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OA/ID Number: 52130
Folder ID Number: 52130-003

Folder Title:
"Amicus: National Center for Law & the Handicapped - May-September 1976"

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Amicus

National Center for Law & the Handicapped VOL. 1 NO. 4 MAY 1976

Advocates on Advocacy: Defining Three Approaches

Amicus

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Advocates on Advocacy: Defining Three Approaches

Amicus is published bi-monthly by the National Center for Law and the Handicapped, Inc., 1235 North Eddy Street, South Bend, Indiana 46617 (219) 288-4751. Third class postage paid at South Bend, Indiana.

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The National Center for Law and the Handicapped is a project of national significance jointly funded by the Bureau of Education for the Handicapped, Office of Education, U.S. Department of Health, Education and Welfare, and Division of Developmental Disabilities, Office of Human Development, U.S. Department of Health, Education and Welfare. The work presented herein was performed pursuant to this grant. Points of view stated do not necessarily represent official policy or position of these agencies.

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ABA Commission To Fund Projects On Mental Disability

The American Bar Association Commission on the Mentally Disabled has received an Edna McConnell Clark Foundation grant for establishment of a nationwide program to improve legal services for the mentally disabled.

The Bar Funding Program will provide financial support to state and local bar-sponsored legal services projects in order to stimulate increased activity and reform in the field of mental disability.

The Management Board of the Bar Funding Program will award 10 grants of approximately $20,000 each for a one-year period. Matching contributions must be obtained for any funds received.

Projects should be innovative and reform-oriented. They may include, but are not limited to, client representation at the commitment stage, client representation during institutionalization, client representation within the community, the use of patient or lay advocates, the use of paralegals, and civil legal services.

Applications accompanied by a preliminary program narrative must be submitted by June 15, 1976. All inquiries should be directed to Susan J. King, Esq., or Judith A. Sabella, ABA Commission on the Mentally Disabled, 1800 M Street, NW, Washington, D.C. 20036; or phone (202) 331-2244.

New Guidelines Issued For Affirmative Action In Hiring Handicapped

The United States Department of Labor has issued revised regulations for affirmative action in employing the handicapped.

The regulations implement Section 503 of the Rehabilitation Act of 1973 which requires all contractors and subcontractors with contracts of $2,500 or more with the Federal government to take affirmative action to employ and promote qualified handicapped individuals.

The new regulations took effect April 16, the date they were published in the *Federal Register.* They revise the original regulations published in June, 1974, to reflect the changes made by the 1974 amendments to the Rehabilitation Act. They also incorporate several of the comments submitted when the proposed revisions were published in August, 1975.

Definitional Changes

The Department of Labor pointed to significant changes in 12 areas of the new regulations. Among those are three definitions.

First, the definition of "handicapped individual" has been changed to conform with the 1974 amendments and means any person who 1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, 2) has a record of such impairment, or 3) is regarded as having such an impairment.

Second, the regulations clarify the meaning of "substantially limited" in defining a handicapped individual. It is used to describe a person "likely to experience difficulty in securing, retaining or advancing in employment because of a handicap."

Third, a definition of "qualified handicapped individual" has been added and describes a handicapped individual who is capable of performing a particular job, with reasonable accommodation to his or her handicap. This definition was added to assure that persons covered under the act, in addition to meeting the definition of handicapped, are also qualified to work.

In other changes, the submission of an annual report is no longer required, and the time for preserving records has been reduced to one year.

A new section obligates all non-exempt contractors with contracts of at least $50,000, and with at least 50 employees, to prepare and maintain an affirmative action program. It deletes a proposed requirement that a summary of the plan be disseminated to applicants and employees, although the plan must be available for inspection.

A new section, added to make it clear to whom the affirm-

ative action obligation applies, requires contractors to invite applicants and employees who believe they are covered by the act and who wish to benefit, to identify themselves. This does not relieve the contractor of his obligations to other employees he knows are handicapped.

The revised rules also include a more detailed explanation of the steps contractors may take to fulfill their affirmative action obligations, but do not require goals, timetables, or utilization analyses.

Criteria for good faith efforts no longer will be issued. At the same time, however, all job qualification requirements must be job-related, and contractors must review these requirements.

Various Sections Deleted

Because the new definition of a handicapped individual no longer includes the need for or ability to benefit from vocational rehabilitation services, the section outlining how a person can have a handicap certified has been dropped.

Also eliminated was the requirement that contractors, in their affirmative action program, provide examples of accommodations which may be necessary. This change was made since it is difficult for contractors to know in advance what accommodations may be required for specific employees.

The provision requiring contractor certification, which was to have been inserted in all contracts after January 1, 1976, has been revoked.

Another change has moved enforcement of Section 503 regulations from the assistant secretary of labor for employment standards to the Department of Labor's Office of Federal Contract Compliance Programs.

The regulations also include a new provision that contracts with sheltered workshops cannot be considered part of an affirmative action program unless the workshops are a source of trainees for the contractor.

National Conference Examines DD Act

A national conference on "Advocacy and Protective Services As Related to Public Law 94-103, The Developmentally Disabled Assistance and Bill of Rights Act" was held March 31 - April 2, in Dallas, Texas.

Cosponsored by the Research and Training Center in Mental Retardation at Texas Tech University, and the Office of Developmental Disabilities (ODD), Department of Health, Education, and Welfare, the conference focused upon Title II, Section 113 of the DD Act which mandates the creation of a mechanism to protect the rights of persons with developmental disabilities. According to this section of the law, in order to receive DD funds states must develop programs for the protection and advocacy of the legal rights of persons with developmental disabilities by October 1, 1977. To help states establish these programs, $1.5 million has been appropriated for the next fiscal year. However, planning monies are now available to the states.

The deadline for state commitment of fiscal '76 funds for planning for this protection and advocacy system has been extended from June 30, 1976, to September 30, 1976.

Recommendations regarding P. L. 94-103 were endorsed by a majority of the conference participants and presented to the Office of Developmental Disabilities which is responsible for the writing of guidelines for planning and implementation of Title II of the DD Act. Copies of a draft of these guidelines have been sent for comment to every state governor's office or agency designated by the state as responsible for implementation of the DD law.

Recommendations resulting from the conference include allowing states to use present allocations immediately for advocacy services, rather than only for research and planning. The participants noted that certain needs for advocacy and protective services of the developmentally disabled are already identified, and models of advocacy systems are available.

A majority of the conference participants also recommended that ODD define the minimum components of a comprehensive advocacy system in its guidelines. Such a system, they recommended,

should consist of at least three interrelated areas of advocacy — personal advocacy, systems advocacy, and legal advocacy.

Recommend Legal Advocacy Component

In regard to the requirement for a legal advocacy component, conference participants adopted a resolution which was passed by the United Cerebral Palsy Association at its Annual Meeting March 25. The resolution is as follows:

"Be it hereby resolved, in the interests of effective, vigorous, and comprehensive systems advocating and protecting the rights of developmentally disabled persons pursuant to the 1975 Act, that the Secretary requires in the general regulations applicable uniformly to all the states under Section 109 that an adequately funded statewide legal advocacy resource, having the capability to bring lawsuit and administrative appeals, be included as an essential part of every state's Section 113 advocacy and protection system."

The director of the Office of Developmental Disabilities as well as the General Counsel Office for the Department of Health, Education, and Welfare, is responsible for the approval of final guidelines relating to Title II. In addition to being sent to each state office, these guidelines will be published in the *Federal Register.*

Advocacy Project Looks at Accessibility of Polling Places

In the March issue of *Amicus,* the Special Report section was devoted to voting rights of the physically and mentally disabled. In Part I of this section, entitled "No Entrance, No Vote, No Voice," we noted that inaccessible polling places, as well as lengthy, expensive, and often confusing absentee voting procedures have prevented many handicapped persons from exercising their right to vote.

The National Easter Seal Society, through funding by a grant from HEW's Office of Education, Bureau of Education for the Handicapped, is involved in an advocacy project which centers on polling place accessibility, and recently completed field work in its study.

Conducted by the Alabama Society for Crippled Children and Adults through its Dothan and Tuscaloosa affiliates, the project focuses on three major areas: 1) Survey of polling places to determine accessibility with subsequent follow-up recommendations; 2) Sampling of polling place officials to determine their awareness of architectural barriers and the effect of these barriers on handicapped individuals; and 3) Sampling of the physically handicapped population to determine how architectural barriers affect their voting habits.

As a result of efforts in the Alabama project, the state attorney general contacted all county commissioners and probate judges noting that, due to the inaccessibility of many polling places in Alabama, thousands of physically handicapped citizens are being denied the right to vote. "This situation," he stated, "of course, should not exist and cannot be permitted to continue. . . I hope and trust that you will take whatever steps are necessary to insure full voting rights for the physically handicapped citizens of our State."

The Alabama advocacy project is one of nine state projects receiving mini-grants through the National Easter Seal Society. These programs are part of the second phase of an anticipated five-year project to develop and replicate a pilot program in advocacy for the physically handicapped.

Further information regarding these advocacy projects, including the final report of the Alabama project, can be obtained from Ms. Sara Kirk, project director, Advocacy Replication, The National Easter Seal Society for Crippled Children and Adults, 2023 West Ogden Avenue, Chicago, Illinois 60612.

in the courts

Gurmankin, et al. v. Costanzo, et al. No. 74-2980 (E.D. Pa.)

The United States District Court for the Eastern District of Pennsylvania held that the School District of Philadelphia cannot refuse to consider blind persons to be teachers of sighted students.

Judge Clarence C. Newcomer, in the case of *Gurmankin, et al. v. Costanzo, et al.*, found that the defendants had discriminated against the plaintiff, Judith Gurmankin, in violation of the due process clause of the 14th Amendment to the United States Constitution.

Judith Gurmankin, blind since age 12, brought this action on behalf of herself and all other visually handicapped individuals qualified to teach in the public schools of Philadelphia who have been prevented from teaching full-time because of the defendants' discriminatory policies and practices. The plaintiff alleged that these hiring practices violated the equal protection clause and the due process clause of the United States Constitution. She also alleged violations of Section 504 of the Rehabilitation Act of 1973.

Defendants in this case are the superintendent of the Philadelphia School District, the executive director of personnel and labor relations, the executive director of professional personnel, and the Board of Education of the School District of Philadelphia.

Due Process Denied

In finding that the plaintiff's due process rights were violated, Judge Newcomer stated that the school board's policy of totally excluding blind persons as teachers of sighted students "created an irrebuttable presumption," that is it presumed that blind persons could not be competent teachers.

"Since the evidence in this case indicates that some blind persons can be successful teachers," he commented, "the school district's presumption is unconstitutionally broad. Thus, even though the school district's apparent goal of insuring that only competent teachers are hired is proper and legitimate, the refusal of the school district to even consider blind persons for teaching positions cannot be justified."

Judge Newcomer also noted that because his decision was based on due process, he had no occasion to consider the equal protection arguments stressed by the plaintiff.

Alleged Discriminatory Interview

Ms. Gurmankin also alleged that the oral interview she had in 1974 was evaluated in a discriminatory manner. Judge Newcomer found that the plaintiff's interview was not graded fairly, "mainly because of the interviewers' lack of information concerning the capabilities of blind teachers and the kinds of adjustments that a blind teacher can make to overcome apparent problems."

The court also found that the school district discriminated against the plaintiff by refusing to give her student teaching "score points" after she had been excluded from student teaching sighted students in Philadelphia public schools because of her blindness.

"Although I am unable to predict what score Ms. Gurmankin would have received if she had been evaluated properly," Judge Newcomer said, "it is clear that due process requirements will not be met if tests results are based on misconceptions and stereotypes about the blind. . ."

Comments on 504

In commenting on the plaintiff's allegation that the defendants' policies and practices violated Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against disabled persons in federally funded programs, the judge noted that refusal to hire a blind person as a teacher is the kind of discrimination which that section was meant to prohibit. "One of the specific purposes of the Rehabilitation Act," he stated, "was to 'promote and expand employment opportunities in the public

and private sectors for handicapped individuals and to place such individuals in employment'."

In his order of April 2, 1976, Judge Newcomer ordered the defendants to offer employment to Ms. Gurmankin as a secondary school English teacher, with seniority rights and all other rights which a secondary school English teacher who was employed in September, 1970, would receive. The plaintiff was also awarded court costs.

The court has not yet ruled on the remaining class aspects of this litigation or on the appropriateness of awarding back pay and a reasonable attorney's fee to the plaintiff.

McGill v. Alton, et al. No. 74-1164 (W.D. Pa.)

According to a consent decree approved January 26, 1976, persons in Pennsylvania mental institutions who are otherwise eligible voters must be considered qualified absentee voters and are entitled to absentee ballots. Both plaintiffs and defendants agreed that denying this right is unconstitutional because it violates the equal protection clause of the 14th Amendment.

The consent decree was approved in the case of *McGill v. Alton, et al.* by Judge Wallace S. Gourley of the U.S. District Court for the Western District of Pennsylvania.

A consent decree is an agreement by all parties in a suit to settle the case, and is approved by the court. A full trial is not held.

In this case, Clifford McGill, a patient at the Farview State Hospital, the Pennsylvania facility for the criminally insane, alleged that his 1st and 14th Amendment rights had been violated when he was denied an absentee ballot in Allegheny County, his residence prior to commitment.

State Statute Used As Basis

Allegheny County election officials and the Pennsylvania secretary of state had turned down his request on the basis of a state statute which said, in part, that "qualified absentee electors" could not include persons in mental institutions.

That same portion of the Pennsylvania statute was found, in the consent decree, to violate Article VII, Section 14 of the state constitution.

The district court originally had issued a summary judgment in favor of the defendants on January 10, 1975. A summary judgment is made after a short, legal proceeding, without a formal trial.

The case was then appealed to the Court of Appeals for the Third Circuit, which in a judgment order on October 21, 1975, set aside the district court judgment and sent the case back to the district court for further action.

Lloyd, et al. v. Illinois Regional Transportation Authority, et al. No. 75 C 1834 (N.D. Ill. E. Div.)

Section 504 of the Rehabilitation Act of 1973 and Section 1612 of the Urban Mass Transportation Act of 1964 do not require that federally assisted public transportation facilities be accessible to the physically handicapped, according to a U.S. District Court judge.

Judge Joel M. Flaum of the U.S. District Court for the Northern District of the Illinois Eastern Division dismissed the class action suit of *Lloyd, et al. v. Illinois Regional Transportation Authority, et al.* on March 16, 1976. His ruling is being appealed to the U.S. Court of Appeals for the Seventh Circuit.

George A. Lloyd and Janet B. Wolfe asked the court to order that public transportation designed for and used in northeastern Illinois be accessible to the physically handicapped.

Judge Flaum also ruled that Section 1612 of the Transportation Act regarding the handicapped, and Section 504 of the Rehabilitation Act do not create "cause of action," that is the right of a private party to sue in order to enforce the statutes.

Section 1612 "has never been interpreted to be more than

a statement of national policy," Judge Flaum said in his memorandum opinion. "It merely states legislative objectives and creates authority to allocate funds."

Turns Down 504 Arguments

Judge Flaum also turned down the plaintiffs' argument that Section 504 of the Rehabilitation Act requires that federally assisted projects must enforce an affirmative action policy for the handicapped.

The plaintiffs cited *Lau v. Nichols* which required San Francisco schools receiving federal funds to provide special programs to Chinese students deficient in English. That case said that merely making the same educational materials and courses available to all was not sufficient.

However, Judge Flaum said *Lau v. Nichols* does not apply to the present case because the obligation of the San Francisco schools came from the HEW guidelines, not the Civil Rights Act itself.

He ruled that in the absence of similar guidelines, here, the Rehabilitation Act "does not require affirmative action be taken to ensure that handicapped persons can use mass transportation facilities; federally assisted programs, however, may not actively prohibit the use of their benefits or employment to otherwise qualified persons who happen to be handicapped."

The court also rejected a plaintiffs' claim under the equal protection clause of the 14th Amendment. "Defendants have not created any inequalities of treatment," the judge ruled. "They are not alleged to be providing handicapped persons with any lesser facilities than other persons. Their obligations under this clause go no farther."

Dixon, et al. v. Weinberger, et al. No. 74-285 (D. D.C.)

A federal court judge has ruled that patients in a Washington, D.C. mental institution have a right to treatment in alternative, less restrictive facilities, when appropriate, under the 1964 Hospitalization of the Mentally Ill Act for the District of Columbia.

Attorneys for both sides in *Dixon, et al. v. Weinberger, et al.* are now studying a preliminary plan which U.S. District Court Judge Aubrey E. Robinson, Jr., ordered be drawn up to implement the alternative treatment.

Patients at St. Elizabeth's Hospital, a federally administered mental institution in Washington, D.C., filed a class action suit asking the court to declare that under the 1964 act they have a right to treatment, including placement in facilities outside the hospital when appropriate. They also asked that the District of Columbia and Federal government officials be found to have a joint duty to provide such treatment.

The judge granted the plaintiffs' motion for a partial summary judgment on December 23, 1975. He resolved the case on the basis of the statutory grounds, which he said were sufficient, and did not consider the constitutional grounds which the plaintiffs had raised. A summary judgment order is based on the pleadings, such as the complaint of the plaintiffs and the answers of the defendants, and other written material submitted to the court, rather than on evidence presented through a full scale trial.

"The extensive legislative history of the 1964 Act. . .clearly indicated that the 'medical and psychiatric care and treatment' mandated by the Act must be broadly construed. And the record before the Court in this case convincingly demonstrates that 'suitable care and treatment in light of present knowledge' includes placement in alternative facilities in numerous instances," the judge said.

The judge also found that the duty to provide treatment in alternative facilities is a joint duty of both federal and District of Columbia officials.

Judge Robinson gave the defendants 45 days to prepare and submit to the court an outline of a plan for providing treatment in alternative facilities. The deadline was later extended to April 23. A final plan must be submitted four months after the preliminary plan is approved.

A. L. v. G. R. H. U.S. Supreme Court Docket No. 75-1202

The United States Supreme Court has declined to review an Indiana court decision that the common law does not give parents the right to have their mentally handicapped minor child sterilized, even though the parents believe the child would benefit in adulthood.

The Court denied the petition for a *writ of certiorari* in the case of *A.L. v. G.R.H.* It thus let stand the April, 1975 decision of the Court of Appeals of Indiana for the Third District.

Indiana does not have a statute permitting involuntary sterilization. The state legislature repealed such a statute in 1974.

Therefore, Mrs. A.L. sought a declaration of her right under the common law attributes of the parent-child relationship to have her brain-damaged son, G.R.H., sterilized.

The Indiana appeals court upheld a trial court's earlier decision denying the mother's right to secure the operation.

In their written opinion, judges of the court of appeals said, "The facts do not bring the case within the framework of those decisions holding either that the parents may consent on behalf of the child to medical services necessary for the child, or where the state may intervene over the parents' wishes to rescue the child from parental neglect or to save its life."

The decision of the Court of Appeals of Indiana for the Third District is reported at 325 N.E. 2d 501.

In re: Joseph Lee Moore 221 S.E. 2d 307 (N.C. 1976)

The North Carolina Supreme Court has upheld the constitutionality of that state's new involuntary sterilization statutes. The court ruled that these statutes do not violate the due process clauses of the United States or North Carolina constitutions, and do not deny equal protection of the law.

The court also found that the statutes are not unconstitutionally vague and arbitrary, as the plaintiff contends, and they do not provide for cruel and unusual punishment.

The state supreme court reversed the decision of two lower courts and said sections G.S. 35-36 through G.S. 35-50 of the state statutes were unconstitutional.

The case arose when the director of the Forsyth County Department of Social Services requested the court to authorize the sterilization of Joseph Lee Moore, a moderately retarded minor. Both Moore and his mother consented to the petition.

However, Moore changed his mind and his attorney filed a motion to void and dismiss the petition, alleging the statutes were unconstitutional.

Lower Courts Agreed

Both the Forsyth District and Superior Courts agreed the statutes were unconstitutional. The state appealed to the court of appeals, but the state supreme court agreed to hear the case prior to determination by the court of appeals.

The supreme court found that the new North Carolina statutes, which took effect January 1, 1975, were constitutional and fully protected the rights of the respondent and the state through the hearing procedure which the statutes establish.

A former sterilization statute had been found unconstitutional by the North Carolina Supreme Court on procedural grounds, specifically that notice and a hearing were not provided.

In upholding the new statutes, Justice Moore said, "Our research does not disclose any case which holds that a state does not have the right to sterilize an insane or a retarded person if notice and hearing are provided, if it is applied equally to all persons, and if it is not prescribed as a punishment for crime."

special report

Advocates on Advocacy: Defining Three Approaches

The word advocacy is being used with increasing frequency by individuals and groups working on behalf of the physically and mentally disabled. In an effort to insure and protect the rights of the disabled, advocates are forming a new movement which includes various approaches.

In the following articles, three advocates take a look at three advocacy approaches -- citizen, legal, and systems change -- and define the objectives and process of each approach from the framework of their own experience and organizational involvement.

Citizen Advocacy

by Max R. Addison

Several advocacy approaches for the disabled have emerged during the 1970's. Their intent has been to provide representation, protection, assistance, and/or advice regarding the rights, interests, and service needs of disabled people and their families.

Although the desired outcomes have been similar, the various advocacy approaches have differed in two basic ways: one, services have generally been provided by either paid professionals or trained volunteers, and two, advocacy services have been directed primarily toward either disabled individuals (case advocacy) or groups (class advocacy). This article is concerned with an individualized volunteer approach, citizen advocacy.

The citizen advocacy concept was developed by Dr. Wolf Wolfensberger to assist disabled children and adults when their rights were not appropriately safeguarded or their needs were not adequately met by existing service systems.

Citizen advocacy is basically a one-to-one relationship between a capable and trained volunteer, known as the advocate, and a mentally retarded, or otherwise developmentally disabled person, known as the protege. In this relationship, the advocate defends the rights and interests of the protege and provides practical assistance and/or emotional reinforcement.

Defending rights and interests is defined as acting or speaking on behalf of a protege to prevent or eliminate situations of abuse or exploitation. Examples of practical assistance include helping a protege learn to use public transportation, to properly budget money, and to locate and use community-based programs, services, and facilities. Emotional reinforcement can include providing friendship to a protege during periods of crisis, loneliness, or boredom, and offering understanding and advice.

The citizen advocacy concept requires that one or more paid professional staff be engaged for each local citizen advocacy program. This coordinator identifies proteges and assesses their needs. Advocates are also recruited, selected, and trained. Eventually, these two groups are appropriately matched on an individual basis. The goal of matching is to achieve a relationship which will meet the specific needs of the protege.

As each advocate and protege are paired, on-

going support is provided by the program's staff and members of a citizen advocacy advisory committee. This committee generally consists of professionals from a variety of disciplines (e.g., law, law enforcement, social work, and psychology), parents, other consumer representatives, and consumers themselves. The expertise of each committee member is available on an individual or collective basis when needed by advocates and/or proteges.

Ideally, the same advocate will provide emotional support and/or practical assistance for the period during which a protege needs these services. In each relationship, the long-range objective is to help the protege develop self-advocacy skills and become as independent as adaptive behavior and intellectual level will permit.

Citizen advocacy is basically a one-to-one relationship between a capable and trained volunteer, known as the advocate, and a mentally retarded, or otherwise developmentally disabled person, known as the protege.

The effectiveness of the citizen advocacy approach is largely a result of the program's independence from service delivery systems and agencies which provide direct services for proteges. This independence can only be achieved by the citizen advocacy program if it is not related to or a part of the delivery of direct services in terms of operating funds, administrative control or physical location. Under this arrangement, the advocate can provide representation for a protege without conflict of interests.

The citizen advocacy concept appropriately focuses on the volunteer as the provider of advocacy services. In practice, however, the local program's staff is also involved in important advocacy roles which include crisis assistance to potential proteges and/or their families; information and referral in response to requests from professionals, parents, or proteges; and community education on the rights and service needs of proteges being served by the advocacy program.

NARC's Sponsorship Role

The National Association for Retarded Children's Child Advocacy Project, funded in July, 1972, by the Department of Health, Education, and Welfare, has actively promoted the citizen advocacy concept. The project staff has developed and nationally disseminated core training materials designed to assist persons in implementing state and local programs. These materials constitute a standardized training package on citizen advocacy. Included in this package are printed publications, a 14½-minute color-sound movie, and slide presentations on the history of mental retardation, and normalization.

The citizen advocacy approach was first applied in Lincoln, Nebraska in January, 1970. The Lincoln Association for Retarded Children (now Citizens) sponsored the first program and was assisted by Dr. Wolfensberger in the implementation process. He continued to serve in an advisory capacity during the project's first year of operation. The program was awarded a Presidential Commendation by President Nixon in January, 1971.

Since the initial application of citizen advocacy in 1970, the approach has been implemented in 32 states. Currently, there are 130 local programs and nine state offices which include an estimated 5,000 advocate-protege relationships. Citizen advocacy programs are primarily sponsored by Associations for Retarded Citizens.

Max R. Addison is project director of the National Association for Retarded Citizen's Child Advocacy Project. He was formerly coordinator of NARC's Parent Training Project. NARC is a cosponsor of the National Center for Law and the Handicapped.

Legal Advocacy

by Dennis E. Haggerty

In the 1950's, parents of developmentally disabled children began organizing committees on the local, state, and national level whose primary goal was to provide a better life for their children. Several movements were involved in this process, all trying to protect the particular interests of the group of disabled individuals whom they represented.

But there were some false starts in these movements, and to look at the history of this effort and suggest that true legal advocacy began here, is erroneous.

For example, lawyers who were parents of retarded children, or interested in movements involving rights of the retarded, were bogged down with assignments to create bylaws and deal with Roberts' Rules while Rome burned. Or worse, having cared for their own children in the best setting possible, because they could afford it, they were no longer deeply interested in the overall good of the movement.

There were also difficulties with committee appointments. For instance, chairmen of committees working on the development of realistic criteria for coverage of disabled children from birth on, often worked for insurance companies and hesitated to force the issue.

And so it went -- and sometimes still does. As a legal advocate, it doesn't seem to be any way to run a railroad.

Litigation Efforts

Legal advocacy has been multi-faceted since the first class action suit for the right to education was brought in May, 1970, by the Pennsylvania Association for Retarded Children (PARC).

PARC v. Pennsylvania was not only a legal action, but also an educational process. Involved in the investigation of institutions in Pennsylvania, and learning from their efforts, were state and local associations representing the mentally retarded, the state cerebral palsy organization, and the Junior Chamber of Commerce. Subsequent news media coverage of this major lawsuit, exposing much of what took place in these institutions, proved educational for the general public as well.

The investigation was particularly educational for political aspirants, including a future governor of that state who was later in a position to assist in a consent decree.

Further, it was an education for the opponent who did not win the governor's chair, but soon found himself on the Federal Court and one of the judges in this historic right-to-education suit.

Finally, it involved a little showmanship at a state ARC convention in order to receive a commitment for state funding to support the litigation effort. For a number of years, the national associations had turned down requests for funds to hire counsel to address some of the major areas in which rights were being denied, such as education, treatment, peonage, and the like. I don't think it is any secret that the national associations did not appreciate the opportunity or the possibilities of such a class action approach in the courts.

At the present time, those in the legal advocacy field should be interested in defining terms, and when we have a sound definitional basis, moving ahead.

However, once the little red wagon started rolling it was hard to keep those jumping on from falling off due to overcrowding. Class action suits in all parts of the country rapidly followed. At one point, the suits in process totaled nearly 150. The national associations representing the disabled gradually saw the possibilities, and soon lawyers became involved on a broader level, with the American Bar Association paying increasing attention and eventually setting up a commission to address these problems. Federal funding of the National Center for Law and the Handicapped to

The law case approach . . . has limitations. Just as the parents' organizations were once hesitant to move into the courts, they are now hesitant to move away from them.

assist this constituency also followed this class action litigation.

The law case approach, however, has limitations. Just as the parents' organizations were once hesitant to move into the courts, they are now hesitant to move away from them. It must be remembered that courts are considered to be forums of last resort. Parents now seem to be attempting to use them as one of first resort.

In my opinion, courts will react when issues are properly presented to them. As we move toward determining problems, we are not presenting the issues to the courts as they should be presented, and certainly cannot expect a proper response from them until we do.

At the present time, those in the legal advocacy field should be interested in defining terms, and when we have a sound definitional basis, moving ahead.

We should also be interested in the secondary and tertiary areas, including clearly establishing the definition of a due process hearing for a child in an educational setting.

The challenges are many, but until we in the field struggle with the perimeter of what is good for our constituency, we will not get the courts to effectively address these issues, nor should they.

The courts are not shy and they will deal in areas which are well defined and need redress. For instance, the courts have always promptly addressed the issues of abused children, and, certainly, the disabled will have the same kind of success.

Definitional Goals

As we move toward determining what constitutes proper treatment, we should also concern ourselves with the word "treatment" itself, and see if it really covers what we are talking about. Aren't we talking about the preservation of the rights guaranteed 200 years ago in our Constitution, namely, the right to life, liberty and the pursuit of happiness? And does not that pursuit of happiness mean a delivery of a quality of life which was heretofore unheard of in an institutional setting?

Those of us who speak for the developmentally disabled should be ready to stay in the legal advocacy field. But first we should examine whose rights are to be protected, and who is to protect them. We should struggle with the definitional perimeters of what the quality of life should be for any citizen in an institution or in the community, with all the ramifications suggested therein, namely, prejudice, the "not in my block" syndrome.

In analyzing where these perimeters lie, however, we might consider who we are working for -- are we working for ourselves with our fixed attitudes, or are we truly working for our children or grandchildren a generation or two beyond us? Are we attempting to hold onto lifestyles for them that have been meaningful for us, but which will have long lost their relevance?

The who that works is also important. Are we as parents too close and too emotionally involved to choose a proper legal or advocate approach for our constituency? But who should receive this trust? Certainly, we cannot turn it over to those who run programs, such as administrators of state schools and hospitals. If we have learned nothing else, we should have learned that lesson.

To be an advocate for and to speak for the rights of our constituency certainly rules out those who control the very lives of these constituents, argue for the funding necessary to run the institutions and community programs, and still worry about their own salaries, their own pension plans, and their own struggle to the top of the professional heap. In my opinion, the two concepts are mutually exclusive. We are probably searching for a person whose job description has not been com-

pletely determined.

Remaining in the legal advocacy field will not be easy. However, we should not by default allow the mistakes of the past to continue into the future by giving up the struggle with these problems of definition and guidelines.

Dennis E. Haggerty, a member of the NCLH Board of Directors, is an attorney in Philadelphia, and the father of a 16-year-old retarded son. He is cochairman of the Committee on Mental Retardation Law and Ethics of the American Bar Association Family Law Section, a cosponsor of NCLH.

Mr. Haggerty conducted an investigation of one of the largest state schools and hospitals in the United States and recommended initiation of the first right to education suit, Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, in federal court. He was subsequently appointed by the court as Master to oversee the implementation of the consent decree entered as a result of that suit.

Systems Change Advocacy

by Marie L. Moore

Advocacy is defined as insuring disabled persons their rights to appropriate services. The process of advocacy includes finding, accessing, and developing such services at the time and in the place they are needed.

The advocacy process is especially difficult, however, when the needs are multiple. And it is particularly acute when families of disabled persons are from low-income and minority groups.

The United Cerebral Palsy Association's National Advocacy Project, launched in July, 1972, under a grant from HEW, set out to develop and monitor models of advocacy in UCP affiliates. Inherent in each model has been the establishment of an advocacy advisory council, composed of consumers, volunteers, and professionals, and the employment of an advocacy coordinator. Together, they work across-the-board in affiliate programs and in the community, intervening on behalf of persons with developmental disabilities. Intervention here means bringing about changes that remedy the problems of not just one person, but all persons in the present and future who may have similar problems.

Class advocacy has included the following approaches: 1) Initiating, influencing, and monitoring legislation affecting the developmentally disabled; 2) Using a systems analysis approach, identifying services needed and/or changes sought in the service delivery system from the consumers' perspective; 3) Initiating, influencing, and assisting in the development of new services, and in the improvement and expansion of existing services; and 4) Promoting the active involvement of a diversity of consumers (disabled adults and parents of disabled children) in the planning, policy-making, and monitoring of services at state, county, and local levels.

Other approaches used in class advocacy include: 5) Providing technical assistance to established consumer action groups in the use of appeal procedures, the development of action strategies, and similar activities; and 6) Using community organization processes to develop better communication and cooperation among agencies, organizations, and consumer groups involved in community planning.

Case advocacy approaches have included 1) Providing information, training, and technical assistance to case management and personnel working for UCP affiliates and other agencies in order to expand their advocacy role and function; 2) Conducting an ombudsman program for a disabled person following the report of a grievance, by investigating, interceding, or initiating action on his/her behalf; and 3) Locating appropriate legal

services for consumers or groups of consumers, and providing information that will assist legal service professionals in negotiation or litigation.

In each model location, specific target populations have been identified. These have included very young parents and their children, persons from ethnic minority groups, persons residing in state institutions, and those separated from services because of location in rural, inner city, or other isolated areas.

Initially three model sites were selected. These were New York State, San Mateo and Santa Clara Counties in California, and Milwaukee, Wisconsin. Three replication sites were then chosen: Illinois, Rhode Island, and the Greater Kansas City area. The UCP affiliates in these areas represent diverse geographic and population profiles, varying patterns of service delivery and availability, and unique patterns of programming services for the disabled.

Projects Result in Many Changes

Various systems changes have resulted from UCP involvement in these project sites. For example, project efforts in San Mateo and Santa Clara Counties resulted in the establishment of a parent coalition group -- Parents for Improved Community Services (PICS). This group was originally organized to address a grievance involving the exclusion of one severely disabled child in one county school system. However, it was necessary for the parent group to use a state statute which mandated a grievance procedure that had never been detailed, much less implemented.

With the assistance of the advocacy coordinator, the parent group designed a grievance procedure which is now considered a model for the entire state of California. Under this statute and using this appeal process, PICS was able to win this case, and obtain educational programming not only for the child in question, but also for 30 other children in the county. The parent group continues to monitor the quality of educational services for these 30 children, and counsel other providers of services as well.

Another example of systems change occurred in New York State, where volunteers, consumers, and UCP staff organized a statewide citizens' group to develop legislative proposals and communicate with their legislative representatives regarding the needs of the developmentally disabled. Project efforts have also facilitated new programs for disabled children in rural areas of the state and alternative living arrangements for former residents of state institutions.

With the assistance of the advocacy coordinator, the parent group designed a grievance procedure which is now a model for the entire state of California.

In Milwaukee, project efforts included a follow-up survey of high risk infants in 250 families, most of whose cases were not followed after discharge from the Milwaukee County High Risk Infant Nursery. Findings from this survey resulted in county and state funds to improve follow-up services by the High Risk Nursery.

In addition, through information gathered in the project's ombudsman program, a grant was written and state funds obtained for legal services for the developmentally disabled. These services are currently being offered through Milwaukee Legal Services.

As a voluntary agency conducting an advocacy project in several locations throughout the country, UCPA has found that advocacy, in order to be effective, requires linkage of many advocacy systems. Advocacy is a process which reaches and teaches consumers, works to change the service delivery systems when necessary, and cements the relationship between persons who are disabled, their families, and the agencies mandated or committed to provide services. This process requires the help and input of all concerned.

Marie L. Moore, a member of the NCLH Advisory Council, is national advocacy coordinator for United Cerebral Palsy Associations Inc. in New York. A member of the Advisory Committee to the Citizen Advocacy Project of the National Association for Retarded Citizens, Ms. Moore has extensive experience in occupational therapy and rehabilitation counseling.

Advocacy Programs for the Disabled

Type	Purpose	Responsible Organization
Case Advocacy		
A. Citizen Advocate	A. One-to-one relationship between a capable volunteer and a person who is disabled in which the volunteer advocates for the rights and interests of the other, and provides practical or emotional reinforcement for him.	A. Citizen Advocacy Board operated by a private association or agency.
B. Ombudsman	B. One who acts as an advocate for a disabled individual following the report of a grievance, by investigating, interceding or initiating action on his/her behalf.	B. Private -- Advocacy Council or Committee operated by a private organization or association. Public -- State Human Rights Commission.
C. Legal Advocate	C. One who represents a person in the litigation or legal negotiation process when rights are threatened or violated.	C. None, unless in an agency setting.
D. Case Manager Advocate	D. One who assists the individual in information, referral, follow-along services, and serves as an advocate when there are barriers to the service delivery system.	D. Public or private agencies.
E. Protective Services	E. A service mandated by legislation which provides guardianship, trusteeship — and other advocacy services.	E. State government board or council.

•••Advocacy Programs for the Disabled

Type	Purpose	Responsible Organization
Class Advocacy		
A. Legislative Advocacy	A. Using the legislative process to mandate change in the social system in order to secure the rights of the disabled.	A. Representatives of consumer organizations at local, state, and national levels.
B. Community Organization Advocacy	B. Using the community organization process to develop better communication among agencies serving the disabled; to assist in the development of cooperative or coalition efforts on behalf of the disabled by public and private providers of service, and by consumers.	B. Community or state-wide planning groups, or consumer advocate groups whose membership includes consumers or consumer representatives.
C. Program Brokerage	C. Service development and program expansion by eliminating barriers which obstruct program development, and combining resources.	C. Consumer representative organization working in cooperation with governmental and private agencies.
D. Protective Services	D. A service mandated by legislation which provides guardianship, trusteeship, and other advocacy services.	D. State government board or council.
E. Consumer Action Advocacy	E. Groups of parents or adults who are disabled that act as pressure groups or influencing groups and advocate for desired change.	E. Independent organizations; groups associated with consumer representative organizations.

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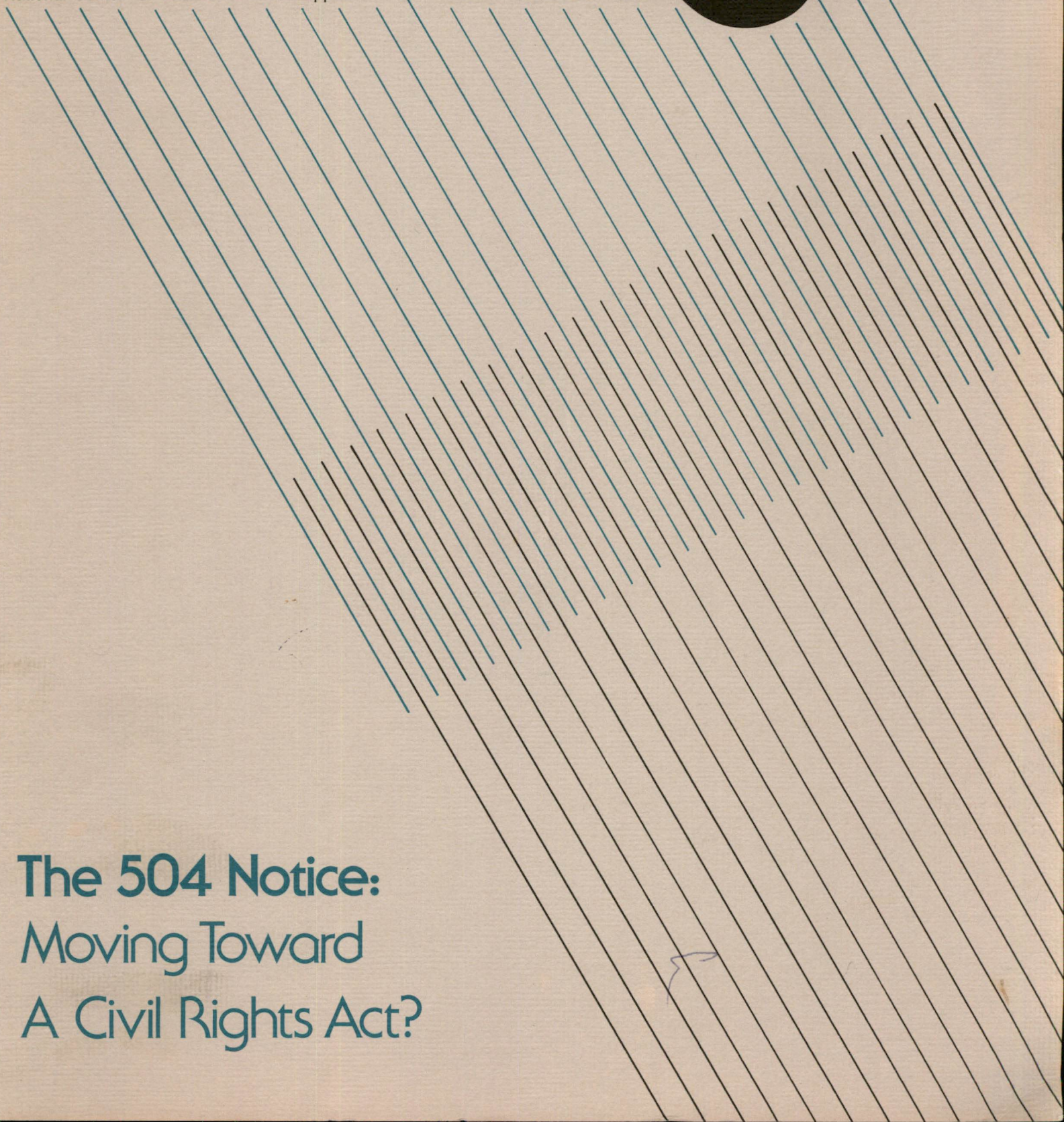
Amicus

National Center for Law & the Handicapped

VOL. 1 NO. 5 JULY 1976



The 504 Notice: Moving Toward A Civil Rights Act?

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Amicus is published bi-monthly by the National Center for Law and the Handicapped, Inc., 1235 North Eddy Street, South Bend, Indiana 46617 (219) 288-4751. Third class postage paid at South Bend, Indiana.

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The National Center for Law and the Handicapped is a project of national significance jointly funded by the Bureau of Education for the Handicapped, Office of Education, U. S. Department of Health, Education and Welfare, and Division of Developmental Disabilities, Office of Human Development, U. S. Department of Health, Education and Welfare. The work presented herein was performed pursuant to this grant. Points of view stated do not necessarily represent official policy or position of these agencies.

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news

A&TBCB Proposes Regulations for Determining Complaints

The Architectural and Transportation Barriers Compliance Board (A&TBCB) has issued proposed regulations regarding the board's practice and procedures in resolving those complaints which "cannot be amicably resolved to ensure accessibility by means of compliance with the required standards." The proposed regulations were published in the *Federal Register* of June 10.

Created by Section 502 of the Rehabilitation Act of 1973, the A&TBCB was established to enforce those federal laws mandating accessibility and usability by the physically disabled and elderly.

Public Law 90-480, known as the Architectural Barriers Act of 1968 and amended by the Act of March 5, 1970 (P.L. 91-250), was written to ensure that new and remodeled federally financed public buildings are designed and constructed so as to be accessible to the physically handicapped.

The Rehabilitation Act Amendments of 1974 (P.L. 93-516) provide that an order of compliance issued by the A&TBCB may include the withholding or suspension of federal funds with respect to any building found not to be in compliance with the applicable standards.

Additional regulations which will fully implement Section 502 of the Rehabilitation Act, including guidelines for voluntary compliance for agencies and programs subject to the jurisdiction of the A&TBCB, will be published at a later date.

The National Center for Law and the Handicapped is in the process of reviewing these proposed regulations and will provide further information on them in the next issue of *Amicus.*

UMTA Issues Final Regulations

On April 30, 1976, the Urban Mass Transportation Administration (UMTA) announced in the *Federal Register,* final regulations to require accessibility for handicapped persons in federally funded public transit programs.

The regulations were promulgated six years after Congress passed the Urban Mass Transportation Act of 1964, as amended in 1970, the first of several federal laws requiring that "special efforts" be made by transit planners to enable handicapped persons to utilize public transit services. Dissatisfaction among handicapped people over UMTA's slow implementation of the laws has led to a series of lawsuits against federal and local transit officials in several cities.

The new regulations propose, as additional criteria for approval of UMTA grants, that transit programs exhibit "satisfactory special efforts in planning public mass transportation facilities and services that can be utilized by elderly and handicapped persons." In the regulations, UMTA does not, however, specify a mandatory program design to meet the "special efforts" requirements. Instead, several examples are given in an appendix to the regulations which are said to be "illustrative of a level of effort that will be deemed to satisfy this requirement with respect to wheelchair users and semi-ambulatory persons."

The three illustrations given in the regulations are: 1) A program for handicapped persons involving an expenditure of 5 percent of the funds a local area receives under the principal UMTA funding formula; 2) Purchase of only wheelchair-accessible buses until one-half of the fleet is accessible or, in the alternative, provision of a substitute service that would provide comparable service; and 3) Some other type of accessible system which would assure wheelchair

users and semi-ambulatory persons 10 round-trips per week at fares comparable to mainline service.

In connection with the stated intent to make some buses accessible to wheelchair users, UMTA will require that bus manufacturers, bidding on contracts, offer as an option, "a wheelchair accessibility package consisting of a level-change mechanism, sufficient front or rear door and passageway clearances to permit the wheelchair to reach a securement location in the bus, and at least one wheelchair securement device."

However, the regulations do not specify an effective date for requiring the wheelchair option, instead leaving the effective date open and deferring the decision on that critical issue until later.

The UMTA issued "special efforts" requirement was endorsed and adopted by the Federal Highway Administration in its capacity as enforcement agency for the Federal Aid Highway Act's handicap accessibility provision. Thus, challenges to inaccessibility in FAH funded programs must take these regulations into account.

Additionally, the regulations incorporate the 1971 revised American National Standards Institute (ANSI) standards for barrier-free design in new and renovated terminals and other fixed facilities. Included is a specific provision directing careful attention to the location of elevators in subways and elevated train facilities so that extra distance from trains is minimized. Also, there are regulations addressing accessibility problems in rapid-rail and light-rail facilities.

The regulations also called for further consideration of the future of Transbus, UMTA's prototype project of a new bus design which would be accessible to handicapped persons. A hearing on Transbus was conducted in Washington on May 5, but no decision as to its future has yet been announced by UMTA.

NCLH Comments: While it is too early to assess the final impact of the new regulations in local transit operations, it seems clear that the regulations will not be regarded as satisfactory by handicapped persons concerned about inaccessible transportation services. Several problems with the regulations are apparent.

The statement of accessibility program features is in discretionary and illustrative, rather than mandatory terms. Therefore, the question is once more raised about UMTA's good faith in implementing its responsibility under federal law.

This concern is particularly justified by those portions of the regulations which appear to permit segregation of handicapped riders into separate systems. UMTA has asserted that these regulations are also intended to assure compliance with Section

Staff Attorney

The National Center for Law and the Handicapped announces an opening for a staff attorney. The attorney will be involved in all phases of securing the legal rights of the handicapped, including litigation, legislative drafting, regulatory procedures, continuing education programs for fellow professionals, and providing information to the handicapped and to the general public.

Applicants should be admitted to any U.S. bar and have at least two years experience in civil liberties or civil rights litigation, and at least one year of professional experience in dealing with problems of the mentally or physically disabled. Applicants should be capable of sophisticated, independent and joint research in law, social science, and technology.

Resumes and letters of reference should be sent directly to Harvard Hollenberg, Director of Legal Services, NCLH, 1235 North Eddy Street, South Bend, Indiana 46617. *NCLH is an Affirmative Action/Equal Opportunity Employer and encourages applications from the handicapped, members of minority groups, and women.*

504 of the Rehabilitation Act. This section requires non-discrimination against the handicapped in federally funded programs, and the "separate but equal" programs which may result from these regulations will contradict that law's purpose of integrating the handicapped into the mainstream of society.

Furthermore, the heavy emphasis of the regulations on wheelchair accessibility, in contrast to the needs of such groups as hearing impaired and visually handicapped persons, will raise questions about the adequacy of the regulations in protecting the legal rights of those groups.

Legislation — Federal and State

Federal Legislation

H.R. 10612
Tax Reform Bill

An amendment to the Tax Reform Bill would provide income tax incentives for the removal of architectural and transportational barriers. After Senate action, the Tax Reform Bill must go to a House-Senate conference committee before final congressional action can be taken.

The architectural and transportational barriers amendment originally was introduced as a bill by Sen. Robert R. Dole (R-Kan.) in April. The Senate Finance Committee added it as an amendment to the Tax Reform Bill in May after Dole and Sen. Walter Mondale (D-Minn.) agreed on some compromises. The amendment would place a $25,000 limit on expenditures which could be deducted and would be in effect from January 1, 1977, to January 1, 1980.

S. 2019
Handicapped Employees

A bill which would increase wage supplements to handicapped employees is pending before the Senate Subcommittee on the Handicapped. Introduced by Sen. Hubert H. Humphrey (D-Minn.), the bill would authorize funding, under the Rehabilitation Act of 1973, of demonstration programs of wage supplements for handicapped employees in sheltered workshops. The Department of Health, Education, and Welfare has urged the establishment of such demonstration programs.

S. 574
Tax Deductions

Sen. Ernest Hollings (D-S.C.) is the sponsor of a bill which would amend the Internal Revenue Code to permit the deduction without limitations of medical expenses incurred for certain dependents suffering from physical or mental impairment or defect. The bill was sent to the Senate Finance Committee.

H.R. 11175
Employment-Related Expenses

Rep. Gary Myers (R-Penn.) is the sponsor of a bill sent to the House Ways and Means Committee which would amend the Internal Revenue Code to provide a deduction for certain employment-related expenses paid or incurred by a handicapped individual.

H.R. 11176
Medical Expenses

Rep. Myers is also the sponsor of a bill which would amend the Internal Revenue Code to provide that special expenses paid during the year for the medical care of the taxpayer, his or her spouse, or any dependent, if such an individual is mentally retarded or handicapped, would be allowed as a deduction. The bill has been sent to the House Ways and Means Committee.

S. 1757
Civil Rights of Handicapped

Sen. Lowell Weicker (R-Conn.) has introduced a bill to amend the Civil Rights Act of 1964 to prohibit discrimination on the basis of a handicap. The bill is pending before the Senate Judiciary Committee.

S. 1311
Civil Rights of Handicapped

This bill, pending before the Handicapped Subcommittee of the Senate Labor and Public Welfare Committee, would amend

the Civil Rights Act of 1964 to include the handicapped. Its sponsor is Sen. Claiborne Pell (D-R.I.).

H.R. 10385
Post Office Accessibility

Rep. William Lehman (D-Fla.) has introduced a bill which would require that buildings designed for use by the U.S. Postal Service be constructed in a manner making them accessible to the physically handicapped. Presently, the Postal Service Reorganization Act of 1970 exempts the service from complying with the 1968 Architectural Barriers Act. Lehman's bill is pending before the Postal Facilities, Mail and Labor Management Subcommittee of the House Post Office and Civil Service Committee.

State Legislation

OHIO

A new Civil Rights Bill for the Handicapped took effect in Ohio on July 23, prohibiting discrimination against handicapped persons in employment, housing, and the use of public accommodations. In addition, the new law requires that all voter registration and polling places authorized by county boards of election be accessible to mobility-limited citizens by November 1, 1980.

The bill, which was signed into law April 23, by Gov. James A. Rhodes, includes handicapped persons within the provisions of the Ohio Civil Rights Commission Law.

NEW YORK

The New York Legislature has amended the state's election law to require that polling places provide access "by ramp or otherwise" to physically handicapped or elderly voters. The new law takes effect December 1.

Director of Legal Services Appointed At NCLH

Harvard Hollenberg has been appointed director of legal services of The National Center for Law and the Handicapped. The former New York City attorney assumed his new duties June 1. His appointment was announced by Dr. Philip J. Faccenda, president of the Center.

Until recently, Hollenberg served as the chief counsel for the New York State Commission to Evaluate the Drug Laws. He graduated from New York University in 1959, and Harvard Law School in 1965, where he was a Felix Frankfurter Scholar. In 1960 Hollenberg attended Victoria University of New Zealand as a Fulbright Scholar.

Hollenberg has extensive legal experience in the New York State Mental Health System. He served for five years as the senior attorney for the New York State Mental Health Information Service, and worked extensively with the New York Legislature.

In his new capacity, Hollenberg will supervise the activities of four staff attorneys, and serve as the deputy executive director of the Center.

Hollenberg replaces Francis X. Beytagh, Jr., who served as acting director until his recent appointment as dean of the University of Toledo Law School.

Hull Appointed Senior Attorney

Kent Hull, staff attorney with the National Center for Law and the Handicapped for the past year and a half, has been named senior attorney. The announcement was made earlier this month by Dr. Harvey A. Bender, executive director.

In making the appointment, Dr. Bender noted Hull's "distinguished record of achievement at NCLH, especially in the fight for the right to equal accessibility in housing, transportation, and public accommodations for the handicapped."

In addition to maintaining his usual caseload, Hull's new duties will include assisting the director of legal services in training new staff and supervising project assignments.

in the courts

Disabled in Action of Pennsylvania, Inc., et al. v. Coleman, et al.
No. 76-1913 (E.D. Pa.)

On June 17, 1976, a lawsuit was filed in federal district court at Philadelphia on behalf of handicapped and elderly persons to require federally funded transportation programs to implement the Transbus vehicle in their operations. Transbus is the prototype low-floor, wide-door, ramped bus which has been under development by the Urban Mass Transportation Administration (UMTA) for nine years.

