

## § 42.501

SOURCE: 45 FR 37622, June 3, 1980, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes by Order No. 2679-2003, appear at 68 FR 51364, 51365, 51366, Aug. 26, 2003.

### GENERAL PROVISIONS

#### § 42.501 Purpose.

The purpose of this subpart is to implement section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

#### § 42.502 Application.

This subpart applies to each recipient of Federal financial assistance from the Department of Justice and to each program or activity receiving such assistance. The requirements of this subpart do not apply to the ultimate beneficiaries of Federal financial assistance in the program or activity receiving Federal financial assistance.

#### § 42.503 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient may not discriminate on the basis of handicap in the following ways directly or through contractual, licensing, or other arrangements under any program or activity receiving Federal financial assistance:

(i) Deny a qualified handicapped person the opportunity accorded others to participate in the program or activity receiving Federal financial assistance;

(ii) Deny a qualified handicapped person an equal opportunity to achieve the same benefits that others achieve in the program or activity receiving Federal financial assistance;

(iii) Provide different or separate assistance to handicapped persons or classes of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons or classes of handicapped persons with assistance as effective as that provided to others;

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(iv) Deny a qualified handicapped person an equal opportunity to participate in the program or activity by providing services to the program;

(v) Deny a qualified handicapped person an opportunity to participate as a member of a planning or advisory body;

(vi) Permit the participation in the program or activity of agencies, organizations or persons which discriminate against the handicapped beneficiaries in the recipient's program;

(vii) Intimidate or retaliate against any individual, whether handicapped or not, for the purpose of interfering with any right secured by section 504 or this subpart.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in any program or activity receiving Federal financial assistance on the ground that other specialized aid, benefits, or services for handicapped persons are available.

(3) A recipient may not, directly or through contractual, licensing, or other arrangements, utilize criteria or methods of administration that either purposely or in effect discriminate on the basis of handicap, defeat or substantially impair accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(4) A recipient may not, in determining the location or design of a facility, make selections that either purposely or in effect discriminate on the basis of handicap or defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(5) A recipient is prohibited from discriminating on the basis of handicap in aid, benefits, or services operating without Federal financial assistance where such action would discriminate against the handicapped beneficiaries or participants in any program or activity of the recipient receiving Federal financial assistance.

(6) Any entity not otherwise receiving Federal financial assistance but using a facility provided with the aid of

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Federal financial assistance after the effective date of this subpart is prohibited from discriminating on the basis of handicap.

(c) The exclusion of nonhandicapped persons or specified classes of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or a different class of handicapped persons is not prohibited by this subpart.

(d) Recipients shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall insure that communications with their applicants, employees and beneficiaries are effectively conveyed to those having impaired vision and hearing.

(f) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to qualified handicapped persons with impaired sensory, manual, or speaking skills where a refusal to make such provision would discriminatorily impair or exclude the participation of such persons in a program or activity receiving Federal financial assistance. Such auxiliary aids may include brailled and taped material, qualified interpreters, readers, and telephonic devices. Attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature are not required under this section. Departmental officials may require recipients employing fewer than fifteen persons to provide auxiliary aids when this would not significantly impair the ability of the recipient to provide its benefits or services.

(g) The enumeration of specific forms of prohibited discrimination in this subpart is not exhaustive but only illustrative.

### § 42.504 Assurances required.

(a) *Assurances.* Every application for Federal financial assistance covered by this subpart shall contain an assurance that the program or activity will be conducted in compliance with the requirements of section 504 and this subpart. Each agency within the Department that provides Federal financial assistance shall specify the form of the foregoing assurance and shall require

applicants for Department financial assistance to obtain like assurances from subgrantees, contractors and subcontractors, transferees, successors in interest, and others connected with the program or activity. Each Department agency shall specify the extent to which an applicant will be required to confirm that the assurances provided by secondary recipients are being honored. Each assurance shall include provisions giving notice that the United States has a right to seek judicial enforcement of section 504 and the assurance.

(b) *Assurances from government agencies.* Assurances from agencies of State and local governments shall extend to any other agency of the same governmental unit if the policies of the other agency will affect the program or activity for which Federal financial assistance is requested.

(c) *Assurances from institutions.* The assurances required with respect to any institution or facility shall be applicable to the entire institution or facility.

(d) *Duration of obligation.* Where the Federal financial assistance is to provide or is in the form of real or personal property, the assurance will obligate the recipient and any transferee for the period during which the property is being used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provisions of similar benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(e) *Covenants.* With respect to any transfer of real property, the transfer document shall contain a covenant running with the land assuring non-discrimination on the condition described in paragraph (d) of this section. Where the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant.