

**§ 1151.12**

muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

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

(3) *Has a record of such an 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.

(4) *Is regarded as having an impairment* means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;

(iii) Has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

**§ 1151.12 Qualified handicapped person.**

*Qualified handicapped person means:*

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

(b) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

**§§ 1151.13–1151.15 [Reserved]**

**Subpart C—Discrimination Prohibited**

**GENERAL**

**§ 1151.16 General prohibitions against discrimination.**

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any pro-

**45 CFR Ch. XI (10–1–14 Edition)**

gram or activity which receives federal financial assistance.

(b) These regulations do not prohibit the exclusion of nonhandicapped persons or persons with a specific type of handicap from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or persons with a different type of handicap.

(c) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program or activity receiving Endowment financial assistance because of the absence of appropriate auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

(d) Recipients shall take appropriate steps to insure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

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

[44 FR 22734, Apr. 17, 1979, as amended at 68 FR 51384, Aug. 26, 2003]

**§ 1151.17 Specific discriminatory actions prohibited.**

(a) A recipient, in providing any aid, benefit, or service, either directly or through contractual, licensing, or other arrangements, shall not, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary

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to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(b) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.

(c) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(1) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons; or

(3) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(d) A recipient may not, in determining the site or location of a facility, make selections:

(1) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives federal financial assistance; or

(2) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives

of the program or activity with respect to handicapped persons.

(e) As used in this section, the aid, benefit, or service provided under a program or activity receiving federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with federal financial assistance.

[44 FR 22734, Apr. 17, 1979, as amended at 68 FR 51384, Aug. 26, 2003]

### § 1151.18 Illustrative examples.

(a) The following examples will illustrate the application of the foregoing provisions to some of the activities funded by the National Endowment for the Arts.

(1) A museum exhibition catalogue or small press editions supported by the Endowment may be made usable by the blind and the visually impaired through cassette tapes, records, discs, braille, readers and simultaneous publications;

(2) A theatre performance supported by Federal funds may be made available to deaf and hearing impaired persons through the use of a sign language interpreter or by providing scripts in advance of the performance.

(3) A performing arts organization receiving Federal funds and offering, for example, a specific event in an inaccessible facility may arrange to provide a reasonable opportunity for that specific event to be offered to the public at large in an alternative accessible space; e.g., a theatre offering four different plays a season may offer at least one performance of each play in an alternative accessible space.

(4) Recipients of federal funds should make every effort to assure that they do not support organizations or individuals that discriminate;

(5) A handicapped person with experience and expertise equal to qualification standards established by a planning or advisory board may not be excluded from participation on the board on the basis of handicap. This does not mean that every planning or advisory board necessarily must include a handicapped person.