The plaintiffs in this suit include, in addition to individual disabled and elderly persons in Philadelphia, the American Coalition of Citizens with Disabilities, the Paralyzed Veterans of America, the National Congress of Organizations of the Physically Handicapped, the National Council of Senior Citizens and the Disabled in Action chapters of Pennsylvania, Baltimore, New Jersey and New York.

Named as defendants were Secretary of Transportation William T. Coleman, Jr.; Robert E. Patricelli, administrator of UMTA; and Norbert E. Tiemann, administrator of the Federal Highway Administration.

The complaint sets forth the legislative background of congressional mandates requiring accessible public transportation. One such mandate is the Urban Mass Transportation Assistance Act of 1970 (Public Law 91-453) which states that "special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured."

The plaintiffs also cite the Federal-Aid Highway Act of 1973 (P.L. 93-87) and the Federal-Aid Highway Act Amendments of 1974 (P.L. 94-643). They also contend that Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) applies in this case. Section 504 prohibits discrimination against disabled persons in federally funded programs.

Discussion of Transbus

Additionally, the history of the Transbus project and commentaries on Transbus technology are provided in the complaint. According to the plaintiffs, the final reports on the Transbus research and development project released in April, 1976, reveal that "the project has been successful on all counts; it has achieved its technological objectives; and specifications for an improved, accessible, attractive, and cost-effective bus have been developed which can now be put into production."

The complaint also cites the testimony of defendant Patricelli at the April 14, 1976 public hearing on Policies Regarding Urban Transit Bus Design and Performance Specifications:

"The UMTA Transbus research and development program, undertaken with the participation of bus operators and suppliers, has produced a number of design and performance improvements which could be incorporated into specifications for ordering full-size (35-40 foot) transit buses."

The plaintiffs allege that what could have been an effective vehicle to meet the transportation needs of disabled and elderly persons has been abandoned by UMTA. As evidence of this abandonment, the complaint cites the failure of UMTA to announce a decision by June 14, on the use of Transbus performance specifications; UMTA had earlier stated its intention to make that decision by June 14. The plaintiffs filed their lawsuit three days later.

The complaint also alleges that by their failure to require the expenditure of federal transit funds only for Transbus, the defendants have not carried out the duties imposed on them by federal law. The plaintiffs request the court to order the defendants to permit expenditure of federal funds only on the Transbus and to take such other action to assure elderly and handicapped persons public mass

transportation services which they can effectively utilize.

The plaintiffs are represented by the Philadelphia Public Interest Law Center.

People of the State of California, ex rel. Attorney General, et al. v. Smuggler's Inn, et al. No. 251428 (Superior Court, Sacramento County)

On November 8, 1974, a suit was filed in the Superior Court for Sacramento County, California, in which the attorney general of California alleges that the Smuggler's Inn Restaurant is inaccessible to persons in wheelchairs. The suit contends this violates the state's Health and Safety Code, Government Code, and Civil Code.

The state of California has asked the court to prohibit the restaurant from operating in violation of the codes and to remedy the violations. The state alleges that the main entrance to the restaurant, as well as two of the four exits and the restrooms are not accessible.

The state also asked the court to order Sacramento County to enforce the state regulations and to stop approving public accommodations which don't conform to the regulations. The plaintiffs allege that there are at least six other public accommodations within the territorial limits of Sacramento County which were constructed after July 1, 1970, and which do not adhere to the specifications of the Health and Safety Code which took effect on that date.

According to the complaint, the California Attorney General notified Associated Hosts, owners of Smuggler's Inn Restaurant, on June 20, 1974, of the restaurant's violations. At that time they demanded that steps be taken to bring the restaurant into compliance. However, at the date the suit was filed, no steps to comply had yet been taken.

In April, 1975, Associated Hosts of California, Inc. and Sunrise Restaurants, a subsidiary of Associated Hosts and involved in the ownership and maintenance of Smuggler's Inn, filed a cross-complaint against the owners of the building, the contractor, and the architect. The cross-complaint seeks to hold them liable for any damages, fees, costs, and expenses which the restaurant may suffer as a result of the state's suit. They contend that the cross-defendants knew or should have known the rules, regulations, and laws of the state of California existing at the time of construction of the Smuggler's Inn Restaurant.

California v. Smuggler's Inn is believed to be the first time the state has sought court action to enforce the regulations which require that public accommodations be accessible to the physically handicapped.

It is also believed to be the first time that the landlord, contractor, and architect of a building have in turn been sued in an accessibility case.

Judge Charles W. Johnson overruled the motions of both the defendants and cross-defendants who sought to have the cases dismissed because, they alleged, the California statute does not permit such a lawsuit. He also denied the defendant's motion for a summary judgment.

The court is expected to hear the full case in the fall.

Cherry, et al. v. Mathews, et al. No. 76-0255 (D. D.C.)

James L. Cherry, a physically handicapped resident of Louisville, Kentucky, and the Action League for Physically Handicapped Adults (ALPHA) in Louisville, brought suit February 13, 1976, against U.S. Department of Health, Education, and Welfare officials to force promulgation of regulations for Section 504 of the Rehabilitation Act of 1973.

Defendants are HEW Secretary F. David Mathews, the Department of HEW, and Martin Gerry, acting director of the Office for Civil Rights of HEW.

The Rehabilitation Act was

enacted on September 26, 1973. Section 504 of this Act provides that no otherwise qualified individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.

While considering the 1974 amendments to the Rehabilitation Act, Congress directed HEW to issue regulations providing for the implementation of Section 504 before the close of 1974. At that time, Congress expressed concern that over a year had elapsed since the enactment of Section 504 and that regulations were not yet issued.

Petition Filed With HEW

On June 3, 1975, after regulations were still not issued, the plaintiffs filed a petition for rulemaking with the Secretary of HEW, requesting these regulations be issued promptly, and include the following: a) declaring that architectural barriers in certain facilities constitute "discrimination" prohibited by the Rehabilitation Act; b) defining "handicapped individual" broadly to include all physical and mental disabilities; c) declaring that all types of facilities are covered by the rule; and d) interpreting the phrase "Federal financial assistance" broadly to include such elements as revenue sharing funds and federal tax expenditures.

According to the complaint, the defendants acknowledged, in a letter dated August 15, 1975, they had received the petition, and assured the plaintiffs that preparation of regulations under Section 504 were nearly complete.

Plaintiffs wrote a similar letter on November 6, 1975, to the director of the Office of Civil Rights, urging that Section 504 rules be issued promptly, and that defendants respond to the plaintiffs' June 3 petition. Plaintiffs did not receive a response to this letter until February 17, 1976, four days after this suit was filed.

Plaintiffs Allege Discrimination

In a memorandum in support of their motion for summary judgment, the plaintiffs note that Cherry and most of the members of ALPHA are excluded from and discriminated against by Kentucky programs receiving federal financial assistance only because of their handicap. "Although people who are not handicapped have ready access to these programs," they said, "plaintiffs are excluded completely or are able to gain entrance only when a friend or paid attendant is able to accompany them."

The plaintiffs also point out in this memorandum that "due to the thousands upon thousands of recipients of federal financial assistance from HEW, and the varied contexts in which discrimination can be practiced against the handicapped, regulations are imperative." "Without regulations," they note, "sponsors do not know precisely what Section 504 demands nor what penalties are possible for violation of Section 504.

"Enforcement of Section 504 in such circumstances is severely compounded by due process problems," the plaintiffs argue.

"Effective planning for the future is impossible due to the indefinite boundaries of Section 504. Without Section 504 regulations, equal treatment of the handicapped will remain a national policy without becoming a national reality."

Seek Declaratory and Injunctive Relief

Cherry and ALPHA have asked the court to declare that the defendants' failure to promulgate regulations violates Section 504 of the Rehabilitation Act. In addition, they have asked the court to issue a mandatory injunction requiring the defendants to publish proposed regulations for public comment within 30 days, and final regulations within the next 30 days thereafter.

In their complaint, the plaintiffs also request the court to decree that defendants' failure to respond to their June 3, 1975 petition for rulemaking constitutes unreasonable delay in violation of several provisions of the Federal Administrative Procedure Act.

Young, et al. v. Coleman, et al. No. H76-201 (D. Conn.)

Two handicapped Connecticut residents filed a class action suit May 12, in the United States District Court for the District of Connecticut. They allege that state's application for and approval of funds for the purchase of an inaccessible public transportation system violates federal laws designed to protect the handicapped, and the Fifth and 14th Amendments to the United States Constitution.

The plaintiffs are Marilyn Young, who is in a wheelchair due to spina bifida and paralysis, and Joyce Baker, who has cerebral palsy and is mobility handicapped.

Defendants are William Coleman, Jr., secretary of the U.S. Department of Transportation (USDOT); Robert E. Patricelli, administrator of the Urban Mass Transportation Administration (UMTA); National City Management Company, a Texas Corporation designated by the Connecticut Department of Transportation (CDOT) to operate the public bus transportation system in the Hartford, New Haven and Stamford urban areas; and James F. Shugrue, action commissioner of CDOT.

According to the complaint, CDOT submitted an application to UMTA on January 12, requesting funds for the acquisition of two privately-owned Connecticut corporations operating routes within the Hartford, New Haven, and Stamford urban areas. Funds were also requested for the purchase of 318 new standard-size buses at a cost of approximately $36,000,000.

The complaint acknowledges that the existing, privately-owned, mass transportation bus system has no vehicles that serve handicapped individuals. The replacement buses, they note, will contain "special provisions" for the elderly and handicapped "as directed by UMTA," including vertical stanchions, non-skid floors, improved interior lighting, and low-level entrances with step-well lighting.

The plaintiffs allege, however, that none of these provisions will make the public bus transportation system accessible to Connecticut residents who have disabling physical impairments which necessitate wheelchair confinement.

CDOT was notified on May 11, that its application for urban mass transportation funds was approved. In their brief in support of a motion for a preliminary injunction, the plaintiffs note that by approving the application the "federal and state defendants' conduct falls far short of the directives of federal law" and violates the Urban Mass Transportation Act of 1964, as amended. This Act provides that "special efforts be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured."

The plaintiffs also contend that the defendants' approval of CDOT's application violates Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination against disabled persons in federally funded programs.

According to attorneys for the plaintiffs, in a hearing on May 25, the court denied the motion to stop the purchase of the two Connecticut transportation systems. However, with the consent of both sides, the court openly asked the defendants to refrain from purchasing new buses until further review by the court, and to submit a plan at a July 6 hearing, in which they would outline the steps they will take to provide a transportation system which is accessible to the handicapped.

Five days of hearings began July 6 during which time the judge strongly urged both parties to settle without a court order. The state offered to amend the capital acquisition contract and to purchase 10 accessible vans for mainline service in the New Haven area only. The plaintiffs rejected this plan; however, the state has indicated a willingness to negotiate and settle.

The judge has asked each party to submit proposed findings and conclusion by July 23, if an agreement has not been reached by that time.

Adams, et al. v. Mathews, et al.
No. 3095-70 (D. D.C.)

Timetable for Processing of School Segregation Complaints According to Court Order of June 14, 1976

TYPE OF COMPLAINT	PROCESS	NUMBER OF DAYS—MAXIMUM
COMPLETE:	To determine if completed and to notify complainants of procedural steps to be taken and timeframes.	15
	To investigate and determine, in writing, whether or not there is a violation.	90
	Negotiations	90
	Initiation of formal enforcement after maximum negotiation period.	30
INCOMPLETE:	Determination of incompleteness.	15
	Period to complete.	45
	Notice to complainant of 120 more days to complete.	120
	To investigate and determine whether or not there is a violation.	90
	Negotiations	90
	Initiation of formal enforcement action.	30
EMERGENCY:*	Determination of merits (If incomplete, additional information to complete to be sought within 15 days of original submission.)	60
	Negotiations	60
	Initiation of formal enforcement action.	60

*Summer recess emergency procedures and excessive complaint workload exception not depicted.

. . . *Adams, et al. v. Mathews, et al.* No. 3095-70 (D. D.C.)

COMPLIANCE REVIEW	PROCESS	NUMBER OF DAYS—MAXIMUM
At the commencement of each quarter of the fiscal year, HEW must notify those recipients who will be subject to compliance reviews of the general subject area of the review and the date on which the review will commence.	Determination of compliance with Title VI and for Title IX (Parents, students, and employees allowed 45 days from commencement of review to present information.) Negotiations Initiation of formal enforcement action.	90 (From date compliance review commences) 90 30

SPECIAL NOTE: The number of days noted in timetable are maximum figures and do not preclude the processes noted from beginning earlier.

The above timetables were set in a June 14, 1976 court order in *Adams, et al. v. Mathews, et al.* This case involved the investigation of complaints of school segregation in 17 Southern and Border states. The Office of Civil Rights, under the Department of Health, Education, and Welfare, has announced that it will investigate complaints of bias based on sex, handicap, and national origins according to the same timeframes set out in the court order.

special report

The 504 Notice:

A History of Section 504

The present concern in implementation of the Rehabilitation Act of 1973 focuses on Section 504, the provision which prohibits discrimination against handicapped persons in federally funded programs and activities. The Act, as originally passed by Congress, had a number of fundamental goals, only one of which was the guarantee of equal rights for handicapped persons in federal programs. It sought to encourage the development and implementation of rehabilitation services for all handicapped persons, particularly extending services to severely disabled persons who had not been served in the past. Further, the Act was designed to encourage rehabilitation agencies to serve disabled persons who might not have vocational goals in the traditional sense, but who would nevertheless benefit from appropriate rehabilitation services.

