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September 22, 2006

John Bailey
General Counsel
New York State Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, NY 12243

Dear Mr. Bailey:

We have reviewed the self-evaluation forms submitted by local districts pursuant to 06 ADM 05, *Providing Access to Temporary Assistance Programs for Persons with Disabilities and/or Limited English Proficiency*. We applaud OTDA for requiring local districts to conduct self-evaluations, but have concerns, stemming from the results of those self-evaluations. We urge OTDA to take the steps discussed below to address the serious deficiencies in the districts' responses, and failure to respond, to OTDA's self-evaluation requirement. It is clear that both OTDA and many local districts have much more work to do to bring local districts into compliance with the ADA and Section 504.¹

I. Only Half of the Districts Submitted Self-Evaluation Forms to OTDA.

In response to our May 24, 2006 Freedom of Information request, OTDA provided us with self-evaluation forms for only 31 of 58 districts, or 53 % of the districts. Districts that did and did not submit self-evaluations are identified in Table 1.² Notably, the New York City Human Resources Administration, which has 68% of the state's cash assistance caseload, did not submit a self-evaluation form. The ADM makes clear that completion of the self-evaluation

¹ This letter discusses only ADA and Section 504 issues. We plan to contact you in a separate letter discussing our concerns about districts' responses to questions concerning procedures for providing access to individuals with limited English proficiency.

² All Tables are located in the Appendix.

form is mandatory.

The ADM indicates that districts were initially asked to conduct a self-evaluation and submit the results to OTDA by November 23, 2004, almost one and a half years before the ADM was issued. We request that OTDA take immediate steps to ensure that all districts that have not submitted self-evaluation forms do so. Districts will not take these types of requirements seriously if they believe that no consequences will result from failing to comply with them.

II. OTDA Should Require Districts to Submit Updated Self-Evaluation Forms and Corrective Action Plans.

06 ADM 05 states that districts that completed a self-evaluation form before the ADM was issued need not complete another form unless they failed to present a corrective action plan to address deficiencies found in the earlier self-evaluation, and unless OTDA informs a district that it must complete another self-evaluation. Most of the completed self-evaluation forms provided to us appear to have been completed before the ADM was issued, because they use an earlier version of the form. Almost every one of these districts identified some deficiencies in program accessibility.

Yet, no district, to our knowledge, has submitted a corrective action plan, and only one (Oneida) submitted an updated self-evaluation. We request that OTDA require all districts with deficiencies in program accessibility to either submit a corrective action plan, complete an updated self-evaluation, or both.

III. Many Districts Did Not Submit Copies of Written Procedures With Their Self-Evaluation Forms, So It Is Impossible For OTDA to Determine the Adequacy of These Procedures.

Although every district that submitted a self-evaluation form claims to have procedures on at least some of the accommodation issues asked about, only 15 districts (26 % of all districts, 48 % of districts that responded) submitted copies of any procedures with their self-evaluation forms, despite the fact that OTDA requires districts to submit copies of these procedures.³ [See Table 2]

In a number of cases, districts did not submit written procedure because, by their own admission, they do not have a written procedures on an issue. Districts' failure to have written procedures is unacceptable, because an unwritten procedure is far less likely to be effective than a written procedure. Putting procedures into writing is the most effective way to ensure that staff are aware of them, and the best way to standardize agency practices. It is also the only way for OTDA to ensure that the district really has a procedure on an issue. Finally, without copies of

³ Although we requested these supporting documents from OTDA, we recognize that it is possible the district submitted supporting policies that were not provided to us.

districts' procedures, OTDA is extremely limited in its ability to review the substance and adequacy of those policies.

Accordingly, we request that OTDA: (a) require districts to put unwritten procedures into writing; (b) require districts to submit all of the procedures they say they have to OTDA; and (c) inform districts that unwritten procedures are unacceptable and will be regarded by OTDA as equivalent to having no procedures on an issue.

IV. Many Districts' Procedures Lack Important Details Necessary to Convert General Policies into Practices.

A number of districts' "procedures," whether submitted in writing or described by districts, are not procedures at all. They are, instead, general policies that lack detail concerning the procedures to be used by staff to execute the policy. For example, Otsego County stated that a number of its procedures (none of which were submitted in writing) consist of providing "staff assistance." This "procedure" does not contain information on the type of assistance staff should provide, how they should determine whether assistance is needed, which staff have the responsibility to provide assistance, and when assistance must be provided. Jefferson County submitted a "procedure" stating that sign language interpreters will be provided "as needed," which does not tell staff how to determine when an interpreter is needed and when using a pencil and paper to write notes is sufficient (see discussion in V.J. below). Sullivan County submitted "procedures" that were largely restatements of the anti-discrimination language and disability definition contained in the ADM, without any further details on implementation.

We request that OTDA make clear to districts that they must have *specific procedures* on providing accommodations to people with disabilities, not just general policies. In addition, we request that OTDA instruct districts to provide detailed information in their procedures concerning:

- 1) the process to be followed by staff in providing a particular type of accommodation;
- 2) which staff are responsible for deciding whether an accommodation will be provided and the type of accommodation to be provided;
- 3) which staff are responsible for providing the accommodation, and recording relevant information about requests for and decisions on accommodations in the individual's case record;
- 4) the time frames within which decisions on accommodations must be made and in which accommodations must be provided;
- 5) what staff should do if they are not sure whether an accommodation is needed, or what type of accommodation to provide;

- 6) how individuals are to be notified about the decision on a request to provide an accommodation;
- 7) when accommodations should be offered, even if not requested;
- 8) examples of reasonable accommodations other than assistance to the hearing impaired in their policies, such as modifications of non-essential program rules; and
- 9) other information that agency staff need to know to ensure that accommodations are provided on a timely basis and when needed.

