

TEXAS WORKFORCE COMMISSION LETTER

ID/No: WD 24-01

Date: June 22, 2001

Key Word: Administration

To: Local Workforce Development Board Executive Directors
Agency Executive Staff
LWDA Coordinators
Agency Local Offices

From: Barbara Cigainero, Director of Workforce Development

Subject: Prohibition Against Discrimination Based on Disability or Limited English Proficiency in the Administration of Workforce Services

PURPOSE:

To ensure that Local Workforce Development Boards (Boards) provide equal opportunity and access to all federally-funded workforce services to individuals with learning, emotional or behavioral disabilities, or with Limited-English Proficiency (LEP).

REFERENCES:

United States Civil Rights Act of 1964, Title VI
Rehabilitation Act of 1973, Section 504
Americans with Disabilities Act of 1990, Title II
Workforce Investment Act of 1998 (Public Law 105-220), Section 188
29 Code of Federal Regulations 37.35 and 37.8, Implementation of the Nondiscrimination and Equal Opportunity Provision of the Workforce Investment Act, revised July 1, 2000
Department of Health and Human Services, Office of Civil Rights, Policy Guidance, entitled "Title VI's Prohibition Against National Origin Discrimination as It Affects Limited English Proficiency Persons," and issued August 30, 2000
Department of Labor, Civil Rights Center, Policy Guidance, entitled "Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination as It Affects Persons with Limited English Proficiency," and issued January 17, 2001
Department of Health and Human Services, Office of Civil Rights, Summary of Policy Guidance entitled, "Prohibition Against Discrimination on the Basis of Disability in the Administration of Temporary Assistance for Needy

Families,” and issued January 19, 2001
Department of Health and Human Services, Office of Civil Rights, Decision
Against Massachusetts Department of Transitional Assistance regarding
Office of Civil Rights Complaint Number 01-98-3055, and issued
January 19, 2001

BACKGROUND:

Certain federal civil rights laws prohibiting disability discrimination apply to the administration of Temporary Assistance for Needy Families (TANF). Title VI of the Civil Rights Act of 1964 prohibits discrimination based on national origin by any activity receiving federal assistance. Title II of the Americans with Disabilities Act of 1990 (ADA) protects individuals with a disability from being excluded by reason of that disability from participation in or benefit from services or activities of a public entity. Section 504 of the Rehabilitation Act of 1973 prohibits the same discrimination by entities that receive federal financial assistance.

Lawsuits have been filed against several states, including Massachusetts, alleging failure to make reasonable accommodations for persons with learning disabilities who receive services funded under TANF. A January 19, 2001, decision by the United States Department of Health and Human Services’ (DHHS) Office of Civil Rights (OCR) was used as part of a lawsuit against the State of Massachusetts.

In the wake of the DHHS OCR decision against Massachusetts, DHHS released a Policy Guidance, “Prohibition Against Discrimination on the Basis of Disability in the Administration of Temporary Assistance for Needy Families,” clarifying what will be applied in OCR compliance reviews and/or investigations of complaints of disability discrimination. This policy guidance supplements previously released OCR policies that explained how federal civil rights laws applied to certain aspects of welfare reform, and that the failure to provide “meaningful language access” might also violate civil rights laws.

Grassroots groups and advocates are using federal civil rights laws to seek “meaningful language access” policies. They have reported that some state and local entities providing workforce services fail to provide “meaningful language access,” such as translation services and materials in languages other than English, to low-income persons with LEP. This has resulted in persons with LEP being denied access to critical federally-funded benefits and services, including those funded under TANF, Welfare-to-Work (WtW), the Workforce Investment Act (WIA), and Food Stamp Employment and Training (FSE&T). The denial of access to persons with LEP may violate federal civil rights laws.

PROCEDURES:

Boards must ensure that all individuals with learning, emotional or behavioral disabilities or with LEP have equal opportunity and access to all federally-funded

workforce services, including those funded under WIA, TANF, WtW, and FSE&T.

Boards must comply with all federal civil rights laws and regulations, and should review the following:

- Section 504 of the Rehabilitation Act of 1973: Under Section 504, “covered entities” include “any state or local agency, private institution or organization, or any public or private entity that (1) operates, provides or engages in health or social service programs and activities and that (2) receives federal financial assistance from DHHS directly or through another recipient/covered entity.” Guidance is available at <http://www.hhs.gov/ocr/504.html>
- Title II, ADA: The ADA prohibits discrimination against individuals with disabilities who receive state and local services. Boards must ensure that they and their contractors are in compliance with the ADA. Guidance is available at <http://www.hhs.gov/ocr/ada.html>
- DHHS OCR Guidance, entitled “Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families),” and issued January 19, 2001. This guidance may be accessed at <http://www.hhs.gov/ocr/prohibition.html>.

This guidance addresses the application of federal civil rights laws prohibiting discrimination against individuals with disabilities in TANF. It details how Section 504 of the Rehabilitation Act and Title II of ADA relate to welfare services.

This guidance covers any entity that receives federal assistance from DHHS, including state, county, and local welfare agencies, and public and private contractors and subcontractors. Accordingly, Boards and their contractors must adopt methods for administering welfare services to ensure equal opportunity for persons with disabilities in all aspects of the delivery of TANF services, including applications, assessments, work activities, sanctions, and time limits.

This guidance also describes “promising practices” including policies, procedures, and other recommended steps that Boards can take to ensure meaningful access to TANF services by people with disabilities. It identifies essential requirements that the DHHS OCR will apply in its compliance reviews and investigations. These are not new requirements; they reiterate ADA and Section 504 principles that DHHS OCR has been enforcing for years that require:

- equal access through the provision of appropriate services;
 - the modification of policies, practices, and procedures to provide such access, unless doing so would result in a fundamental alteration to the services; and
 - the adoption of nondiscriminatory methods of administration.
- DHHS OCR Decision Against the Massachusetts Department of Transitional Assistance (DTA) regarding OCR Complaint Number 01-98-3055, issued January 19, 2001, included as Attachment 1 to this WD Letter:

OCR's investigation revealed that DTA had three types of violations¹:

- 1) Denied equal opportunity to learning disabled individuals to participate in or benefit from DTA's TANF services through:
 - inadequate assessment processes;
 - failure to identify the obstacles to employment that confront individuals with learning disabilities; and
 - failure to identify what measures individuals with learning disabilities need in order to have equal opportunities to participate in TANF activities.

 - 2) Used criteria or methods of administration that had the effect of discriminating against TANF-eligible individuals with learning disabilities. DTA provided little training or technical assistance to DTA employees, DTA contractors, or vendors on learning disabilities among its TANF population. Employees were not trained to:
 - identify or assess whether individuals may have learning disabilities;
 - refer individuals with learning disabilities to appropriate services;
 - make modifications in services, policies, or practices by using auxiliary aids for individuals with disabilities; or
 - otherwise accommodate individual needs.

 - 3) Failed to make reasonable modifications necessary to avoid discrimination against TANF-eligible individuals with learning disabilities.
- Section 188 of the Workforce Investment Act (WIA) of 1998 Discrimination is also prohibited under Section 188. Boards and their contractors must comply with Section 504 and the ADA in their administration of WIA and all other services operated through One-Stop Service Delivery Centers.

¹ Blank lines in WD Letter 24-01, Attachment 1, signify the omission of names of the parties to the complaint in the Massachusetts case.

Guidance is available at

http://wdsc.doleta.gov/disability/pdf_docs/tein_16_99.pdf

- 29 Code of Federal Regulations (CFR) 37.35 and 37.8, Implementation of the Nondiscrimination and Equal Opportunity Provision of the Workforce Investment Act, revised July 1, 2000: These sections may be accessed at <http://www.access.gpo.gov/nara/cfr/index.html> by scrolling down and searching for "29CFR37.35" and "29CFR37.8" as directed.

Boards should review WIA's nondiscrimination and equal opportunity regulations that prohibit discrimination, and specifically the requirements to:

- provide information in languages other than English, and ensure access to persons with LEP to WIA services on an equal basis with those proficient in English; and
 - ensure that communications with individuals with disabilities are as effective as communications with individuals without disabilities.
- DHHS OCR guidance on Title VI's Prohibition Against National Origin Discrimination as It Affects Limited English Proficiency Persons, dated August 20, 2000, which may be accessed at <http://www.hhs.gov/ocr/lep/>.

Boards must comply with the following four requirements to ensure "meaningful language access":

- 1) A thorough *assessment* of language needs, including the identification of language needs of each LEP individual; situations in which the individual will need language services; resources needs; and how to make these resources available;
- 2) A comprehensive *written policy* to ensure meaningful communication with LEP individuals. This includes notices to LEP individuals of their rights to free language assistance; staff training; monitoring; and translation of written materials. The guidance warns that the use of family, friends, and/or minor children as interpreters can raise Title VI liability issues;
- 3) *Training staff* to implement the language access policy. At a minimum, staff must be able to recognize potential disabilities and conduct initial screenings to identify possible disabilities for individuals who agree to be screened. Boards must ensure that service providers and those entities to which a referral is made have the requisite training and knowledge; and
- 4) *Vigilant monitoring* to ensure that LEP individuals can access services.

DHHS posts related information on LEP guidance on its web site:

<http://www.hhs.gov/ocr/lep/>.

- Department of Labor (DOL) OCR Policy Guidance, “Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency,” issued January 17, 2001, which may be accessed at: <http://www.usdoj.gov/crt/cor/lep/dollep.pdf>. This guidance clarifies the responsibilities of state and local entity-recipients of DOL federal funds in providing assistance to individuals with LEP.

Boards should review their written policies concerning prohibited discrimination based on disability including learning, emotional, or behavioral disabilities and against national origin as it affects persons with LEP. Boards must take appropriate affirmative steps to ensure that their service providers and all appropriate staff are in compliance with all federal civil rights laws and regulations.

ACTIONS REQUIRED:

Boards should review the documents referenced in this WD Letter and ensure that all federal nondiscrimination laws, regulations, policies and procedures for individuals with learning, emotional or behavioral disabilities or LEP are implemented and followed.

INQUIRIES:

Direct inquiries to Reagan Faulkner at (512) 936-3563 or by e-mail at Reagan.Faulkner@twc.state.tx.us.

ATTACHMENT:

Attachment 1: Department of Health and Human Services, Office of Civil Rights, Decision Against the Massachusetts Department of Transitional Assistance Regarding OCR Complaint Number 01-98-3055, issued January 19, 2001

Rescissions: None	Expiration: Continuing
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