Finally, the Act sought to encourage and to provide a means for coordination of technical and scientific research to meet the needs of disabled persons in a wide range of matters, from medical research to engineering and design studies of architectural and transportation barriers.

The language which eventually became Section 504 was first contained in a bill introduced in the House of Representatives by Charles Vanik of Ohio and in the Senate by Hubert Humphrey of Minnesota. This bill was intended to amend Title VI of the Civil Rights Act of 1964, and to extend that important law's coverage to handicapped people.

However, in September, 1972, sometime after the proposed Humphrey and Vanik bills, language identical to these bills was included in the pending Rehabilitation Act. Senator Humphrey acquiesced in the substitution of the proposed Section 504, stating that it included "provisions which carried through the intent of the original bills which I introduced."

While the addition of Section 504 to the Rehabilitation Act may appear to have been somewhat of an afterthought, it is clearly a logical part of the law in both practical and idealistic contexts. From a practical standpoint, it simply made no sense to commit the federal government to a substantial program to integrate disabled people into American society without providing complementary authority to prohibit discrimination in the government's own personnel practices and building projects, or in its contractual agreement and grant programs.

From an idealistic standpoint, perhaps Congress, by enacting the anti-discrimination provision, sought to set an example for the nation, particularly those private sectors which have not treated disabled people equally. Long ago Justice Brandeis observed that government — for good or ill — is a teacher to society and that society will imitate what it learns from government. The same point was emphasized more recently by the Supreme Court when it stated that, "government is the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct." *Adickes v. Kress,* 398 U.S. 144, 190 (1970).

The legislative history of the Rehabilitation Act reveals that both committee witnesses and legislators fully appreciated the significance of Section 504. One witness stated that the Rehabilitation Act would end "second class citizenship" for disabled people, and another viewed Section 504 as establishing "that because a man is blind or deaf or without legs, he is not less a citizen, that his rights of citizenship are not revoked or diminished because he is disabled."

Senator Alan Cranston of California, a committee member, foresaw a vigorous implementation of Section 504 similar to that mandated by Congress in other civil rights legislation. Senator Robert Stafford of Vermont also drew attention to similarities to existing civil rights legislation when he stated, "it was the Committee's intent that the enforcement under Section 503 and 504 would be similar to that carried out under Sections 601 of the Civil Rights Act and 901 of the Education Amendments."

The Nixon administration was never enthusias-

Moving Toward a Civil Rights Act?

tic about the Rehabilitation Act. When President Nixon vetoed the original Rehabilitation Act in 1972, he cited as his reason the possibility of "cruelly raising the hopes of the handicapped in a way that we could never reasonably hope to fulfill." He was, however, speaking about the fiscal spending levels involved, not necessarily Section 504.

It was not until after Congress had passed the Rehabilitation Act over the President's veto, and it became law effective September 26, 1973, that difficulties in the implementation of Section 504 emerged. Within a year Congress began inquiring about the lack of implementation by the Department of Health, Education, and Welfare. HEW statements to congressional committees always implied that issuance of regulations was imminent.

Final Date Requested

In June, 1974, the Senate Subcommittee on the Handicapped held a hearing on proposed amendments to the Rehabilitation Act. Senator Cranston requested HEW to state, in writing, a date 504 regulations could be expected. The HEW response was that the regulations would be published in final form and be in effect by the end of fiscal year 1975. The committee report accompanying the Rehabilitation Amendments of 1974 stated that the regulations should be completed by the end of calendar 1974 and the 1974 amendments were passed by more than a two-thirds majority of both houses of Congress. By the end of 1974, proposed regulations had not even been published.

The continued failure of HEW to promulgate the regulations led to several challenges from both Congress and disabled individuals. In the late winter and spring of 1976, the Senate Subcommitte on the Handicapped once again conducted hearings on the Rehabilitation Act. A major concern of these hearings was the slow implementation of Section 504 by HEW. On April 6, 1976, a lawsuit was filed against the Secretary of HEW to compel him to implement appropriate procedures for enforcement of Section 504. (See *Cherry v. Matthews,* In the Courts.)

During 1974 and 1975, lawsuits had been filed throughout the United States by disabled people challenging various forms of discrimination in federally funded programs. Plaintiffs in these suits asked the courts to directly enforce Section 504 without waiting for HEW enforcement procedures. The theory was that Section 504 should be enforced very much like the Civil Rights Act at the federal level.

One court has specificially held that Section 504 creates a cause of action under which a disabled person may sue, and ruled for the plaintiffs on this basis. Several others have appeared to hold that Section 504 may be enforced by courts without waiting for HEW action. At least two courts, one federal and one state, have held that Section 504 does not create a cause of action.

On April 28, 1976, after two and one-half years without the promulgation of regulations, President Ford issued an executive order requiring the Secretary of HEW to "coordinate the implementation of Section 504. . .by all Federal departments and agencies empowered to extend Federal financial assistance to any program or activity."

Under this order, the Secretary of HEW is responsible for establishing, for all federal agencies, standards for determining who is considered a handicapped individual, and guidelines for determining what constitutes discriminatory practices within the meaning of this Section.

The presidential order also requires each federal department and agency providing federal financial assistance to issue its own regulations for implementation. These regulations, however, must be consistent with the standards and procedures established by HEW.

Finally, on May 17, 1976, HEW issued a Notice of Intent, published in the *Federal Register,* including a draft regulation and preamble prepared by the Office of Civil Rights (OCR) which details a possible interpretation of Section 504.

In issuing this notice, HEW Secretary Mathews stated, "since it appears to be the case that the implications of this legislation have not been elaborated before the general public in sufficient detail, it seems appropriate, before issuing a Notice of Proposed Rulemaking, to solicit public comment on certain key issues which any proposed regulation would, in all likelihood, address."

In the introductory notice, Secretary Mathews outlined the timetable for promulgation of the

regulations. This includes a 30-day period for comments to the draft regulations and a Notice of Proposed Rulemaking to be issued within 30 days of the close of this comment period. The Notice of Proposed Rulemaking will invite public comment for at least another 60 days.

The National Center for Law and the Handicapped prepared and submitted comments and suggestions on the draft regulations for Section 504 to Martin Gerry, director of OCR, prior to the June 16 deadline. In light of the importance of this Section and the implications it may have on the lives of all handicapped persons, and in order to stimulate action on the part of our readership, we are publishing, in the following pages, excerpts from the Center's comments. Since the comments submitted to HEW totaled 54 pages, it is impossible for us to publish them in their entirety. The final opportunity to comment will occur when proposed regulations are published by HEW.

NCLH Comments

The following pages include comments submitted by the National Center for Law and the Handicapped to the Office of Civil Rights, Department of Health, Education, and Welfare, regarding the Notice of Intent and draft regulations issued May 17, 1976, for Section 504 of the Rehabilitation Act of 1973. These comments are preceded by the corresponding text as published in the Federal Register.

In the introduction, Secretary Mathews states:

The most important problem which has hindered the development of the regulation is the constant need to weigh competing equities while resolving complex issues. Thus, while we recognize that the statute creates individual rights, the statute is ambiguous as to the specific scope of these rights. Implicit in this situation is the need to assess carefully the overall impact of a particular requirement both on the persons protected by the statute and those regulated by it. (41 Fed. Reg. 20296, May 17, 1976)

Comments

However, the statute is not ambiguous at all as to the specific scope of the individual rights it created. The statute says *no* exclusions, denials, or discrimination. It is a legislative statement that federal funds are not to be used to support programs or activities that exclude, deny benefits to, or discriminate against handicapped people. While one cannot find fault with Secretary Mathews' desire to "assess carefully the overall impact of a particular requirement both on the persons protected by the statute and those regulated by it", that assessment should not lead to any balancing of interests between those of the recipients and the protected persons. No balancing is contemplated by the statute; its prohibitions are unqualified. . . .

§ 84.4 Discrimination prohibited.
§ 84.4(b)(1)

(iii) Aid or perpetuate discrimination against a qualified handicapped person by providing assistance to any agency, organization, or person which discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

Comments

If the recipient is aware of discrimination on account of handicap by any agency, organization, or person, the recipient should be barred from aiding that agency, organization, or person regardless of whether it provides "any aid, benefit or service to beneficiaries of the recipient's program." For example, an institution serving retarded persons should not do business with any supplier of goods

or services to the institution which discriminates on the basis of handicap in its employment practices. There should be no exceptions permitted. . .the Center proposes the section be rewritten to read as follows:

> (iii) aid or perpetuate discrimination against qualified handicapped person by providing assistance to any agency, organization, or person which discriminates on the basis of handicap in any way which would constitute the violation of these regulations if performed by a recipient.

SUBPART B – EMPLOYMENT PRACTICES

Generally, the proposed regulations in Subpart B carry out the intent of Section 504. However, we are concerned that the concepts of "reasonable accommodation" and "undue hardship" as presently utilized, and the draft regulations concerning pre-employment inquiries and fringe benefits will result in continuing discrimination against handicapped individuals.

§84.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation includes (1) making facilities used by employees readily accessible to and usable by handicapped persons and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant or determine a handicapped employee or applicant to be unqualified if the basis for the denial or determination is the necessity for reasonable accommodation to the physical or mental limitations of the employee or applicant as required in this section.

Comments

The HEW grantee must also realize that the receipt of federal funds carries with it the concomitant responsibility to make such reasonable accommodations as will allow handicapped persons to realize their rights to equal employment opportunities. . . .

We believe that the concept of reasonable accommodation is feasible if it is kept in mind that the burden of making such accommodation is on the recipient and not on the handicapped individual, and that possible fears about greatly increased costs of disruptions in the work of the program are not well founded. *See, Wall Street Journal,* January 27, 1976, at 1, Col. 1 and the Inflationary Impact Statement, appendix B accompanying the Notice of Intent to Issue Proposed Section 504 Regulations, p. 10, Table II. . . .

Section 84.12(c) contains the concept of undue hardship which is also utilized in the Section 503 regulations. The difficulty we have with specifying the factors which are to be considered in determining whether an undue hardship exists is that recipients will be encouraged to use those exceptions to destroy the rule of reasonable accommodation. . . .

We believe that a determination of undue hardship must be made on a case-by-case basis, and that such determinations should be relatively rare. Therefore, we recommend that subparagraph (c) be omitted.

§84.14 Preemployment inquiries.

(a) A recipient may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap in a manner which results in discrimination prohibited by this subpart.

(b) Preemployment inquiries shall be limited to those necessary to determine whether the person has a handicap which would constitute a hazard to that person or to other employees or which would require accommodation under section 84.12.

(c) Preemployment inquiries shall be accompanied by a statement that the recipient is subject to this subpart

and assuring that information obtained from the inquiries will not be used in a manner which would result in discrimination prohibited by this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected only through use of separate forms which shall be accorded confidentiality as medical records. Supervisors may, however, be given information and instructions necessary to the person's health and safety and may be informed of work restrictions and necessary accommodations.

Comments

The recipient who conducts such inquiries too often makes determinations based on fears and prejudices rather than objectively determining whether the individual applicant can do the job. A personal interview frequently will reveal most disabilities without arousing the fears engendered by the written job application. . . .

There is also a "Catch 22" aspect to such preemployment inquiries. A job applicant may be rejected from further consideration for employment if he or she answers fully and completely to all queries, yet be rejected or later fired for either not answering all inquiries or for giving false answers. The regulations must halt such practices.

SUBPART C – PROGRAM ACCESSIBILITY

§84.22 – Existing facilities.

(a) Program accessibility. A recipient shall, through the elimination of physical obstacles or through other methods, operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph shall not necessarily be interpreted to require a recipient to make each of its existing facilities accessible to and usable by handicapped persons.

Comments

(a) Program accessibility. The proposed regulation as drafted raises two significant problems: it lends itself to policies which might result in the segregation of handicapped people, and it lacks adequate standards and guidelines for administration. Once the handicapped are integrated into social settings, the fear and discrimination decrease and the handicapped are accepted as persons. Wright, *Physical Disability – A Psychological, Approach,* at 254-265 (1960). Other social scientists have confirmed that attitudes toward the disabled are favorably changed with increased interaction between the handicapped and the nonhandicapped. See, Yuker, Block and Campbell, *A Scale To Measure Attitudes Toward Disabled Persons* (1960). . . .

The effect of inaccessible public buildings in reinforcing the stigma projected upon the handicapped, and, thereby, further segregating and isolating the handicapped has been documented. Integration of disabled people will be accomplished only by the fulfillment of certain prerequisites, one of which is access to settings and buildings permitting social interaction. Wolfensberger, *The Principle of Normalization and Human Services,* at 48 (1972). . . .

The legislative history of §504 reveals the intention of Congress that this statute be used to end the segregation of handicapped people. . . .We believe that the regulation should state categorically that accessibility is to be required in almost all situations, and that modifications of this requirement are to be limited to specific extraordinary situations. Furthermore, the burden of going forth and justifying such modifications should be placed upon the recipient, and the guiding presumption should be that unless a sufficient showing is made to justify a modification, accessibility is required. . . .

