



U.S. Department of Justice

Civil Rights Division

Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530

APR 24 2018

MEMORANDUM

TO: Federal Agency Civil Rights Directors and General Counsels

FROM: John M. Gore 
Acting Assistant Attorney General

SUBJECT: Coordination of Federal Agencies' Implementation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act

I. Introduction

During the course of its work with other Federal agencies on disability nondiscrimination laws, the Department of Justice (the Department) has become aware of the need to provide further clarity on the scope of the Department's and other agencies' authority under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504). This memorandum sets forth the authorizations provided to the Department and other agencies under Title II and Section 504 and discusses the implications for the Department's coordination of these statutes among Federal agencies. The Department hopes to eliminate inconsistencies in the implementation and enforcement of Title II and Section 504 among Federal agencies, which often results in confusion to the public.

The Assistant Attorney General for Civil Rights is responsible for ensuring consistency in the implementation of Section 504 and Title II across the Federal government. In addition, given Congress' intent for parity between Section 504 and Title II of the ADA, the Assistant Attorney General for Civil Rights must also ensure that any interpretations of Section 504 are consistent with Title II (and vice versa). Accordingly, it is critical that the Assistant Attorney General for Civil Rights have the opportunity to review and approve any regulations and guidance from other Federal agencies implementing Section 504. In addition, unless provided otherwise under statute or by express delegation by the Department, the issuance of regulations and technical assistance implementing or interpreting Subtitle A of Title II of the ADA are within the exclusive domain of the Department; therefore, agencies may not issue such documents independently.

II. Authority under the ADA

The ADA prohibits discrimination on the basis of disability by state and local entities as well as public accommodations. Congress provided various Federal agencies with the authority to issue regulations to implement Titles I – IV of the ADA. For purposes of the discussion of the ADA in this memorandum, the Department is addressing only Title II. The ADA authorizes the

Attorney General to promulgate regulations implementing Subtitle A of Title II, covering all services, programs, or activities of a public entity, except those related to public transportation that are covered by Subtitle B.¹ The ADA authorizes the Secretary of Transportation to promulgate regulations implementing Subtitle B of Title II of the ADA, covering public transportation provided by public entities.²

Additionally, Congress recognized the necessity of educating the public about the rights and responsibilities under the Act. Specifically, section 506 of the ADA, entitled “Technical Assistance,” delineates which agencies may render technical assistance and specifically provides the Attorney General with the responsibility for issuing technical assistance for Subtitle A of Title II, and the Secretary of Transportation with the authority for issuing technical assistance for Subtitle B of Title II.³ Section 202 of the Rehabilitation Act also provides the Director of the National Institute on Disability and Rehabilitation Research with the responsibility for “coordinating activities with the Attorney General regarding the provision of information, training, or technical assistance regarding the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) to ensure consistency with the plan for technical assistance required under section 506 of such Act (42 U.S.C. 12206).”⁴

As to enforcement of Title II, the Department’s Title II regulation requires the Assistant Attorney General for Civil Rights to coordinate the compliance activities of Federal agencies with respect to State and local government entities, and to provide policy guidance and interpretations to designated Federal agencies to ensure the consistent and effective implementation of the requirements of the Title II regulation.⁵ The Title II regulation assigns responsibility for administrative enforcement, such as conducting investigations of complaints, to eight Federal agencies based upon certain functional areas.⁶ For instance, the Department of Labor is responsible for Title II administrative enforcement of all programs, services, and regulatory activities relating to labor and the work force.⁷ The Department maintains the authority to assign enforcement responsibilities to one agency when two or more agencies have apparent responsibility over a complaint⁸ and to itself when it receives a complaint directed to the Attorney General alleging a violation of Title II that may fall within the jurisdiction of a designated agency or another Federal agency that may have jurisdiction under Section 504.⁹

III. Authority under Section 504

Section 504 prohibits discrimination on the basis of disability in federally assisted and federally conducted programs.¹⁰ Agencies are responsible for issuing their own Section 504 regulations for their federally assisted and federally conducted programs.¹¹ However, Executive

¹ See 42 U.S.C. § 12134.

² See 42 U.S.C. §§ 12149 and 12164.

³ See 42 U.S.C. § 12206(c).

⁴ 29 U.S.C. § 762.

⁵ See 28 C.F.R. § 35.190(a).

⁶ See 28 C.F.R. § 35.190(b).

⁷ See 28 C.F.R. § 35.190(b)(7).

⁸ See 28 C.F.R. § 35.190(d).

⁹ See 28 C.F.R. § 35.190(e).

¹⁰ See 29 U.S.C. § 794(a).

¹¹ See *id.*; 28 C.F.R. § 41.4.