V. Many Districts That Have Submitted Self-Evaluation Forms Have Not Put in Place the Procedures Necessary to Comply With their Obligations Under the ADA and Section 504.

A review of the self-evaluation forms reveals that many local districts have not taken some of the most basic steps required to meet their ADA and Section 504 obligations.

A. Some Districts That Submitted Self-Evaluation Forms Don't Have an ADA/Section 504 Contact Person and/or Written ADA/Section 504 Complaint Procedure.

ADA regulations require public entities with at least 50 employees to have an employee responsible for coordination of ADA compliance and an ADA grievance procedure.⁴ Section 504 regulations applicable to welfare programs requires recipients of federal financial assistance with more than 15 employees to have a Section 504 Coordinator to handle grievances and coordinate compliance with Section 504.⁵ Thus it is unlikely that any districts are so small that they do not have to comply with these requirements.

Five districts (16 % of districts that submitted forms) indicated that they do not have an ADA/Section 504 contact person [see Table 3]. Erie and Monroe Counties said they have an ADA contact person but identified people outside of the Department of Social Services as serving this role, which suggests that these agencies do not in fact have their own ADA contact people. Otsego listed the DSS Commissioner as the contact person but wrote on its self-evaluation form that the Commissioner contacts the County ADA representative when he receives a complaint, which also suggests that there is no-one in the agency with responsibility for ADA compliance. Thus it appears that eight of the districts that submitted self-evaluation forms (26% of districts submitting forms) do not have ADA contact people inside of the agency.

⁴ 28 C.F.R. § 35.107.

⁵ 45 C.F.R. § 84.7(a).

Thirteen districts (42 % of districts that submitted forms) indicated that they do not have an ADA/Section 504 complaint procedure. [See Table 4] Hamilton County stated that it has no complaint procedure because no-one has ever been denied a reasonable accommodation in their district, a response that is obviously unacceptable. Oneida County said that it has a complaint procedure, but the procedure submitted with the district's self-evaluation form indicates that complaints are to be submitted to OTDA, which suggests that the district does not have its own complaint procedure.

We request that OTDA: (a) require every district to have its own written ADA/Section 504 grievance procedure and ADA contact person; (b) require districts to submit the name and contact information of the contact person, and copies of grievances procedures to OTDA; and (c) require districts to submit to OTDA copies of any documents or materials that inform applicants, recipients, and members of the public of the name and contact information for the contact person, and about the existence of the grievance procedure.

B. Many Districts Do Not Provide Written ADA and Section 504 Information to Applicants and Recipients.

The ADA and Section 504 require local districts to provide information to applicants, recipients, and beneficiaries about their rights under the ADA and Section 504.⁶ The ADA regulations also require this information to be provided to "other interested persons,"⁷ although the self-evaluation form does not ask about this. Only 14 of the districts that submitted forms provide applicants and recipients with information about the ADA's prohibitions against discrimination. Westchester, which answered yes, explained its response by indicating that there is information about the ADA on its web site, which is not the same as directly providing information.⁸ [See Table 5].

Five districts (Cortland, Erie, Schuyler, Ulster, and Warren) informed OTDA that they provide information to individuals about the ADA and Section 504 by giving them a copy of LDSS 4148A, *What You Should Know About Your Rights and Responsibilities (When Applying for or Receiving Benefits)*.⁹ Hamilton County said it provides information by distributing the LDSS 2921, the state benefits application form. Sullivan County indicated that it posts the State Civil Rights Law. None of these documents provide adequate notice. The Office for Civil Rights at HHS has made clear in a Letter of Findings to a State welfare agency that to be adequate, notice of ADA/Section 504 rights must: (a) clearly state that the agency can

⁶ 28 C.F.R. § 35.106; 45 C.F.R. § 84.8(a).

⁷ 28 C.F.R. § 35.106; OTDA's self-evaluation form asks only about information provided to applicants and recipients.

⁸ We could find no such information on the agency's web site.

⁹ Ulster County stated that it also provides information through posters.

accommodate individuals with disabilities; (b) inform them of how to do so; and (c) set forth information on how to file a grievance if necessary accommodations are not provided.¹⁰

The *What You Should Know About Your Rights and Responsibilities* booklet, application form and State civil rights law contain general “boilerplate” language stating that the agency does not discriminate on the grounds of race, sex, national origin, or disability.

The right to reasonable accommodations is the single most important piece of information that should be conveyed about the ADA and Section 504. However, none of the documents mentioned above mention the right to reasonable accommodations or provide examples of accommodations. Individuals cannot be required to infer from this general statement that the agency cannot or does not discriminate. Further, none of these documents (a) contain examples of reasonable accommodations; (b) informs individuals how to request accommodations; or (c) mention the right to file a grievance with the district if a request is denied.¹¹ Nor do they contain information that is specific to the district, such as the identify and contact information of the ADA Coordinator.

In addition, the *What You Should Know About Your Rights and Responsibilities* booklet and application form are provided only to applicants and to recipients during recertification, while ADA regulations require information about the ADA to be made available to “applicants, participants, beneficiaries, and other interested persons.”¹² Section 504 regulations require districts to take “continuing steps” to notify individuals of their rights under Section 504.¹³ Putting information on the application, form does not constitute “continuing steps.” because applicants turn their applications in to the agency, and thus cannot consult the anti-discrimination language at a later time.

