

## **Overview of Updates**

### **Department of Justice Title VI Legal Manual**

### **January 11, 2001**

The newly revised Department of Justice Title VI Legal Manual has been updated to include new sections on national origin discrimination against limited English proficiency (LEP) speakers, environmental justice, as well as updating existing sections with new case law. In addition an index and a table of authorities listing all cited cases, laws, regulations, and other sources of authority have been added.

Below is a summary of the changes.

#### **Added Sections**

A city or other instrumentality of a State does not have standing to bring suit against the State under Title VI. This discussion starts on page 6 at the bottom with the sentence “At least two courts of appeal have ruled . . .” and ends at the bottom of page 7.

The new Legal Manual cites NCAA v. Smith, 525 U.S. 459 (1999), as another example of how Title VI coverage extends to Congress’ intended recipient, not an indirect recipient. This added discussion is in the last paragraph of the Indirect Recipient section at the bottom of page 23 and top of page 24.

The case Cuffley v. Mickes, 208 F.3d 702 (8<sup>th</sup> Cir. 2000) (the Klan brought suit against the Missouri DOT for denying its application to participate in its Adopt-A-Highway program), is cited as an illustration of the principle that beneficiaries do not enter into any formal contract or agreement with the Federal government where Title VI is a condition of receiving the assistance. See footnote 24 on page 27.

There is a discussion of Cureton v. NCAA, 198 F.3d 107 (3<sup>rd</sup> Cir. 1999). In this case the court reasoned that since the Title VI regulations in question had not been amended to reflect the Civil Rights Restoration Act’s definition of program or activity, the effects test only applied to specifically funded programs. See the last paragraph of the Civil Rights Restoration Act section that begins at the bottom of page 31 and ends on page 32.

The McDonnell Douglas prima facie framework for Title VI claims does not require that the applicant selected for the position be of a different race, color, or national origin than the complainant. The complainant only needs to show that after his rejection, the position remained open and the employer continued to seek applicants from persons of the complainant’s qualifications. See the last paragraph of footnote 40 on page 45.

The new Legal Manual cites a case where the focus of inquiry in a disparate impact case is the consequences of the recipient’s practices, rather than the recipient’s intent. The added section begins with the sentence “For example, in Sandavol v. Hagan . . .” on page 48, and ends at the end of that paragraph at the bottom of page 49.

A plaintiff employed a flawed use of statistics to show adverse impact. New York City Environmental Justice Alliance argued that selling or bulldozing certain city-owned lots

containing 600 community gardens mainly located in minority neighborhoods would tend to exacerbate an existing disparity in access to open space. In order to establish causation, plaintiffs would need to employ facts and statistics that adequately captured the impact of the city's plans on similarly situated members of protected and non-protected groups. See the two-paragraph section that begins with the sentence "In New York City Env'tl. Justice Alliance (NYCEJA) v. Giuliani . . ." on page 50.

The new Legal Manual adds sections addressing national origin discrimination against limited English proficiency (LEP) speakers and environmental justice. The following sections and subsections have been added on pages 54 – 65:

C. National Origin Discrimination and Services in Languages Other than English

1. Presidential Reaffirmance and Clarification of Lau Obligations
2. The Four Factor Analysis: Reasonable Steps Toward Reasonable Measures

D. Environmental Justice and Title VI

1. Executive Order 12898: The Duty to Collect, Disseminate and Think
2. EPA Guidance on Environmental Justice
3. An Analytical Approach and its Attendant Problems of Timing and Proof.

Several points have been added to the section on Private Right to Action and Individual Relief through Agency Action. DOJ has cited several new conflicting circuit court of appeals cases about whether there is an implied private right of action to enforce regulations promulgated pursuant to Section 602 of Title VI. The Supreme Court is likely to decide the issue. Also, many circuits have ruled that individuals may not bring suit against the federal government for failure to enforce Title VI (and Section 504 and Title IX). These additions begin in the first paragraph of this section with the sentence "See Sandoval v. Hagan . . ." on page 99 and end at the end of paragraph in the middle of page 101.

### **Omitted Sections**

The following sections of the September 1998 edition of the DOJ Title VI Legal Manual have been omitted in the January 11, 2001 edition.

The discussion about a contractor or agent hired by a recipient to perform duties that are integral to the functions of the recipient may be subject to Title VI have been omitted. This omitted section begins with the paragraph "Not only is the recipient..." on page 27 and ends at the end of the Contractor and Agent section on page 31.

References to the case Association of Mexican-American Educators (AMAE) v. State of California, 836 F. Supp. 1534 (N.D. Cal. 1993), have been stricken. These omitted references are at the top of page 39, and the section that begins with the sentence "The court in AMAE . . ." and ends at the conclusion of that paragraph. Also, the last paragraph of the Educational Institutions section on page 42 has been omitted.