executive Law §558(b).¹ One of DRNY’s core functions is to pursue legal, administrative, and other remedies or approaches to advocate for the rights of individuals with disabilities.²

Title II of the Americans with Disabilities Act of 1990 (ADA), provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”³ Under the ADA, all public entities with 50 or more employees are required to designate at least one employee to coordinate ADA compliance.⁴ The ADA Coordinator must coordinate compliance with Title II and investigate any complaints that the entity has violated Title II.⁵

The following Report details DRNY’s investigatory findings relating to the compliance of county, town, and village entities with the ADA’s requirement to designate ADA Coordinators. From January 1, 2017 through March 16, 2017, DRNY surveyed 156 municipalities in New York State with a staff of 50 or more people, in order to determine whether each agency had designated an ADA Coordinator. DRNY concluded that 136 municipalities are in violation of the ADA.



¹ DRNY is supported by the U.S. Department of Health and Human Services (HHS), Administration on Intellectual and Developmental Disabilities (AIDD), Center for Mental Health Services (CMHS), Substance Abuse & Mental Health Services Administration (SAMHSA); U.S. Department of Education (DOE), Rehabilitation Services Administration (RSA) and, the Social Security Administration (SSA) to implement the Developmental Disabilities Assistance and Bill of Rights Act of 2000. This Report and its content and conclusions are those of DRNY and does not represent the views, positions or policies of, or the endorsements by, any of these federal agencies.

² See 42 U.S.C. § 15043(a)(2)(i) [PADD Act], 42 U.S.C. § 10805(a)(1)(C) [PAIMI Act], 29 U.S.C. 794e(f)(3) [PAIR Act].

³ 42 U.S.C. § 12132.

⁴ *Disabled in Action v. Board of Elections in the City of New York*, 752 F.3d 189, 193 (2d. Cir. 2014) (citing 28 C.F.R. § 35.107(a)).

⁵ <https://www.ada.gov/pcatoolkit/chap2toolkit.htm>.

BACKGROUND

Congress passed the ADA in July 1990 to protect all individuals with disabilities from discrimination.⁶ Congress mandated that public entities with 50 or more employees have an ADA Coordinator for reasonable accommodation requests and complaints of discrimination.⁷ The ADA Coordinator is the person to whom New Yorkers can complain, if, for example, a government employee refuses to give a large print version of a form to a person who has low vision, or otherwise to assist in filling out the form. The ADA Coordinator also serves as an internal contact for public employees to answer questions accurately and to consistently supervise ADA compliance efforts.⁸ The ADA Coordinator can determine whether a new job posting is ADA-compliant or answer how many accessible bathroom stalls are required for a new building.

40% of public entities surveyed by DRNY did not have an ADA Coordinator. Another 33% did not respond to multiple requests for the contact information for the ADA Coordinator. People with disabilities are denied public services, programs and activities because these governmental agencies have not designated an ADA Coordinator.

SCOPE OF INVESTIGATION

DRNY surveyed 156 of the largest cities, towns, and villages in New York State. All of these municipalities had over 50 employees and were therefore required to have an ADA Coordinator.

DRNY's survey consisted of the following:

- DRNY called the ADA Coordinator whose name or contact information was on the entity's website.
- DRNY called the ADA Coordinator whose name was listed on the Niagara University First Responders' ADA Coordinator database.⁹
- DRNY called or emailed the Clerk of entities that did not have ADA Coordinator information listed on a website. DRNY called or emailed each entity twice.
- Where the Clerk was unable to identify the ADA Coordinator, DRNY asked for the name of another person who could confirm whether there was a designated Coordinator.
- Where an ADA Coordinator was identified, DRNY asked the ADA Coordinator:
 - Whether they knew of their designation as ADA Coordinator;

⁶ 42 U.S.C. § 12101.

⁷ *Id.*

⁸ *Id.*

⁹ The database was created in 2014 and is available at <http://www.fr-dat.com/support-resources/support/nys-ada-coordinator-listing>.

- Whether their designation and contact information was available on the entity’s website; and
- To describe their tasks, duties and responsibilities as an ADA Coordinator.

INVESTIGATION FINDINGS

FINDING: 63 OF THE 156 ENTITIES SURVEYED CONFIRMED THAT THEY DID NOT HAVE A DESIGNATED ADA COORDINATOR.