When asked how applicants and recipients are informed about one specific accommodation, home visits,¹⁴ a number of districts indicated that they inform individuals orally

¹⁰ U.S. Department of Health and Human Services, Office for Civil Rights, Region I, Letter of Findings, (OCR Docket No. 03-10879, (Jan. 29, 2004), available at www.masslegalservices.org/docs/shelterlof.pdf

¹¹ Since copies of the posters used in Ulster County were not submitted, it is not possible to tell whether the information in the posters contains information that is not in the booklet.

¹² 28 C.F.R. § 35.106.

¹³ 45 C.F.R. § 84.8(a).

¹⁴ Home visits are one type of reasonable accommodation that districts must provide to individuals with disabilities who have significant difficulty attending appointments at district offices as the result of a disability. ADA and Section 504 regulations also mention home visits as a method of providing program access to individuals with disabilities if a program site is not

(Cortland, Greene, Jefferson, Renssalaer, Saratoga, Schenectady, Schuyler), by phone (Chautauqua, Nassau, Steuben), or orally and by letter (Erie, St. Lawrence). Some districts indicated that they provide information on home visits only to those who ask or only when the district thought the person might need a home visit, (Cortland, Jefferson Schenectady, Renssalaer), and others implied this though they did not say so explicitly (Oneida, Putnam). Not one district indicated that it provides information on home visits as part of the written materials on the ADA that it provides to applicants, recipients or others. Providing information about home visits only to those who request them and to those the district has determined are likely to need them does not satisfy ADA and Section 504 notice requirements. Most people will not know to request a home visit if they are not provided with information about the right to request them.

We request that OTDA: (a) require districts to develop written information on the right of applicants, recipients, and others to reasonable accommodations that includes (i) district-specific information such as the name and contact information of the ADA Coordinator; (ii) a statement that individuals with disabilities are entitled to accommodations from districts; (iii) examples of reasonable accommodations, including home visits; (iv) information about what to do if accommodations are not provided; (b) require districts to submit that information to OTDA; (c) require districts to describe when and how those written materials are made available to applicants, recipients and members of the public; (d) require districts to describe how “continuing steps” are made to inform applicants and recipients of their rights; and (e) revise the *What You Should Know About Your Rights and Responsibilities* booklet to include information about the right to reasonable accommodations, provide examples of reasonable accommodations, and state that individuals who believe their accommodation needs have not been met have a right to file a grievance with the district.

C. Many Districts Have Addressed Physical Accessibility But Not Other Accessibility Issues.

A number of districts answered “yes” to questions about physical accessibility, and “no” to many of the questions about whether they have procedures on providing reasonable accommodations or specific types accommodation. (*see, e.g.*, Allegany, Broome, Chautauqua, Hamilton, St. Lawrence, Schuyler, and Steuben Counties). These districts appear to have an overly narrow view of their obligations under the ADA and Section 504 and an overly restrictive understanding of the program accessibility requirement. We request that OTDA do more to educate these districts on their legal obligations.

physically accessible. 28 C.F.R. § 35.150(a); 45 C.F.R. § 84.22(b).

D. Many Districts Do Not Have Written Reasonable Accommodation Procedures.

Only 13 districts indicated that they have written reasonable accommodation procedures. Of those districts, one (Sullivan County) checked yes but explained that the answer was really no, leaving only 12 districts (39 % of districts submitting plans, and only 21 % of all districts) reporting that they have written reasonable accommodation policies. [See Table 6]

HHS OCR has made clear in a Letter of Findings that to be adequate, welfare agency reasonable accommodation procedures must have a chain of command for decision-making; a time frame within which to review a request for a reasonable modification and make a decision; a method for communicating a decision and the availability of an appeal; and guidance regarding how an accommodation request should be assessed.¹⁵ All of the districts' reasonable accommodation procedures provided to us lacked one or more of these features.

OTDA's self-evaluation form asks districts if they have a procedure for informing applicants and recipients who are offered and refuse an accommodation about the consequences of refusal. Only 12 districts (21 % of all districts, and 39 % of all districts that submitted self-evaluation forms) answered "yes." [See Table 7]. Given the harsh consequences that can result from the failure to comply with program requirements (i.e., loss of cash assistance, food stamps or Medicaid, denial of applications for these benefits, and sanctions for non-compliance with work requirements), having such a policy is critical. It is also critical because many benefits applicants and recipients have mental and cognitive disabilities that may affect their ability to understand and comprehend program rules or the consequences of their decisions.

Some districts (Delaware, Madison, and Westchester) indicated that their procedure is to contact Adult Services when an individual has refused an accommodation. While contacting Adult Services may be an appropriate response to an individual's refusal of an accommodation in some situations, it is not the appropriate response in others. Some individuals who refuse accommodations do not have mental or cognitive impairments. Others have disabilities that are not sufficiently severe to warrant the involvement of Adult Services. In addition, while the district responses were not clear, some districts may have meant that they contact Adult Services instead of making sure that individuals understand the consequences of refusing an accommodation, which is not appropriate. Districts cannot lawfully delegate away their responsibility to inform applicants and recipients of their rights (and the consequences of refusing to exercise them). Referring an individual to another agency, unit, or program is not a substitute for providing information directly to applicant and recipients.¹⁶

¹⁵ See note 10.

