

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[47 FR 17746, Apr. 23, 1982, as amended at 55 FR 29320, July 18, 1990]

Subpart D—Post Secondary Education

§ 8b.19 Application of this subpart.

Subpart D applies to post secondary education programs or activities, including post secondary vocational education programs or activities, that receive Federal financial assistance for the operation of, such programs or activities.

§ 8b.20 Admission and recruitment.

(a) *General.* Qualified handicapped may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped individuals who may be admitted; and

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped individuals or any class of handicapped individuals unless:

(i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question; and

(ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level of whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped individuals; and

(4) Except as provided in paragraph (c) of this section, may not make pre-admission inquiry as to whether an applicant for admission is a handicapped individual but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Pre-admission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 8b.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 8b.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided, That:*

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

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(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 8b.21 Treatment of students.

(a) *General.* No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other post secondary education aid, benefits, or services to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, education programs or activities operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap exclude any qualified handicapped student from any course or study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate.

§ 8b.22 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or

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to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating student's academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. A recipient shall operate each program or activity to which this subpart applies so that, when viewed in its entirety, auxiliary aids are readily available.

(2) Auxiliary aids may include taped text, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services

and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 8b.23 Housing provided by the recipient.

(a) A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 8b.24 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped individuals, a recipient to which this subpart applies may not (i) on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped individuals on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trust, bequest, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) *Employment of student by recipients.* A recipient that employs any of its students may not do so in a manner that violates subpart B.

§ 8b.25 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation of differentiation is consistent with the requirements of § 8b.22(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

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(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart E—Procedures

§ 8b.26 Procedures.

The enforcement provisions applicable to Title VI of the Civil Rights Act of 1964 found at §§ 8.7 through 8.15 of this subtitle shall apply to this part.

PART 8c—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF COMMERCE

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AUTHORITY: 29 U.S.C 794.

SOURCE: 53 FR 19277, May 27, 1988, unless otherwise noted.

§ 8c.1 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Exec-

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utive agencies or the United States Postal Service.

§ 8c.2 Application.

This part applies to all programs or activities conducted by the agency except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 8c.3 Definitions.

For purposes of this part, the term—*Agency* means the Department of Commerce.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a