

U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION  
WASHINGTON, D.C. 20202

INFORMATION MEMORANDUM  
RSA-IM-91-19  
RSA-101 1/  
DATE: 4/30/91

TO: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)  
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)  
CLIENT ASSISTANCE PROGRAMS (CAP)  
RSA SENIOR MANAGEMENT TEAM

SUBJECT: Amendments to the Rehabilitation Act of 1973 by the Americans with  
Disabilities Act (P.L. 101-336)

CONTENT: Section 512 of the Americans with Disabilities Act (ADA) amended Section 7,  
Definitions, of the Rehabilitation Act of 1973. Specifically, the ADA amended  
Section 7(8), definition of "individual with handicaps" to exclude individuals  
currently engaged in the illegal use of drugs from coverage under Title V of the  
Rehabilitation Act. In addition, that definition was amended for the purposes of  
sections 503 and 504 of the Rehabilitation Act, as those sections relate to  
employment, to exclude individuals whose current abuse of alcohol prevents  
such individuals from performing the duties of the job in question. Section 512  
of the ADA also added definitions of "drugs" and "illegal use of drugs" to  
Section 7 of the Rehabilitation Act.

A copy of portions of Section 7 of the Rehabilitation Act, as amended by P.L.  
101-336, is attached for your information.

INQUIRIES: Director,  
Planning, Policy, and Evaluation Staff, RSA

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Commissioner  
Rehabilitation Services Administration

Attachment

1/ Under development

Section 7 of the Rehabilitation Act of 1973, as amended by Section 512 of the Americans with Disabilities Act, P.L. 101-336:

(8)(A) Except as otherwise provided in subparagraph (B), the term "individual with handicaps" means any individual who (i) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (ii) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to titles I and III of this Act.

(B) Subject to subparagraphs (C) and (D), the term "individual with handicaps" means, for purposes of titles IV and V of this Act, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(C)(i) For purposes of Title V, the term "individuals with handicaps" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who--

(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no

longer engaging in the illegal use of drugs.

- (iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.
  - (iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.
  - (v) For purposes of sections 503 and 504 as such sections relate to employment, the term "individual with handicaps" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.
- (D) For the purpose of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.
- (22)(A) The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).
- (B) The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.