¹⁶ Madison County indicated that its procedure for assisting people with mental impairments, hearing impairments, and vision impairments is to refer them to Adult Services. It

We request that OTDA: (a) require all districts to develop and submit written reasonable accommodations policies that include (i) a chain of command for decision-making; (ii) a time frame within which to review a request for a reasonable modification and make a decision; (iii) a method for communicating a decision and the availability of an appeal; and (iv) guidance regarding how an accommodation request should be assessed; and (v) other detail listed in Section IV; (b) require districts to submit these requests in writing to OTDA; and (c) require districts to inform individuals in writing that if the district offers an individual an accommodation and the individual refuses, and the individual is unable to comply with a program requirement as a result, the individual may be at risk of having her application denied, case closed, or a sanction imposed, depending upon the type of requirement the individual was unable to do. The written notice should also say that an individual who refuses an accommodation at one point in time can request it later. Finally, OTDA should inform districts that should offer the accommodation on more than one occasion, even if the individual initially refuses and should not ask individuals who have refused accommodations to sign forms waiving their rights.

E. Fewer Than Half of the Districts That Submitted Self-Evaluation Forms Have Written Procedures on Either Home Visits or Alternate Accommodations.

Twenty-eight districts (48 % of districts, 90 % of districts that submitted plans) stated that they have a procedures for determining when home visits will be provided to individuals who are physically or mentally unable to travel to a district office. The remaining three districts that submitted plans stated they have no policy on home visits or left the question blank. [See Table 8]. Hamilton County stated that if the need for a home visit arose, it would refer clients to caseworkers for home visits, but then noted that the district “never had one!” Given the high percentage of welfare recipients with disabilities, it is simply not possible that the district has never served a client in need of a home visit. This district’s response illustrates why written policies are so important.

Of the 28 districts that said they have a home visit procedure, only 11 indicated that their procedures are in writing. Of these 11, two explained that what they meant was that they have a copy of the ADA (Oneida) or of the Social Services regulations “good cause” provision (Warren) on file. Having a copy of a law on file is not the same as having a written procedure explaining how the district will implement the law or how it will provide particular modifications. Moreover, the good cause regulation applies *after* an individual has failed to fulfill an eligibility requirement as a result of a disability or other reason, and does not specify that districts must make reasonable accommodations that will assist the individual in complying

is not clear that Adult Services serves those with hearing and vision impairments who do not have mental disabilities, or how a referral to Adult Services would assist an individual in getting the accommodations they need to obtain or retain benefits.

with an eligibility requirement.

Wyoming stated it has a written home visit procedure, but the procedure submitted with its self-evaluation plan discusses the county's practice of conducting unannounced home visits to investigate suspected fraud or to determine whether a client is no longer eligible for benefits. It does not mention home visits that are provided as an accommodation for individuals with disabilities. That leaves only 8 districts (14 % of districts, 29 % of districts that completed plans) that appear to have written policies for providing home visit policies and/or other accommodations when facilities are not physically accessible.

The importance of having written home visit policy cannot be overstated. In New York City, an HRA Policy Directive states that home visits are one of the accommodations that Job and Food Stamp Centers must provide to people with disabilities who need them, but lacks details on who qualifies for home visits, how to qualify for home visits, who will arrange for and conduct the visits, when they will be provided. A 2004 report by the National Center on Law and Economic Justice (formerly Welfare Law Center), *Home Alone: The Urgent Need for Home Visits for People with Disabilities in New York City's Welfare System*, surveyed HRA Job Centers and found that there was no standard home visit policy or procedures among Centers. Centers gave different responses on whether home visits were available, whether people with mental health problems could qualify for them, what documentation was required to obtain home visits, and when documentation must be provided. Several Centers gave us a number to call for more information or to arrange for a home visit, but we were unable, after repeated tries, to get through to a live person at half of these Centers. The report concluded that the lack of a written home visit policy meant that many individuals in New York City entitled to home visits were unlikely to get them, which was consistent with the experiences of many cash assistance and Food Stamp applicants and recipients.¹⁷

We request that OTDA: (a) require districts without home visit procedures to develop them; (b) require districts with unwritten procedures should to put them into writing and submit them to OTDA; and © and to establish home visit procedures that define who is eligible for home visits, indicate a time frame within which they must be provided, whose responsibility it is to arrange and conduct home visits; and other information discussed in Section IV.

¹⁷ After we issued the report, HRA invited us to participate in a work group with other advocates and HRA Counsel and staff to make recommendations to the HRA Commissioner about the substance of a detailed home visit policy. After a year of intensive work, the subcommittee finalized joint recommendations and submitted them to the Commissioner, who subsequently informed the Subcommittee that she would not act on recommendations while a lawsuit on a different ADA issue was pending. To date, HRA still has no written home visit policy.

F. Some Districts Responded That They Have Offices That Are Not Wheelchair Accessible.

Five districts (16 % of districts that submitted forms) indicated that their facilities have physical accessibility problems. Madison County said its facilities were accessible to and usable by people with disabilities, but also indicated that its front entrance is not accessible. St. Lawrence indicated that bathrooms and water fountains are not wheelchair accessible, and did not indicate whether anything is being done to address this problem. Putnam indicated that the CSEU Child Support Enforcement Unit is above the ground floor and is not reachable by elevator but did not explain how the needs of clients who are required to go to that unit are met. Schenectady indicated that not all locations are wheelchair accessible, and that bathrooms and drinking fountains were not accessible at all locations. It stated that individuals are offered the opportunity to meet at another district office, but did not explain how applicants are informed of this. Hamilton County left the question on whether its facilities were accessible to and usable by people with disabilities blank. Nassau answered that its facilities are physically accessible, but submitted documents indicating that it was installing an intercom system because people with disabilities have difficulty entering the building.

We request that OTDA follow up with these districts to determine what they are doing to address physical accessibility barriers that limit program access.