DRNY found that 40% of the public entities had not appointed an ADA Coordinator. These 63 public entities are:

City of Auburn	City of Port Jervis ¹⁰	Town of Farmington	Town of Perinton ¹²
City of Batavia	City of Poughkeepsie	Town of Gates	Town of
City of Beacon	City of Rensselaer	Town of Glenville	Poughkeepsie
City of Canandaigua	City of Rome	Town of Guilderland	Town of Ramapo
City of Cortland	City of Tonawanda	Town of Highland	Town of Sweden
City of Hornell	City of Troy	Town of Irondequoit	Town of Vestal
City of Hudson	City of Watervliet	Town of Islip	Town of Victor
City of Johnstown	City of White Plains	Town of Kent	Town of Walkill
City of Lackawanna	County of Bronx	Town of Lewiston	Town of Warwick
City of Little Falls	County of Kings	Town of Monroe ¹¹	Town of Webb
City of Lockport	County of New York	Town of Mount Pleasant	Town of Webster
City of Mount Vernon	Town of Clarence	Town of New Hartford	Town of Whitestown
City of New York	Town of Clarkson	Town of New Windsor	Village of Rochester
City of North Tonawanda	Town of East Fishkill	Town of Newburgh	Village of Fairport
City of Oneonta	Town of East Rochester	Town of Niagara	Village of Fishkill
City of Peeksville	Town of Elma		Village of Le Roy
			Village of Monroe

¹⁰ The City of Port Jervis told DRNY that it uses an ADA Committee to handled disability concerns. Information about the Committee is available on the city’s website. However, the ADA Committee does not conform to the requirements of 28 C.F.R. § 35.107(a).

¹¹ The Town Clerk for the Town of Monroe told DRNY that supervisors were notified about the lack of compliance but as of the writing of this Report an ADA Coordinator has not been appointed.

¹² The Town Attorney for the Town of Perinton stated that it was DRNY that alerted him that Perinton was out of compliance. As a result, he asked and was appointed ADA Coordinator at the next town meeting on March 22, 2017. He stated that his information and Perinton’s new ADA grievance policy will be posted on the town website shortly, but the information has not been posted as of the writing of this Report.

FINDING: 30 OF THE 156 PUBLIC ENTITIES SURVEYED CONFIRMED THAT THEY HAD AN ADA COORDINATOR, BUT DID NOT HAVE THE ADA COORDINATOR’S NAME OR CONTACT INFORMATION EASILY ACCESSIBLE ON THEIR WEBSITES.

When a public entity does not make its ADA Coordinator’s name, job responsibilities, and contact information readily available online, people with disabilities are denied the benefits of these entities. DRNY had to repeatedly call and wait days and weeks for these entities to respond with the name of the ADA Coordinator. People who contact a public entity with immediate or time-sensitive ADA issues are denied the service of an ADA Coordinator. The 30 entities without an ADA Coordinator’s name or contact information easily accessible on their websites are:

- | | |
|--------------------------|-----------------------------|
| City of Albany | County of Fulton |
| City of Amsterdam | County of Montgomery |
| City of Binghamton | Town of Cicero |
| City of Dunkirk | Town of Chili ¹³ |
| City of Glen Cove | Town of Clay |
| City of Gloversville | Town of Colonie |
| City of Long Beach | Town of Cortlandt |
| City of Middletown | Town of Greece |
| City of Newburgh | Town of Hempstead |
| City of Niagara Falls | Town of Orangetown |
| City of Norwich | Town of Tonawanda |
| City of Olean | Town of Yorktown |
| City of Salamanca | Village of Akron |
| City of Saratoga Springs | Village of Johnson City |
| City of Syracuse | Village of Webster |

FINDING: 52 OF THE 156 ENTITIES SURVEYED WERE UN-RESPONSIVE TO MULTIPLE REQUESTS FOR INFORMATION

DRNY contacted each entity at least twice to request the contact information for the ADA Coordinator. The 52 entities that did not respond to repeated requests for information are:

- | | | |
|---------------------|-------------------------|---------------------|
| Town of Bethlehem | Town of North Hempstead | Town of Brookhaven |
| Town of Union | City of Utica | Town of Huntington |
| City of Jamestown | Town of Manlius | Town of Riverhead |
| City of Plattsburgh | Town of Salina | Town of Smithtown |
| Town of Pawling | City of Geneva | Town of Southampton |
| Town of Amherst | City of Fulton | City of Ithaca |
| Town of Cheektowaga | Town of Carmel | City of Kingston |
| Town of Eden | Town of Patterson | City of Glens Falls |

¹³ The ADA Coordinator for the Town of Chili stated that the town’s website had recently been updated and his information would be posted on the website shortly. As of the writing of this Report, the website has not been updated with his information.

Town of Elma
Town of Grand Island
Town of Hamburg
Town of Lancaster
Town of Orchard Park
Town of West Seneca
Town of Henrietta
Town of Ogden
Town of Pittsford
Village of Pittsford

Town of Southeast
County of Queens
County of Richmond
Town of Clarkstown
Town of Clifton Park
City of Mechanicville
Town of Rotterdam
City of Ogdenburg
City of Corning
Town of Babylon

Town of Eastchester
Town of Greenburgh
Town of Mamaroneck
City of New Rochelle
Town of Ossining
City of Rye
Town of Rye
City of Yonkers

FINDING: TWO (2) OF THE 156 ENTITIES SURVEYED HAD AN ADA COORDINATOR WHO WAS UNAWARE OF HIS OR HER DESIGNATION AND DID NOT KNOW HIS OR HER RESPONSIBILITIES.

