

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION
AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, DC 20202

INFORMATION MEMORANDUM
RSA-IM-93-23
RSM-
Date: August 9, 1993

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)
CLIENT ASSISTANCE PROGRAMS
RSA SENIOR MANAGEMENT TEAM
REGIONAL REHABILITATION CONTINUING EDUCATION
PROGRAMS
RSA DISCRETIONARY GRANTEEES

SUBJECT : References to the Americans with Disabilities Act of 1990 Contained in
the 1992 Amendments to the Rehabilitation Act of 1973

CONTENT : The 1992 Amendments to the Rehabilitation Act of 1973 (the Act) contain
numerous references to the Americans with Disabilities Act of 1990 (the
ADA). Some of these references ensure that the goals and intent of the two
acts are identical or working in concert. Other modifications to the Act
were made to conform language of the Act with similar language in the
ADA. This Information Memorandum highlights key provisions/changes
in the Act along with a summary of the purpose for the changes. The
language of the law is presented in **bold** print with new language
underlined. A summary of the changes follows the statutory language.

FINDINGS; PURPOSE; POLICY

Section 7 Definitions

- (8) **(E) For the purposes of sections 501, 503 and 504 -**
(i) **for purposes of the application of subparagraph (B) to such sections,**
the term "impairment" does not include homosexuality or bisexuality;
and
(ii) **therefore the term "individual with a disability" does not include an**
individual on the basis of homosexuality or bisexuality.

(E) For the purposes of section 501, 503 and 504, the term "individual with a disability" does not include an individual on the basis of -
(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
(ii) compulsive gambling, kleptomania, or pyromania; or
(iii) psychoactive substance use disorders resulting from current illegal use of drugs.

These modifications conform language in the definition of "individual with a disability" to that used in the civil rights sections of Title V of the Act so that the protected class coverage of these sections is similar to the protected class coverage of the ADA. They incorporate the exclusions from the term "individual with a disability" set forth in the ADA for purposes of sections 501, 503, and 504 of the Rehabilitation Act.

TITLE I - VOCATIONAL REHABILITATION SERVICES

PART A - GENERAL PROVISIONS

Section 100 Declaration of Policy; Authorization of Appropriations

(a)(1) Congress finds that –

(E) enforcement of title V and of the Americans with Disabilities Act of 1990 (42 U.S.C. 1210 et seq.) holds the promise of ending discrimination for individuals with disabilities; . . .

Under section 100(a)(1)(D), Congress identified discrimination as one of the reasons for the significant number of individuals with disabilities being unemployed or underemployed. With this language Congress highlights the importance of eliminating discrimination in order for the purposes of Title I of the Act to be fulfilled.

Section 101 State Plans

(a)(6)(B) provide satisfactory assurances that facilities used in connection with the delivery of services assisted under the plan will comply with the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968, with section 504 of this Act, and with the Americans with Disabilities Act of 1990.

States must provide assurances, as part of their State plan, that the facilities used in the provision of services comply with the Architectural Barriers Act, section 504 of the Act, and the ADA. The Architectural and Transportation Barriers Compliance Board, also known as the Access

Board, establishes the accessibility standards under each of these acts. The standards can be found at 34 CFR 104.23(c) and 41 CFR Appendix A, Subpart 101-19.6.

Section 103 Scope of Vocational Rehabilitation Services

(b) Vocational rehabilitation services, when provided for the benefit of groups of individuals, may also include the following:

(5) Technical assistance and support services to businesses that are not subject to title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and that are seeking to employ individuals with disabilities.

This provision allows State agencies, as part of their services to groups of individuals, to provide technical assistance and support services to companies that are trying to employ people with disabilities but which do not have to comply with the ADA. Generally, this would mean companies which employ less than the current threshold of 25 employees or the future threshold of 15 employees.

Section 109 Training of Employers with Respect to Americans with Disabilities Act of 1990

A state may expend payments received under section 111 -

(1) to carry out a program to train employers with respect to compliance with the requirements of title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.); and

(2) to inform employers of the existence of the program and the availability of the services of the program.