G. Many Districts Do Not Have Procedures to Assist Applicants and Recipients with Mental Impairments.

Only 19 districts (33 % of all districts, 61 % of districts that submitted forms) indicated that they have procedures to assist applicants and recipients with mental impairments. Four districts indicated that the procedures are not in writing. [See Table 9]

A number of districts mentioned that their procedures consist of one or more of the following: referrals to Adult Services (Delaware, Madison, Warren, Westchester), staff assistance to the individual (Otsego); referrals to other agencies and organizations (including an Office for Aging, a community action agency, the Office of Mental Health, and mental health service providers) (Sullivan, Westchester); permitting individuals to bring a representative with them to appointments (Franklin); and involving particular staff such as case managers (Cattaraugus). Notably, most districts mentioned only one of these approaches.

While all of these approaches may be appropriate in some circumstances, none are appropriate or adequate in all situations. Permitting an individual with a mental disability to bring someone with him/her to appointments is helpful only if the client has someone to bring. Referring an individual to an another agency or organization for treatment or services does not alleviate the district's obligation to accommodate the individual in her interactions with the welfare agency. The failure to provide accommodations in appointments for those who miss appointments for disability-related reasons is probably one of the most common reasons that people with physical and mental disabilities are denied or lose benefits. Yet not one district

mentioned flexible appointment policies as a means of accommodating an individual with a mental disability.

We request that OTDA: (a) require districts without procedures for serving individuals with mental impairments to develop them; (b) require districts with unwritten procedures to put them in writing; (c) require district procedures to contain more than one approach for accommodating individuals with mental impairments; and (d) require written procedures to contain the detail recommended in Section IV.

H. Many Districts Do Not Have Adequate Braille Signage for Individuals With Visual Impairments.

ADA regulations provide that public entities “shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities” and it requires public entities to place signage at all inaccessible entrances directing users to an accessible facility or location at which they can obtain information about accessible facilities.¹⁸

Most of the districts that responded do not have Braille signage at all of the locations asked about. Fourteen districts (24 % of districts, 45 % of districts that submitted forms) have Braille signs at restroom doors; 10 (17 % of districts, 32 % of districts that submitted forms) have Braille room numbers; and 8 (14 % of districts, 26 % of districts that submitted forms) have Braille signs on permanent rooms and spaces. Nineteen districts have Braille on elevators. Since two districts indicated that the question regarding signage on elevators is not applicable, 19 of 29 districts (66 % of districts that submitted forms, for which the question was presumably relevant) have Braille on elevators. Nine districts (16 % of districts, and 29 % of responding districts) indicated that they did not have Braille signage at any of these locations; only 5 (9 % of all districts, 16 % of districts that submitted forms) indicated that they have Braille signage at all of these locations, though one of the five (Chautauqua) indicated that it has Braille signage in only some permanent rooms and for only some room numbers. Eight districts (28 % of districts that submitted forms with elevators to floors serving clients) indicated that they have Braille signage in elevators but none of the other locations. [See Appendix Table 10].

We request that OTDA instruct districts to put Braille signage at all elevators, rest rooms, and other rooms where signage is posted for the general public.

I. A Number of Districts Lack Procedures for Applicants and Recipients Who Are Unable to Read the Application, Booklets, and Notices Because of a Visual Impairment.

Twenty-four districts (36 % of all districts, 77 % of districts that submitted forms) stated that they have procedures in place for applicants/recipients who cannot read the application,

¹⁸ 28 C.F.R. §§ 35.163(a)-(b).

information booklets, notices, and other written documents as a result of a visual impairment, but several (Clinton, Franklin, Otsego, Schenectady, Schuyler) indicated that these procedures are not in writing. [See Table 11] The majority of districts claiming to have procedures indicated that their procedure is to provide staff assistance. Some (Albany, Cattaraugus) mentioned only assistance with completing forms, leaving it unclear whether the district provides any help to those who cannot read application booklets or notices. Only one district (Warren) mentioned assistance with reading notices. Franklin County indicated that it instructed applicants/recipients who could not read to bring someone with them to the appointment or referred individuals to an organization for the visually handicapped, but did not explain what happens when the client has no-one to bring with her, or if assistance is needed when the client receives a notice and is not at the welfare agency. Madison County said that it refers clients to the Adult Services Unit, although it is unlikely that Adult Services assists individuals with reading forms, notices, and other materials unless the individual qualifies more generally for Adult Services.

Accordingly, we request that OTDA: (a) require districts without procedures to assist those with visual impairments who cannot read notices to read them; (b) require districts with unwritten policies to put them in writing; (c) require districts to describe in their policies how they will accommodate clients who need assistance with reading notices that they receive when they are at home, and booklets that they may want to review after they have left a district office; (d) describe how they will assist individuals who do not qualify for assistance from Adult Services.

J. A Number of Districts Lack Adequate Procedures for Accommodating Hearing Impaired Individuals.

The ADA requires welfare agencies to provide communication to people with hearing and speech impairments that is as effective as communication provided to others,¹⁹ and to provide auxiliary aids and devices, including sign language interpreters, to ensure that communication is effective.²⁰ Interpretive Guidance to the ADA regulations makes clear that the type of Aid or device that must be provided depends in part on the nature of the communication. The Guidance states that while notepads and written materials may be sufficient in some circumstances, they may not be sufficient in others, such as when the information being presented is complex or lengthy.²¹ The regulations also provide that when a public entity communicates by telephone with applicants and recipients, TDDs or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing and speech.²²

¹⁹ 28 C.F.R. § 35.160(a).

²⁰28 C.F.R. § 35.160(b)(1).

²¹ 28 C.F.R. Pt. 35 App. § 35.160.

²² 28 C.F.R. § 35.161.

Twenty-six districts (45 % of all districts, 84 % of districts responding) stated that they have procedures in place to assist hearing-impaired individuals. Of those, three (Delaware, Schenectady, and Westchester) indicated that their procedures are not in writing, and one (Otsego) indicated that its policy was to provide “staff assistance,” though the nature of that assistance was not specified. [See Table 12] Given the complexity of benefits program rules, and the obligation of districts to develop individualized plans for cash assistance recipients, every district is required by the ADA to use sign language interpreters in some circumstances. Sullivan County stated that it has a procedure for serving hearing impaired individuals but does not provide sign language interpreters, raising a question about the adequacy of its procedures. Schuyler and Greene Counties have policies that are plainly inadequate and unlawful: Greene County states that its policy is to use New York Relay; Schuyler’s policy states that individuals are instructed to bring their own interpreter to Medicaid appointments or to access New York Relay.

Twelve districts (39 % of districts that submitted plans, 21 % of districts) reported that neither TTYs nor TDDs nor New York Relay are available in their district. [See Table 13] Given that access to the New York Relay service is available to anyone by calling a toll-free number, this response is truly alarming, and reflects a need for additional staff training. Putnam County responded to this question by stating that interactions were done face-to-face, which does not address clients’ need for effective communication with hearing impaired individuals who call or need to call the agency. Allegany County indicated that services were available through 911, and Otsego wrote “listed in the phone directory,” the significance of which is unclear, although both may refer to New York Relay. These two districts, and others (Cattaraugus, Jefferson, and Westchester) seemed to indicate that they use only New York Relay, and do not have TDDs or TTYs.

We assume that at least some districts use “automated response units” for answering telephones, in which callers are offered a menu of choices and given a limited time to make selections), instead of having a live person answer the phone. It is not possible to use these automated systems through a telephone relay service, because there is insufficient time for the operator to type in the menu choices and the caller to read them and type back a response in time for the operator to make the menu selection. Thus, exclusive reliance on the relay service is an ineffective way to provide communication access to hearing impaired individuals. In addition, it is our understanding that use of TTYs by deaf and hearing impaired individuals has decreased significantly in recent years, and use of pagers, instant messaging, and email has increased.

We request that OTDA require all districts to: (a) develop written procedures for obtaining sign language interpreters in a timely fashion, or alternatives (such as video conferencing) that ensure effective communication with speech and hearing impaired individuals during face-to-face interactions; and (b) procedures that identify the types of interactions for which sign language interpreters must be provided. We also request that OTDA require districts to develop written procedures for interacting with speech and hearing impaired individuals by phone (both outgoing and incoming calls). OTDA should require districts that use automated response units to use automated response systems that direct callers to a live person if the caller

does not respond to the menu options within a specific period of time. In addition, OTDA may want to encourage districts to contact the agency through email, and to require districts to have policies requiring a designated staff person to check and respond to this email within a specific period of time.

VI. Conclusion.

We request that this issue be placed on the agenda of the next OTDA Legal Advisory Committee meeting. We are also available to discuss further our concerns and proposals. Thank you for your attention to this matter.

Sincerely,

Cary LaCheen
National Center for Law
and Economic Justice

Barbara Weiner
Susan Antos
Empire Justice Center

cc: Patricia Augle, Division of Employment and Transitional Supports
Linda Hunt, Office of Legal Counsel
Anne Grace, Office of Legal Counsel
Russell Sykes, Deputy Commissioner
Barbara Gwinn, Welfare to Work Division of Employment and Temporary Supports

Larry Ritter, ADA Coordinator

APPENDIX A
Table 1
Self-evaluation forms

Submitted self-evaluation form

Albany
 Allegany
 Broome
 Cattaraugus
 Chautauqua
 Clinton
 Cortland
 Delaware
 Erie
 Franklin
 Greene
 Hamilton
 Herkimer
 Jefferson
 Madison
 Monroe
 Nassau
 Oneida
 Otsego
 Putnam
 Rensselaer
 St. Lawrence
 Saratoga
 Schenectady
 Schuyler
 Steuben
 Sullivan
 Ulster
 Warren
 Westchester
 Wyoming

Did not submit self-evaluation form

New York City (HRA)
 Cayuga
 Chemung
 Chenango*
 Columbia
 Dutchess
 Essex
 Fulton
 Genesee
 Lewis
 Livingston
 Montgomery
 Niagara
 Onondaga
 Ontario
 Orange
 Orleans
 Oswego
 Rockland
 Schoharie
 Seneca
 Suffolk
 Tioga
 Tompkins
 Washington**
 Wayne
 Yates

Total = 31 (53 %)

Total = 27 (47 %)

* Chenango sent a letter stating that it was conducting an internal review “similar” to the ADA/LEP self-evaluation, but it did not complete and return the OTDA ADA/LEP form.

** Washington County submitted a blank form with a letter stating “on the advice of our attorney we are not completing the information requested on this form).”