We, therefore, propose the following text for the rule:

§84.22

(a) Program accessibility – A recipient shall eliminate physical barriers which make aspects of its program or activities inaccessible to or unusable by handicapped persons. If a recipient believes that the requirement of complete accessibility in its programs or activities will create an extraordinary hardship upon the recipient, the recipient may seek modification of the application of this rule to its programs or activities. In determining whether a modification is appropriate for a recipient, the entire program or activity will be viewed in terms of accessibility. No recipient may conduct its program or activities in such a manner that results in the segregation of handicapped persons from nonhandicapped persons, or in deprivation of services and activities of equal quality to handicapped persons, or results in substantial inconvenience to handicapped persons, or conflicts with the expressed preferences of handicapped persons to participate in inaccessible portions of the recipient's program or activities. A determination to grant

a requested modification of this rule shall not be made before an opportunity has been offered to handicapped persons and other interested persons affected by the program to be heard or to submit comments on the requested modification, in accordance with regulations established for that purpose. The authority reviewing the request for the modification shall be authorized to either grant or deny the request or to grant the request provisionally, with directions that the recipient submit periodic statements as to the continued necessity for the modification of the rule's application.

§84.22(c) — Time period.

(c) Time period. A recipient shall achieve program accessibility as expeditiously as possible but in no event later than three years from the effective date of this part.

Comments

In 1968, Congress enacted the Architectural Barriers Act of 1968, 42 U.S.C. 4151 *et seq.* which requires barrier free design in new and altered federal buildings and federally financed and leased buildings. The law, on its face, went into effect immediately. . . .

Recipients who were not covered under the 1968 law should have begun to achieve accessibility under the 1973 law. . . .It should also be noted that the three year period begins to run after the HEW regulations become effective. Effectively, we may be facing a 1980 or 1981 date before federal accessibility laws would be enforced against recipients. . . .We see no justification for the three-year period to allow recipients to bring themselves into compliance and, therefore, propose the following text for §84.22(c):

Time period. — A recipient shall achieve program accessibility as expeditiously as possible but in no event later than one year from the effective date of this part.

§84.23 New construction.
§84.23(b) — Alterations

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part of the facility shall be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

Comments

This section seems to be very good in that it has a broad and a liberal interpretation of the meaning of architectural alteration. We believe that it is in full compliance with the law and that it will result in designers and builders taking into consideration the needs of handicapped persons in many situations where those needs might not ordinarily be apparent.

§84.42 Admissions and recruitment.

(b) Admissions. In determining whether a person satisfies any policy or criterion for admission or in making any offer of admission, a recipient to which this subject applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission which has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of overall success in the education program or activity in question and (ii) alternative tests or criteria which have a less disproportionate, adverse effect are shown to be unavailable;

(3) Shall assure itself that the selection and administration of admissions tests is such that, when an admissions test is administered to an applicant who has a handicap which impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where such skills are the factors which the test purports to measure); shall assure itself that admissions tests which are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and shall assure itself that admissions tests that it administers are administered in facilities which are readily accessible to handicapped persons;

(c) Different admissions criteria. A recipient may, if necessary to the furtherance of equal educational opportunity for qualified handicapped persons and if such action does not constitute the giving of a preference on the basis of handicap, apply criteria for the admission of handicapped persons which differ from the criteria applied to nonhandicapped persons, where such criteria are useful as predictors of completion of the education program or activity in question or of success in the occupation or profession for which the education program is designed to prepare students.

Comments

We are concerned that section 84.42(b)(2) as well as 84.42(c) will not offer the handicapped person sufficient protection from discrimination. We recommend their deletion and the substitution of the following as a new section 84.42(b) to replace both sections 84.42(b)(2) and 84.42(c):

> (c) Testing and different admissions criteria. Each recipient or applicant for assistance must submit to the Department with its application for funding a list of and all tests or criteria, including different admissions criteria used to further equal educational opportunity for handicapped persons which would in any way be affected by the conditions described in section 84.3(j)(2)(i). Each recipient or applicant for assistance must submit with such data a plan for modifying those tests or criteria so as not to discriminate against handicapped persons.

Inflationary Impact Statement

Comments

An initial consideration which should be raised and criticized in the Inflationary Impact Statement is whether such economic and fiscal considerations are appropriate in considering implementation of a civil rights statute. . . .It will seem to some disabled people ironic that, after failing for almost two hundred years to make any substantial federal effort to protect their rights, the nation, in its first effort to establish equal rights for handicapped people, should be obsessed with such considerations. . . .

However, whatever the weaknesses of the Inflationary Impact Statement as presently written, there is nevertheless valuable information which supports the concept of economic feasibility and practicality in providing equal rights to handicapped persons. One such valuable statement is on page 2, where the Inflationary Impact Statement concludes that "the benefits forthcoming (psychic as well as pecuniary) provide a substantial offset to the cost that will be incurred. The cost involved will not be as great as is widely thought and the compelling situation of some of the handicapped persons involved tips the balance in favor of proceeding with immediate implementation of the regulation." This is a very important statement in a governmental document. It is, in essence, what disabled people and their supporters have been saying for years.

Likewise, the statements on page 7 involving a study by the Civil Service Commission on problems of reasonable accommodations for handicapped employees is helpful and valuable in overcoming the skepticism of employers about the cost of hiring handicapped workers. . . .The conclusion of the Inflationary Impact Statement on the matter of employing handicapped workers is that "in the large majority of cases enforcement of reasonable accommodation will not result in any significant cost increase for employers." (Page 14) That, again, is a very significant statement to be found in a governmental and officially endorsed document. . .

An example of the report's attempts to reach conclusions without adequate factual basis is the statement on page 4 about "outset costs." The Inflationary Impact Statement recognizes that in some situations the expenditures required to comply with Section 504 will be a one-time cost. Thus, for example, if a building is once made accessible, it will remain accessible and the benefits accruing from that one time expense for accessibility will continue. In order to appropriately assess the inflationary impact of such a cost, it would seem necessary to project the future benefits from the outset cost as they occur in future years. Unless such a projection is made, it would appear that the Inflationary Impact Statement is deficient. . . .

The final category of comments about the Inflationary Impact Statement concerns matters which were not addressed as adequately and as fully as they might have been. . . .On page 19 in the listing of benefits to accrue from barrier free design, the Inflationary Impact Statement fails to list one very obvious and very important benefit -- that barrier free design helps everybody - the aged, the temporarily handicapped, and even those able-bodied persons who no longer must contend with dangerous steps and other physical obstacles. . . .

Editorial

Ambivalence Chasing on 504

In 1973, Congress enacted the Rehabilitation Act which became effective on September 26 of that year. The Act contained a section, 504, which Congress intended to be a civil rights act for handicapped persons. Section 504 says:

> No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Those who optimistically believed that the rights of the disabled would not become inextricably bound up with the Administration's equivocations on civil rights were proved wrong. An enactment of Congress, even one which is so explicit as is 504, is meaningless unless executed by the President through promulgation of regulations establishing standards and sanctions for the allocation and termination of federal funds.

Two and one-half years after the effective date of 504, regulations had still not been published. Only after the commencement of a potentially embarrassing lawsuit by consumers, did the President, on April 26, issue an Executive Order commanding the Secretary of the Department of Health, Education, and Welfare to begin the regulatory process. On May 17, the Secretary published a notice of intent to issue regulations pursuant to 504, the purpose of which seemed to be: How can we persuade the public that what was said, was not meant?

Four methods were used to perpetuate the Administration's ambivalence. First, the Secretary added an inflationary impact statement which assumed its own conclusion, namely, that enforcement would cost in excess of $100,000,000. Although the statement contains considerable speculation, there are insufficient data to justify the costs contained therein.

Using the same type of "educated guessing," NCLH has developed a different impact statement – one more positive in its outlook. We estimate that of the 20 to 30 million handicapped people in America, from five to seven million are now receiving an average of $3,000 in benefits annually. These individuals could be self-sustaining through the vigorous enforcement of 504, and thus pay an average of $2,000 in taxes. To be conservative, if only two million disabled persons were to be rendered self-sustaining, the net saving to the federal government would be $10,000,000,000. If thrift is the name of the game, then $10,000,000,000 here and $10,000,000,000 there sure adds up!

The second major example of administration backpeddling was the inclusion of language in the intended proposed regulations that would offer sanctuary to procrastinators.

Two types of evasion are encouraged: compliance after impermissible delays and compliance by segregating the handicapped. The delay is particularly lamentable because implementation of the Architectural Barriers Act of 1968, which has never been fully implemented, would be delayed an additional three years under the Secretary's proposed scheme. The question of the potential harm of segregating the handicapped through the validation of selective accessibility seems not to have even occurred to the Secretary.

The third problem area was the omission of well-defined procedures to tie the policies of the Department of Transportation and other federal departments with the goals of 504. The Executive Order of April 26, issued by the President, places with the Secretary of HEW the responsibility for tying together regulations promulgated by his own and other departments, so that coherent, effective, and complete implementation of 504 is realized. But stringent guidelines must be established to see that all federal departments comply.

Fourth, and, perhaps, most important in this

movement to invisibly execute 504, was the complete omission of enforcement procedure regulations. Here is how they palmed the ace: One year ago, HEW issued proposed regulations with purely discretionary procedures for the enforcement of civil rights laws. Reaction to these regulations registered 8.5 on the Richter scale. So HEW withdrew them and, instead, published in the *Federal Register* of May 3, for public comment, a series of questions prior to the promulgation of new consolidated civil rights enforcement procedures.

Then, on May 17, when issuing their notice of intent to publish proposed 504 regulations, HEW announced that enforcement of these regulations would be handled through the eventual consolidated civil rights procedures.

Meanwhile, a group of consumers of educational services obtained a court order (*Adams v. Mathews*) establishing, in 17 states, maximum time periods for the enforcement of certain civil rights provisions relating to education. The Office of Civil Rights has announced that these time frames will apply to all civil rights enforcement by HEW, and NCLH has informed the Secretary that no less is required under the due process clause of the Fifth Amendment.

What You Can Do

The Secretary is required to publish two sets of regulations in the near future: regulations to implement Section 504 of the Rehabilitation Act of 1973, and Consolidated Procedural Rules for Administration and Enforcement of Certain Civil Rights Laws and Authorities.

First, if you do not receive the *Federal Register* as a matter of course, demand of the Secretary that he send you timely notice of all future publications in the *Federal Register* relating to these two areas.

Second, when proposed regulations are published regarding 504, be prepared to comment upon: (a) the fact that cost must never be a factor in considering whether or not to enforce civil rights laws; (b) the fact that you will not tolerate further delays in enforcement; (c) the fact that you will not tolerate currently permissible or implied segregation of the handicapped; (d) the fact that, in particular, the regulations governing the critical area of transportation for the handicapped must be effectively coordinated between the Secretaries of HEW and Transportation, but, that this same coordination must occur with all other departments of the federal government; and (e) the fact that any regulations pursuant to 504 are meaningless without enforcement procedures and explicit sanctions.

Third, when proposed Consolidated Procedural Rules for Administration and Enforcement of Certain Civil Rights Laws and Authorities are issued, be prepared to respond on the basis of these general principles: (a) enforcement must be based on a timetable no more expansive that that laid down in *Adams v. Mathews* (See In the Courts); (b) the civil rights needs of any one group may not be given priority over any other; and (c) it is the responsibility of the department to seek out complaints, whatever form they take, and to compile sufficient information to recognize and quash all patterns of discrimination so revealed.

We hope the material presented will provide the basis for you to form an opinion and take effective action. The responsibility to act remains with you.

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Amicus

National Center for Law & the Handicapped VOL. 1 NO. 6 SEPT. 1976

Affirmative Action: Opening Doors To Employment

Amicus

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Amicus is published bi-monthly by the National Center for Law and the Handicapped, Inc. 1235 North Eddy Street, South Bend, Indiana 46617 (219) 288-4751. Third class postage paid at South Bend, Indiana.

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The National Center for Law and the Handicapped is a project of national significance jointly funded by the Bureau of Education for the Handicapped, Office of Education, U. S. Department of Health, Education and Welfare, and Developmental Disabilities Office, Office of Human Development, U. S. Department of Health, Education and Welfare. The work presented herein was performed pursuant to this grant. Points of view stated do not necessarily represent official policy or position of these agencies.

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news

NCLH Awarded Federal Grants

The National Center for Law and the Handicapped (NCLH) has received a continuation grant of $600,000 for the fiscal year which began July 1, 1976. NCLH also was awarded a "mini-grant" of $113,000 for new demonstration projects.

In addition to ongoing projects, current developments and future priorities will include the expansion of the NCLH internship program, development of a training program for new attorneys in law and the handicapped, and establishment of a Washington, D.C. liaison office.

Plans for the Legal Internship Program, which currently provides Notre Dame law students with practical training and experience and assistance to NCLH attorneys, are to bring to the Center law students as well as students in the social sciences from other academic institutions, and to place current interns in off-site service and legal advocacy programs. A joint NCLH and Notre Dame Intern Program would permit non-Notre Dame students to matriculate into the second year law program at Notre Dame while serving as interns.

The new attorney training program will bring two to three new attorneys to the Center for a period of three months, after which they will be placed in a legal aid office or public interest law firm to specialize in problems of the handicapped.

In order to improve communication and to coordinate legal advocacy efforts among all groups concerned with equal rights for the disabled, an NCLH Washington, D.C. office is in the planning stages. Establishing a liaison with legal advocacy and consumer-provider organizations in the D.C. vacinity will facilitate action and supervision of follow-through on issues of national concern.

Regulations Proposed for Developmental Disabilities Grants

Policies and procedures for developmental disabilities grants to states, nonprofit agencies, organizations, colleges, and universities have been proposed by Assistant Secretary for Human Development Stanley B. Thomas, Jr.

The proposed regulations implement the Developmental Disabilities Services and Facilities Construction Act of 1970 (Public Law 91-517), as amended by the Developmentally Disabled Assistance and Bill of Rights Act of 1975 (PL 94-103).

