

PART 1624—PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY

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AUTHORITY: 49 U.S.C. 794; 42 U.S.C. 2996f(a)(1) and (3).

SOURCE: 71 FR 65059, Nov. 7, 2006, unless otherwise noted.

§ 1624.1 Purpose.

The purpose of this part is to assist and provide guidance to legal services programs supported in whole or in part by Legal Services Corporation funds in removing any impediments that may exist to the provision of legal assistance to persons with disabilities eligible for such assistance in accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 and with sections 1007(a)(1) and (3) of the Legal Services Corporation Act, as amended, 42 U.S.C. 2996f(a)(1) and (3), with respect to the provision of services to and employment of persons with disabilities. The requirements of this Part apply in addition to any responsibilities legal services programs may have under applicable requirements of the Americans with Disabilities Act and applicable implementing regulations of the Department of Justice and the Equal Employment Opportunity Commission.

§ 1624.2 Application.

This part applies to each legal services program receiving financial assistance from the Legal Services Corporation.

§ 1624.3 Definitions.

As used in this part, the term:

(a) *Legal services program* means any recipient, as defined by §1600.1 of this chapter, or any other public or private agency, institution, organization, or other entity, or any person to which or to whom financial assistance is extended by the Legal Services Corporation directly or through another agen-

cy, institution, organization, entity or person, including any successor, assignee, or transferee of a legal services program, but does not include the ultimate beneficiary of legal assistance;

(b) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property;

(c)(1) *Person with a disability* means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or (iii) is regarded as having such an impairment;

(2) As used in paragraph (c)(1) of this section the phrase:

(i) *Physical or mental impairment* means: (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; The phrase includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism;

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iii) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(iv) *Is regarded as having an impairment* means: (A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a legal services program as constituting such a limitation; (B) has a physical or mental impairment that

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substantially limits major life activities only as a result of the attitudes of others toward such impairments; or (C) has none of the impairments defined in paragraph (c)(2)(i) of this section but is treated by a legal services program as having such an impairment;

(d) *Qualified person with a disability* means:

(1) With respect to employment, a person with a disability who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) with respect to other services, a person with a disability who meets the eligibility requirements for the receipt of such services from the legal services program.

(e) *Auxiliary aids and/or other assistive technologies* means any item, piece of equipment, or product system whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Auxiliary aids and/or other assistive technologies include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, voice recognition software, computer screen magnifiers, screen reader software, wireless amplification systems, and other aids.

§ 1624.4 Discrimination prohibited.

(a) No qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by any legal services program, directly or through any contractual or other arrangement.

(b) A legal services program may not deny a qualified person with a disability the opportunity to participate in any of its programs or activities or to receive any of its services provided at a facility on the ground that the program operates a separate or different program, activity or facility that is specifically designed to serve persons with disabilities.

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the purpose or effect of

excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d)(1) A legal services program that employs a total of fifteen or more persons, regardless of whether such persons are employed at one or more locations, shall provide, when necessary, appropriate auxiliary aids and/or other assistive technologies to persons with impaired sensory, manual or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program's services. A legal services program is not required to maintain such aids at all times, provided they can be obtained on reasonable notice.

(2) The Corporation may require legal services programs with fewer than fifteen employees to provide auxiliary aids and/or other assistive technologies where the provision of such aids would not significantly impair the ability of the legal services program to provide its services.

(e) A legal services program shall take reasonable steps to ensure that communications with its applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(f) A legal services program may not deny persons with disabilities the opportunity to participate as members of or in the meetings or activities of any planning or advisory board or process established by or conducted by the legal services program, including but not limited to meetings and activities conducted in response to the requirements of 45 CFR part 1620.

§ 1624.5 Accessibility of legal services.

(a) No qualified person with a disability shall, because a legal services program's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by any legal services program.

(b) A legal services program shall conduct its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. This

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paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by persons with disabilities, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to persons with disabilities in the most integrated setting appropriate.

(c) A legal services program shall, to the maximum extent feasible, ensure that new facilities that it rents or purchases are accessible to persons with disabilities. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to LSC certifying that the facilities covered by the lease or contract will be accessible to persons with disabilities, or if the facilities will not be accessible, a detailed description of the efforts the program made to obtain accessible space, the reasons why the inaccessible facility was nevertheless selected, and the specific steps that will be taken by the legal services program to ensure that its services are accessible to persons with disabilities who would otherwise use that facility. After a statement certifying facility accessibility has been submitted, additional statements need not be resubmitted with respect to the same facility, unless substantial changes have been made in the facility that affect its accessibility.

(d) A legal services program shall ensure that new facilities designed or constructed for it are readily accessible to and usable by persons with disabilities. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the altered facilities readily accessible to and usable by persons with disabilities.

§ 1624.6 Employment.

(a) No qualified person with a disability shall, on the basis of disability, be subjected to discrimination in em-

ployment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that ensures that discrimination on the basis of disability does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the legal services program;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A legal services program may not participate in any contractual or other relationship with persons, agencies, organizations or other entities such as, but not limited to, employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the legal services program, and organizations providing training and apprenticeship programs, if the practices of such person, agency, organization, or other entity have the effect of subjecting qualified

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applicants or employees with disabilities to discrimination prohibited by this paragraph.

(e) A legal services program shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless the accommodation would impose an undue hardship on the operation of the program.

(1) For purposes of this paragraph (e), reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by persons with disabilities; and

(ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of auxiliary aids and/or other assistive technologies, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified employee or applicant with a disability if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against persons with disabilities, and shall ensure that employment tests are adapted for use by persons who have disabilities that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a person with a disability or as to the nature or severity of a disability except under the circumstances described in 45 CFR 84.14(a) through (d)(2). The Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this part.

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(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of disability.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of disability.

§ 1624.7 Enforcement.

(a) The procedures described in part 1618 of these regulations shall apply to any alleged violation of this Part by a legal services program.

(b) When LSC receives a complaint of a violation of this part, LSC policy is generally to refer such complainants promptly to the appropriate Federal, state or local agencies, although LSC retains the discretion to investigate all complaints and/or to maintain an open complaint file during the pendency of an investigation being conducted by such other Federal, state or local agency. LSC may use, at its discretion, information obtained by such other agency as may be available to LSC, including findings of such other agency of whether discrimination on the basis of disability occurred.

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PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

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