Although the City of Watertown and the Town of Haverstraw each designated an ADA Coordinator, that person was unaware of his or her designation and did not know the responsibilities involved. The ADA Coordinator for the City of Watertown said that he was not sure whether he was the ADA Coordinator. DRNY explained his responsibilities as an ADA Coordinator, which he was not familiar with, but he said he would act as one if necessary. The ADA Coordinator for the Town of Haverstraw stated that he did not know that he was the designated Coordinator, did not know what his responsibilities were as the designated Coordinator, and did not perform those functions.

FINDING: NINE (9) OF 156 PUBLIC ENTITIES SURVEYED HAD ADA COORDINATORS WHOSE NAME AND CONTACT INFORMATION WAS EASILY LOCATED ON THE ENTITIES' WEBSITES

Only 9 public entities had an ADA Coordinator, with a name and contact information which was easily located on the entities' websites. These entities are:

City of Buffalo
City of Cohoes
City of Long Beach
City of Oneida
City of Rochester
City of Schenectady
Town of Brighton
Town of Evans
Town of Oyster Bay

CONCLUSION

These municipalities have had 27 years to implement the most basic requirements of the ADA. It is inexcusable that 136 of the 156, 74% of the public entities surveyed, were out of compliance with the ADA. These public entities must take immediate steps to remedy this violation and ensure that New Yorkers with disabilities have an equal opportunity to access public services, programs and facilities.

PROPOSED IMMEDIATE RESOLUTIONS

Public Entities Without ADA Coordinators

1. Immediately appoint an ADA Coordinator and a backup ADA Coordinator.
2. Develop a complaint process and grievance procedure.
3. Develop or adopt training materials and modules for ADA Coordinators.
4. Develop a process for answering questions from the public and entity staff.
5. Publish ADA Coordinator's name and information as well as complaint/grievance policy in public buildings and on entity's website.
6. Create multiple ways to contact the ADA Coordinator.
7. Regularly review records of ADA complaints and requests for information about ADA requirements to identify compliance issues.
8. Conduct a review of other ADA compliance issues.

Public Entities with ADA Coordinators Not Publicly Available

1. Appoint a backup ADA Coordinator.
2. Publish ADA Coordinator's name and information as well as complaint/grievance policy in public buildings and on entity's website.
3. Create multiple ways to contact the ADA Coordinator.
4. Regularly review records of ADA complaints and requests for information about ADA requirements to identify compliance issues.
5. Conduct a review of other ADA compliance issues.

EXHIBIT 1

ADA COORDINATOR SURVEY

Are you the ADA Coordinator for [public entity]? An ADA Coordinator is the point person for questions, complaints, and concerns about disability access and discrimination issues coming from local residents as well as government employees. The title of the position does not have to be "ADA Coordinator."

If so,

1. Is your name and contact information as ADA Coordinator available on [public entity's] website?
2. What are your duties and responsibilities as ADA Coordinator?
3. Have you handled any matters in your capacity as ADA Coordinator? If so, please provide examples.

If not, do you know if [public entity] has an ADA Coordinator? If so, who? If not, do you know who would be the appropriate person to ask?

APPENDIX A

DRNY'S AUTHORITY TO INVESTIGATE DISABILITY RIGHTS VIOLATIONS

Protection and Advocacy Systems (“P&A Systems”) have the authority to pursue legal, administrative and other appropriate remedies or approaches to protect and advocate for individuals with disabilities.¹⁴

In 1975, Congress enacted the Developmental Disabilities Assistance and Bill of Rights Act [DD Act] because of the concerns it had regarding instances of abuse of developmentally disabled persons. The DD Act established the P&A System “to protect the legal and human rights of individuals with developmental disabilities.”¹⁵ Likewise, in 1986 Congress enacted the Protection and Advocacy for Individuals with Mental Illness Act because of its concern for the prevalence of abuse and neglect among individuals with mental illness.¹⁶ Both Acts established the authority of P&A Systems to pursue legal, administrative, and other remedies in order to protect the rights of people with intellectual and developmental disabilities and mental illness.¹⁷

The Protection and Advocacy of Individual Rights Act [PAIR Act] provides services to individuals with disabilities that neither have developmental disabilities as defined by the DD Act nor are mentally ill as defined by PAIMI Act.¹⁸ P&A Systems providing services under PAIR enjoy the same general authorities as those set forth in the DD Act, including the authority to advocate for the rights of individuals with other disabilities through legal and other channels.¹⁹

¹⁴ See, e.g., *Connecticut Office of Prot. & Advocacy for Persons with Disabilities v. Hartford Bd. of Educ.*, 464 F.3d 229, 238 (2d Cir. 2006).

¹⁵ 42 U.S.C. § 15001(b)(2).

¹⁶ 42 U.S.C. §§ 10801(a).

¹⁷ 42 U.S.C. § 15043(a)(2)(i), 42 U.S.C. § 10805(a)(1)(C)

¹⁸ 29 U.S.C. § 794e.

¹⁹ 29 U.S.C. 794e(f)(3).