Table 2
Written ADA policies submitted with self-evaluation forms

<u>Policies submitted with self-evaluation form</u>	<u>No policies submitted</u>
Broome (G)	Albany
Clinton (G)	Allegany
Cortland (G, HI, HV, RA, VI)	Cattaraugus
Greene (G, HI)	Chautauqua
Jefferson (G, GEN, HI, HV, MI, RA, VI)	Delaware
Nassau (G, HI, PHY)	Franklin*
Oneida (G, GEN, HI, HV, RA)	Erie
Otsego (PHY)	Hamilton
St. Lawrence (HI)	Herkimer
Saratoga (G, HI, HV, MI, PHY, RA, REF)	Madison
Schuyler (G, HI)	Monroe
Sullivan (G, GEN, PHY, RA)	Putnam
Ulster (G, GEN, HI, RA, VI)	Rensselaer
Westchester (G, GEN, VI)	Schenectady
Wyoming (G, GEN, HI)	Steuben
	Warren
<hr/>	
Total = 15 (26 % of all districts, 48 % of districts that submitted forms)	Total = 16 (28 % of all districts, 52 % of districts that submitted forms)

* Submitted written info distributed to clients on their rights under the ADA/Section 504, but no policies.

G = Grievance procedures
 GEN = General ADA concepts, requirements
 HI = Hearing impairment procedures
 HV = Home visit procedures
 PHY = Physical access
 RA = Reasonable accommodation procedures
 REF = Procedures if accommodation offered and refused
 VI = Vision impairments

Table 3
ADA contact person

<u>Has ADA contact person</u>	<u>No ADA contact person</u>
Albany	Allegany
Broome	Erie*
Cattaraugus	Monroe*
Chautauqua	Otsego**
Clinton	Putnam
Cortland	St. Lawrence
Delaware	Schuyler
Franklin	Steuben
Greene	
Hamilton	
Herkimer	
Jefferson	
Madison	
Nassau	
Oneida	
Otsego**	
Renssalaer	
Saratoga	
Scenectady	
Sullivan	
Ulster	
Warren	
Westchester	
Wyoming	
Total = 23 (40 % of districts, 74% of districts that submitted forms)	Total = 8 (26 % of districts that submitted forms)

* District said had a contact person but identified one or more people outside of the agency.

** District said it had contact person but also said the contact person referred issues to someone outside of the agency.

Table 4

ADA Complaint procedure

Has ADA complaint procedure

Broome
Clinton
Cortland
Greene
Hamilton
Jefferson
Madison
Monroe
Nassau
Oneida
Otsego
Saratoga
Schuyler
Sullivan
Ulster
Warren
Westchester
Wyoming

No ADA complaint procedure

Albany
Allegany
Cattaraugus
Chautauqua
Delaware
Erie
Franklin
Herkimer
Putnam
Renssalaer
St. Lawrence
Schenectady
Steuben

Total = 18 (31% of districts,
58 % of districts submitting forms)

Total = 13 (22% of all districts,
43 % of districts that submitting forms)

Table 5

Written information provided on the ADA/Section 504

<u>Written information provided</u>	<u>No written information provided</u>
Cortland*	Albany
Erie*	Allegany
Franklin	Broome
Greene	Cattaraugus
Hamilton**	Chautauqua
Jefferson	Clinton
Madison	Delaware
Monroe	Herkimer
Nassau	Otsego
Oneida	Putnam
Schuyler*	Rensselaer
Sullivan***	St. Lawrence
Ulster****	Saratoga
Warren*	Schenectady
Wyoming	Steuben
	Westchester*****
<hr/> Total = 15 (24 % of all districts, 48% of districts submitting forms)	<hr/> Total = 16 (27 % of all districts, 52% of districts submitting forms)

* Answered “yes” but explained that they did so by distributing *What You Should Know About Your Rights and Responsibilities (When Applying for or Receiving Benefits)*.

** Answered “yes” but explained that they did so by distributing LDSS 2921.

*** Post state civil rights law.

**** Distribute *What You Should Know About Your Rights and Responsibilities (When Applying for or Receiving Benefits)* and use posters.

***** Answered “yes” but explained that they posted information on the web site, which does not constitute providing information directly to individuals. We found no such information on the web site.

Table 6
Written reasonable accommodation procedure

<u>District has written procedure</u>	<u>District has no written procedure</u>
Cortland	Albany
Erie	Allegany
Jefferson	Broome
Madison	Cattaraugus
Monroe	Chautauqua
Nassau	Clinton
Oneida	Delaware
Otsego	Franklin
Saratoga	Greene
Ulster	Hamilton*
Westchester	Herkimer
Wyoming	Putnam
	Rensselaer
	St. Lawrence
	Schenectady
	Schuyler
	Steuben
	Sullivan**
	Warren
Total = 12 (21 % of districts 38 % of districts submitting forms)	Total = 19 (33 % of districts 61 % of districts submitting forms)

* This district left the question blank.

** This district checked “yes” when asked if it has written accommodation procedures but its written response indicated that it does not have a written policy.

Table 7
Information on the consequences of refusing accommodations

Has procedure to ensure person understands consequences of refusing accommodation

Cortland
 Jefferson
 Madison
 Monroe
 Oneida
 Otsego
 Saratoga
 Schenectady
 Sullivan
 Warren
 Westchester
 Wyoming

Total = 12 (21 % of districts,
 39 % of districts submitting forms)

Has no procedures

Albany
 Allegany
 Broome
 Cattaraugus
 Chautauqua
 Clinton
 Delaware
 Erie
 Franklin
 Greene
 Hamilton*
 Herkimer
 Nassau
 Putnam
 Renssalaer
 St. Lawrence
 Schuyler
 Steuben
 Ulster

Total = 19 (33 % of districts,
 61 % of districts submitting forms)

* This district left the question blank.