This provision authorizes the expenditure of funds under the Vocational Rehabilitation Services Program for State programs that educate and train employers on the employment provisions of the ADA. It also allows for expenditures which advertise, market, or otherwise make employers aware of the existence of these programs. This authorization is specific to training programs concerning Title I of the ADA and does not authorize expenditures for programs focusing on Title II (State and Local Governments) or Title III (Program Accessibility) of the ADA.

Section 112 Client Assistance Program

(a) . . . The client assistance program shall provide information on the available services and benefits under this Act and title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) to individuals with disabilities in the State, especially with regard to individuals who have traditionally been unserved or underserved by vocational rehabilitation programs. . . .

This provision requires that each CAP provide information not only on the services and benefits under the Act but also those available under Title I of the ADA. This provision also requires CAP to focus these outreach efforts on unserved and underserved groups.

PART C - INNOVATION AND EXPANSION GRANTS

Section 123 Use of Funds

A state may use funds made available under this part, directly or by grant, contract, or other arrangement, to carry out

(1) programs to initiate and expand employment opportunities for individuals with severe disabilities in integrated settings that allow for the use of on-the-job training to promote the objectives of title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.);

(4) programs and activities that -

(A) assist employers in accommodating, evaluating, training or placing individuals with disabilities in the workplace of the employer consistent with provisions of this act and title I of the Americans with Disabilities Act of 1990; and

...

(11) support the provision of training and technical assistance to clients, business, industry, labor, community rehabilitation programs, and others regarding the implementation of the amendments made by Rehabilitation Act

Amendments of 1992, of title V of this Act, and of the Americans with Disabilities Act of 1990; and

Among the authorized uses of funds under the Innovation and Expansion grants program is the establishment of on-the-job training programs for individuals with severe disabilities. These programs must be in integrated settings and must promote the equal employment opportunities objectives of the ADA. States may also provide or contract for programs and activities under this part which assist employers with accommodating, evaluating, training, and placing individuals with disabilities. Again, these programs must be consistent with the goals and objectives of the Act and the ADA. Finally, States may provide or support the provision of training and technical assistance under this part to anyone concerning the 1992 Amendments, the provisions of title V (usually sections 501, 503 and 504), as well as any of the provisions of the ADA, not simply title I of the ADA.

TITLE II - RESEARCH

Section 204(b) Research Activities

(3)(D)(i) In establishing Centers to conduct the research or demonstration activities described in subparagraph (B)(iii), the Director may establish one Center in each of the following areas of focus:

(III) Employment, including supported employment, and reasonable accommodations and reduction of environmental barriers as required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and title V [of the Act].

Under the Research title (Title II) of the Act, this section supports the establishment of Rehabilitation Engineering Research Centers. One authorized focus area (employment) of such a Center includes reasonable accommodations and the reduction of environmental barriers as required by the ADA and Title V of the Rehabilitation Act.

TITLE III - TRAINING AND DEMONSTRATION PROJECTS

Section 302 Training

(a)(3) In carrying out this subsection, the Commissioner shall furnish training regarding the services provided under this Act, and, in particular, services provided in accordance with amendments made by the Rehabilitation Act Amendments of 1992, to rehabilitation counselors and other rehabilitation personnel. In carrying out this

subsection, the Commissioner shall also furnish training to such counselors and personnel regarding the applicability of section 504 of this Act, title I of the Americans with Disabilities Act of 1990, and the provisions of titles II and XVI of the Social Security Act that are related to work incentives for individuals with disabilities.

This provision stipulates that training will be provided to rehabilitation counselors and other rehabilitation personnel on the applicability of title I of the ADA to vocational rehabilitation and employment of individuals with disabilities.

TITLE IV - NATIONAL COUNCIL ON DISABILITY

Section 401 Duties

(a)(7) gather information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

This section adds a new responsibility for the National Council on Disability to gather information regarding the implementation, effectiveness, and impact of the ADA.

TITLE VI - EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH DISABILITIES

Section 621 Part B - Projects with Industry

(a)(6) The Commissioner may include, as part of agreements with grant recipients, authority for such grant recipients to provide technical assistance to -

...

(C) assist employers in understanding and meeting the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) as the Act relates to employment of individuals with disabilities.

This provision allows the Commissioner to include, as part of the agreements with PWI grantees, authority for them to provide technical assistance to employers concerning the employment provisions of the ADA.

Acting Commissioner
Rehabilitation Services
Administration

CC: CSAVR
NAPAS