Order 12250 provides the Attorney General with the authority to coordinate Executive agencies' implementation and enforcement of Section 504 and other provisions of Federal law prohibiting disability discrimination under any program or activity receiving Federal financial assistance. The Attorney General delegated the Section 504 coordination authority under Executive Order 12250 to the Assistant Attorney General for Civil Rights.¹²

Among the Assistant Attorney General for Civil Rights' responsibilities under Executive Order 12250 are reviewing Executive agencies' existing and proposed rules, regulations, and orders of general applicability in order to identify those which are inadequate, unclear or unnecessarily inconsistent;¹³ and developing standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.¹⁴ Executive Order 12250 also requires each Executive agency responsible for implementing Section 504's nondiscrimination provisions to issue "appropriate implementing directives (whether in the nature of regulations or policy guidance)" that are "consistent with the requirements prescribed by the Attorney General ... and ... subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect."¹⁵ The Department's Section 504 coordination regulation at 28 CFR part 41 specifies the procedures for the promulgation and enforcement of Section 504 regulations by all agencies providing financial assistance, the standards for determining protected individuals under Section 504, and the guidelines for determining what practices are discriminatory under Section 504.¹⁶

IV. Relationship between the ADA and Section 504

Section 504 laid the foundation for the development of Title II of the ADA, as Congress stated that the purpose of Title II was to "make applicable the prohibition against discrimination on the basis of disability, currently set out in regulations implementing section 504 of the Rehabilitation Act of 1973, to all programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, regardless of whether or not such entities receive Federal financial assistance."¹⁷ Subsequently, the ADA has played an important role in the interpretation of Section 504, with Congress amending the Rehabilitation Act in 1992 to make clear that the principles underlying the ADA also apply to all sections of the Rehabilitation Act, including Section 504.¹⁸ The legislative history of the 1992 amendments explains that one of the purposes of the legislation is "to ensure that the precepts and values embedded in the Americans with Disabilities Act are reflected in the Rehabilitation Act of 1973."¹⁹ The legislative history further provides the following:

¹² See 28 C.F.R. § 0.51.

¹³ See Executive Order 12250, § 1-202.

¹⁴ See Executive Order 12250, § 1-203.

¹⁵ See Executive Order 12250, § 1-402.

¹⁶ For a detailed explanation of Executive Order 12250's clearance requirement for regulations and policy guidance documents that implement Section 504 regulations and other provisions of Federal law prohibiting disability discrimination, please refer to the April 24, 2018 memorandum entitled, Clearance Requirements for Title VI, Title IX, Section 504, and Related Nondiscrimination Regulations and Policy Guidance Documents.

¹⁷ H.R. Rept. 101-485(II) at 84 (May 15, 1990).

¹⁸ See Public Law 102-569 (1992).

¹⁹ S. Rep. 102-357 at 2 (Aug. 3, 1992).

The statement of purpose and policy is a reaffirmation of the precepts of the Americans with Disabilities Act, which has been referred to as the 20th century emancipation proclamation for individuals with disabilities. It is the Committee's intent that these principles guide the policies, practices, and procedures developed under all titles of the [Rehabilitation] Act.²⁰

Section 501 of the ADA also provides that “[e]xcept as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.”²¹ Therefore, Section 504 provides the floor for the ADA, as the ADA potentially could provide broader protections. Courts also have generally treated claims under the ADA and the Rehabilitation Act identically.²²

V. Implications for Coordination Among Federal Agencies

The Assistant Attorney General for Civil Rights must ensure consistency in the implementation of Section 504 and Title II across the Federal government, as well as in the interpretation of Section 504 with Title II (and vice versa). Therefore, the Assistant Attorney General for Civil Rights must have the opportunity to review and approve any regulations and guidance from other Federal agencies implementing Section 504. In addition, unless otherwise provided, the Department maintains the exclusive authority to issue regulations and technical assistance implementing or interpreting Subtitle A of Title II, and therefore, agencies may not issue such documents independently.

We hope that this memorandum helps to clarify the scope of authority of both the Department and other Federal agencies for implementing and enforcing Title II of the ADA and Section 504. Please feel free to contact the Regulations, Interpretations, and Coordination Unit of the Disability Rights Section at 202-307-0663, if you have any questions about the substantive requirements of the ADA or Section 504 or the coordination process under either statute. We look forward to working with your respective agencies in ensuring the consistent application of these disability rights laws.

²⁰ S. Rep. 102-357 at 12 (Aug. 3, 1992). *See also* H.R. Rep. 102-822 at 81 (Aug. 10, 1992).

²¹ 42 U.S.C. § 12201(a).

²² *See, e.g., Theriault v. Flynn*, 162 F.3d 46, 48 n.3 (1st Cir. 1998); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003); *Helen L. v. DiDario*, 46 F.3d 325, 330 n.7 (3rd Cir. 1995); *Baird ex rel. Baird v. Rose*, 192 F.3d 462, 468 (4th Cir. 1999); *Delano-Pyle v. Victoria Cty., Tex.*, 302 F.3d 567, 574 (5th Cir. 2002); *McPherson v. Michigan High School Athletic Ass'n, Inc.*, 119 F.3d 453, 459-460 (6th Cir. 1997); *Gorman v. Bartch*, 152 F.3d 907, 912 (8th Cir. 1998); *Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999); *Cohon ex rel. Bass v. N.M. Dept. of Health*, 646 F.3d 717, 725-26 (10th Cir. 2011); *Bircoll v. Miami-Dade Cty.*, 480 F.3d 1072, 1088 n.21 (11th Cir. 2007).