Table 8
Home visit or alternate accommodation policy

<u>Have home visit policy</u>	<u>Have home visit or alternate accommodation policy in writing</u>	<u>Have no home visit or alternate accommodation policy</u>
Albany	✓	Hamilton***
Allegany	X	Otsego
Broome	X	Steuben
Cattaraugus	✓	
Chautauqua	X	
Clinton	X	
Cortland	✓	
Delaware	X	
Erie	X	
Franklin	X	
Greene	X	
Herkimer	X	
Jefferson	✓	
Madison	X	
Monroe	X	
Montgomery	X	
Oneida*	X	
Putnam	X	
Rensselaer	X	
St. Lawrence	X	
Saratoga	✓	
Schenectady	X	
Schuyler	X	
Sullivan	✓	
Ulster	✓	
Warren*	X	
Westchester	✓	
Wyoming**	X	
<hr/> Total = -- (48 % of districts, 90 % of districts submitting forms)	<hr/> Total = 8 (14 % of districts, 26 % of districts submitting forms)	<hr/> Total = 3 (5 % of districts, 10 % of districts submitting forms)

- * District said it has a written procedure but explained that they were referring to a copy of the law.
- ** Written procedures concerned unannounced home visits to detect fraud, not home visits as an accommodation.
- *** Hamilton did not say whether it has a written policy.

Table 9
Policy for those with mental impairments

<u>Have a policy</u>	<u>Not in writing</u>	<u>No policy</u>
Clinton		Albany
Cortland		Allegany
Delaware		Broome
Erie		Cattaraugus
Franklin	✓	Chautauqua
Jefferson		Greene
Madison		Hamilton
Nassau	✓	Herkimer
Oneida		Monroe
Otsego		Putnam
Renssalaer		St. Lawrence
Saratoga		Schenectady
Schuyler	✓	
Sullivan		
Steuben	✓	
Ulster		
Warren		
Westchester		
Wyoming		
<hr/>		
Total = 19 (33 % of all districts, 61 % of districts submitting forms)	Total = 4	Total = 12 (19% of all districts, 35% of districts submitting forms)

Table 10
Braille signage

<u>Braille signage at all types of locations asked about</u>	<u>Braille signage at no locations asked about</u>	<u>Braille signage at some locations</u>
Chautauqua*	Cattaraugus	Albany
Erie	Cortland	Allegany**
Greene	Otsego	Broome
Herkimer	Putnam	Clinton
Madison	Schenectady	Delaware**
Monroe	Sullivan	Franklin
Schuyler	Warren	Hamilton***
	Westchester	Jefferson**
		Nassau**
		Oneida**
		Renssalaer**
		St. Lawrence
		Saratoga
		Steuben
		Ulster
		Wyoming
<hr/> Total = 7 (12 % of districts, 23 % of districts submitting forms)	<hr/> Total = 8 (14 % of districts 26 % of districts submitting forms)	<hr/> Total = 16 (52 % of districts 28 % of districts submitting forms)

- * County indicated it has Braille signage at only some room numbers and permanent rooms and spaces.
- ** County had Braille signage on elevator only.
- *** Hamilton left a number of answers blank, so we are assuming they do not have Braille signage at these locations.

Table 11
Policy for individuals who cannot read application, information booklets and notices

<u>Has procedures for those who cannot read due to visual impairment</u>	<u>Has no procedures for those who cannot read due to visual impairment</u>
Albany	Allegany
Cattaraugus	Broome
Chautauqua	Greene
Clinton*	Hamilton
Cortland	Putnam
Delaware	Rensselaer
Erie	Steuben
Franklin*	
Herkimer	
Jefferson	
Madison	
Monroe	
Nassau	
Oneida	
Otsego*	
St. Lawrence	
Saratoga	
Schenectady*	
Schuyler*	
Sullivan	
Ulster	
Warren	
Westchester	
Wyoming	
<hr/>	
Total = 24 (41 % of districts, 77 % of districts submitting forms)	Total = 7 (12 % of districts, 22 % of districts submitting forms)

* District indicated that procedures are not in writing.

Table 12
Procedures for people with speech and hearing impairments

Procedures for hearing impaired

Albany
 Cattaraugus
 Clinton
 Cortland
 Delaware*
 Erie
 Franklin
 Greene
 Jefferson
 Madison
 Monroe
 Nassau
 Oneida
 Otsego**
 Putnam
 Rensselaer
 St. Lawrence
 Saratoga
 Schenectady*
 Schuyler
 Steuben*
 Sullivan***
 Ulster
 Warren
 Westchester
 Wyoming

No procedures for hearing impaired

Allegany
 Broome
 Chautauqua
 Hamilton
 Herkimer****

Total = 26 (45 %
 of districts, 84 %
 submitting forms)

Total = 5 (16 % of districts,
 9 % submitting forms)

- * District indicated that procedures are not in writing.
- ** Indicated that its policy is for staff to provide “assistance,” with no information on the type of assistance provided.
- *** Indicated that it has procedures for hearing impaired individuals but does not provide interpreters.
- **** Indicated that it had no procedures for hearing impaired but said it provided interpreters to hearing impaired individuals.

Table 13

Telephone access for those with speech and hearing impairments

<u>TDD/TTY or Relay is available</u>	<u>TDD/TTY or Relay not available</u>
Albany	Chautauqua
Allegany	Delaware
Broome	Franklin
Cattaraugus	Hamilton
Clinton	Herkimer
Cortland	Oneida
Erie	Putnam
Greene	Rensselaer
Jefferson	St. Lawrence
Madison	Saratoga
Monroe	Schenectady
Nassau	Sullivan
Otsego	
Schuyler	
Steuben	
Ulster	
Warren	
Westchester	
Wyoming	
<hr/>	
Total = 19 (33 % of districts, 61 % of districts submitting forms)	Total = 12 (21 % of districts, 39 % of districts submitting forms)

* District indicated that it does things face to face and with interpreters.