Secretary of Health, Education, and Welfare David Mathews has approved the regulations which were published August 30 in the *Federal Register.*

Passed into law last October, the new Act is designed to assist states in developing a comprehensive plan to increase the provision of quality services to persons with developmental disabilities.

The Act, however, does not provide for separate funds. Instead, it mandates establishment of a means for assessing the systems already in use and requires funds to be used to fill gaps in existing generic services, as well as to expand the reach of these services to new groups of individuals.

In order to assess and coordinate services for the developmentally disabled, the Act calls for the establishment of a state planning council. The council is required to serve as an advocate and to include in the state plan programs for the protection and advocacy of the legal rights of persons with developmental disabilities.

The Act also establishes a new program of special projects and includes a formula grant program for the protection and advocacy of individual rights of the developmentally disabled.

In order to qualify for federal assistance, states must develop and implement de-institutionalization programs, use individual treatment plans for residents of institutions for the developmentally disabled, and guarantee protection of the legal rights of these individuals.

According to the Notice, the major purpose of the proposed regulations is to "ensure the continued targeting of funds

and resources to developmentally disabled individuals through a national, state, and local partnership."

Rights Specified

A second purpose, they note, is to "specify the rights of the developmentally disabled." These rights, as listed in the Notice, are the right to appropriate treatment, services, and habilitation; programs designed to maximize the developmental potential of the individual; and the obligation of the federal government and the states to assure that public funds are not provided in programs which do not deliver appropriate treatment, services, and habilitation, or do not meet the appropriate minimum standards specified in the Act.

The proposed regulations implement only certain sections of the Act. Regulations have not yet been developed for the amendments revising the components and functions of the National Advisory Council on Services and Facilities for the Developmentally Disabled.

The proposed regulations issued August 30, also do not cover the conduct of special studies required by the Act, nor the administrative aspects of the special projects authority for projects of national significance.

Comments, suggestions, and/or objections to the proposed regulations should be submitted on or before October 12, 1976, in writing, to the Director, Developmental Disabilities Office, Department of Health, Education, and Welfare, 330 C Street, SW, Washington, DC 20201.

ABA Resolves to Support Accessibility

The American Bar Association (ABA) House of Delegates has resolved to support vigorous enforcement of legislation to ensure access to public buildings and transportation services for the physically handicapped.

The report and recommendations of the ABA Section of Individual Rights and Responsibilities was approved at the organization's annual meeting this past August.

The ABA has authorized its president, or his designee, to testify before governmental bodies in support of federal, state, and local legislation, as well as policies and executive directives designed to ensure ready and effective accessibility.

The ABA further resolved to insure that its functions would be held in barrier-free environments in the future, thereby serving as an example for other groups.

To accomplish that objective, the Section recommended consultation with the American Association for the Advancement of Science, which considers accessibility of facilities in planning its meetings.

The Section's report on governmental action is critical of federal, state, and local mandates requiring accessible design in government funded building and transit programs which result in bureaucratic inaction. According to the report, the power of legislative directives is weakened without the sanctions necessary for enforcement.

The physically handicapped, the report continues, are barred from participating in the normal functions of society. Obstacles such as street curbs, buildings without ramps, inaccessible elevators, narrow aisles and doorways, and inadequate toilet facilities and telephones often prevent the handicapped from utilizing public buildings and transportation. Therefore, they are restrained from coming to the seat of government to petition congress, from transacting business, or obtaining government services; they cannot vote, attend public schools, conduct business, or become independent or self-supporting.

Although the federal and state governments have all, in varying degrees, taken steps to remove architectural barriers, the report points out that, "most state laws do not establish a special body to coordinate enforcement of, and compliance to, standards. Instead the states commonly leave such compliance responsibilities to state and local agencies charged with other duties, such as the fire marshall."

Although in the past decade

there has been significant federal legislation, such as the Architectural Barriers Act of 1968, the Urban Mass Transportation Act of 1964, and Section 504 of the Rehabilitation Act of 1973, the report states that the statutes have generally been regarded as suggestive, not directive, and, therefore, inadequately enforced.

The Section's report also notes that allegations as to the cost of barrier-free construction have been exaggerated. A July 15, 1975 report by the Comptroller General entitled "Further Action Necessary to Make Public Buildings Accessible," concludes that when barriers are eliminated in the initial design, the cost is negligible, and when barriers are eliminated in existing construction, the cost is still comparatively minor.

HEW Proposes Regulations for Section 504

Proposed regulations to implement Section 504 of the Rehabilitation Act of 1973 were issued July 16, in the *Federal Register* by the Department of Health, Education, and Welfare (HEW).

Section 504 provides that "no otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

The proposed regulations follow a Notice of Intent and draft regulations published in the *Federal Register* May 17, which indicated HEW plans to implement Section 504 (Reported in *Amicus,* July 1976). This Notice resulted in over 300 written comments submitted to the Office of Civil Rights (OCR) concerning the draft regulations and an attached statement of the estimated economic and inflationary impact of the draft proposal.

OCR invited comments on the proposed regulations by September 14, however, they noted that comments received after that date would be considered, if feasible, before the regulations are finalized.

Issues For Comment

The May 17 Notice sought comments on three specific issues which HEW felt should be considered apart from the draft regulations themselves. First was the issue of whether or not homosexuals, alcoholics, and drug addicts should be considered as groups to be protected under Section 504.

According to the proposed regulations, homosexuals will not be considered "handicapped." However, drug addiction was found to be within the statutory definition of "handicap" as set forth in the Rehabilitation Act of 1973.

The second issue concerned the degree of specificity necessary in the regulations to "provide adequate and accurate guidance to the public but, at the same time, to allow sufficient flexibility to foster prompt cooperation and compliance."

HEW has decided to continue with its specific and detailed mandates, as opposed to a more general statement which would delegate discretion to recipients. This decision was made on the basis that most comments favored detailed regulations as necessary to apprise beneficiaries of their rights, and to inform recipients of their responsibilities under Section 504.

The third issue concerned what HEW terms "balancing competing equities," that is carefully "assessing the overall impact of a particular requirement both on the persons protected by the statute, and those regulated by it."

HEW has concluded, despite numerous comments that the statute is absolute and contains no exception designed to allow such discretion, that its position on this matter as stated in the May 17 draft regulations was correct.

The Department, however, specifically asserts its commitment to the principle that "cost or difficulty are appropriate considerations, not in determining what constitutes discrimination, but in fashioning a

remedy if a recipient has been found to be discriminating."

No Enforcement Regulations

In addition, HEW has continued to defer action on its responsibility under Executive Order 11914 issued in April, 1976. This Order requires the Department to coordinate governmentwide enforcement of Section 504, and to issue general standards for other departments and agencies to follow in their promulgation of regulations implementing this section.

HEW has made no commitment in the latest version of the regulations to issue concurrent enforcement regulations. The Department stands by its original commitment to promulgate new consolidated procedural regulations for enforcement of all civil rights statutes, including those affecting handicapped persons.

However, if the new procedural regulations are not in effect when final 504 regulations are implemented, the procedural provisions of Title VI of the Civil Rights Act of 1964 will serve as the enforcement mechanism for 504 in the interim period.

Title VI prohibits discrimination in federally assisted programs on the basis of race, color, or national origin.

NCLH Analyzes Survey Data

In February, 1976, the National Center for Law and the Handicapped (NCLH) conducted a mail survey of approximately 200 individuals and 200 groups and organizations as to their perceptions of the problems and needs of the disabled.

The 400 surveyed represented those working on behalf of the handicapped, as well as handicapped individuals themselves. All respondents remained anonymous.

The major purpose of the survey was an initial assessment of the respondents' perceptions to assist the Center in determining consumer needs and problem areas. In addition, the questionnaire responses provided NCLH with additional information regarding resource persons, groups, and materials. The survey also served as a preliminary step in the Center's future use of similar testing instruments.

In addition to specific background questions regarding such information as residence, age, and disability, those surveyed were asked to rate the importance of various issues involving the handicapped, as well as the extent to which the legal system has adequately (actual) or should (ideal) address these areas.

Of the several hundred questionnaires mailed, 80 individuals and 79 groups and organizations returned forms suitable for analysis. Since a specific population was not defined and sampling procedures were not utilized, the generality of results are necessarily restricted to descriptions of only those organizations and individuals that responded.

The patterns may more or less accurately describe the state of affairs for larger populations, but since there was no systematic sampling design, there is no basis for this statement.

The average individual responding to the survey was middle age, well-educated, urban, professional, and upper white collar. About half of the individuals responding were handicapped.

The 79 organization and group respondents tended to be very diverse in age, size, geographical scope, clientele served, and size and type of membership.

Individual Responses

The survey results for individual respondents showed that overall, both disabled and non-disabled individuals felt that all of the problem areas listed were of great importance. In general, they also thought the legal system has not adequately addressed any of the problem areas and could be used a great deal more.

While the disabled and non-disabled generally agreed that all of the problem areas were important, they did not agree on the order of importance. Perhaps the most striking of these differences is in the importance attributed to use of public

facilities and the inability to find employment.

The disabled in this survey felt the most important problem confronting them was use of public facilities and the second most important problem was employment.

Non-disabled individuals in this survey rated employment first and placed use of public facilities second.

Organization Responses

Like individuals, the organization responses showed all the problems to be of generally high importance, the legal system doing a fair to poor job of addressing the problems, and ideally should be used to a much greater extent to resolve the problems. When taken as a whole, disabled and non-disabled individuals rated the problems slightly, but consistently, more important than organizations and groups.

Unlike the individuals, however, group respondents felt that poor public attitudes toward the disabled was the most important problem facing the disabled, with financial support programs and employment following closely behind. Use of public facilities placed sixth on the "importance" priority list.

Also like the individual responses, organizations and groups rated use of public facilities and employment as the most fertile areas for the legal system, but the latter group of respondents added financial support programs to their list of areas for effective legal system involvement.

The full analysis of data and summary of results, completed by Kenneth L. Spenner of the University of Wisconsin, is available from the Center.

Enforcement Rules for Civil Rights Statutes Issued by HEW

Proposed regulations implementing Section 504 of the Rehabilitation Act of 1973 were issued by the Department of Health, Education, and Welfare (HEW) July 16, 1976. However, no provision was made in the regulations for enforcement.

HEW previously issued in the May 3, 1976 *Federal Register* a Notice of Intent to promulgate new consolidated procedural regulations for enforcement of all civil rights statutes. According to the notice, the regulations would include enforcement of Section 504 which prohibits discrimination against qualified handicapped persons in federally assisted programs.

In an attempt to encourage citizen participation in the process of developing proposed regulations, the Office of Civil Rights (OCR) withdrew its June 4, 1975 Notice of Proposed Rulemaking.

The Department's objective in doing so is to encourage public participation, particularly from those persons and organizations likely to be affected by the regulations, on important questions relating to policies of enforcing civil rights laws and authorities.

If these new rules for the enforcement of the various civil rights laws are not in effect when final Section 504 regulations are implemented, the procedural provisions of Title VI of the Civil Rights Act of 1964 would serve as the enforcement mechanism for that section. Title VI prohibits discrimination in federally assisted programs on the basis of race, color or national origin.

Questions Presented in Notice

In its new Notice of Intent, the Department has issued a series of questions to serve as a starting point for public commentary. In addition, a summary of the issues and an invitation to comment will be published outside the *Federal Register.*

HEW has defined two basic issues which they believe warrant discussion. The first is the development of a workable process for insuring the resolution of complaints. The second issue involves the process used for determining priorities, including the extent to which interested

persons and organizations should participate.

The first issue raises a series of questions, including:

1) What type of information should be considered for a complaint; should it contain specific information and documentation?

2) Should OCR withhold action on a complaint when identical issues are being considered or litigated by another federal agency, a state agency, or private party?

3) When is a complaint resolved — when it is determined to be valid and a remedy or enforcement is initiated, or when it is determined to be invalid — are these sufficient?

4) Could other less formal methods of conciliation or mediation be used, rather than the formal process of investigation and negotiation?

5) Should OCR give priority to certain types of complaints?

6) Should OCR maintain certain identifiable stages in the complaint resolution process, as well as specific timetables?

7) Should state or other non-federal agencies participate in resolving complaints, particularly concerning investigation?

NCLH Comments

The National Center for Law and the Handicapped (NCLH) in response to HEW's May 3 request for public commentary on the above issues, has submitted the following recommendations:

1) The Department should accept all complaints on behalf of persons who may be mentally handicapped; therefore, NCLH rejects the suggestion that complaints be in writing and contain specified information. The Center recommends that advocates for the mentally handicapped be employed by the Department to assist clients in the complaint process.

Furthermore, the regulations should require that the individual be promptly notified of the receipt of the complaint, and informed of the right to obtain information related to complaints based on the Freedom of Information Act.

2) Under no circumstances should OCR withhold action on a complaint when the issues raised in that complaint are being considered by another federal agency, state agency, or private party. The withholding of action on complaints would discourage and frustrate complainants and would be contrary to the orders in *Adams v. Mathews* (Reported in *Amicus,* July, 1976).

3) Following resolution of a complaint, OCR should ensure that the complaint is truly resolved by monitoring the guilty party to determine that policies are changed and remedies are made.

4) Less formal methods of resolving complaints should be rejected, due to the temptation to settle the complaint in a manner less demanding of time and energy. Futhermore, recipients are required to provide a grievance procedure which would probably be administered informally.

5) HEW should not give priority attention to certain complaints. Each complaint should be processed in the order in which it was received, thereby eliminating ranking and the degree of harm that may occur by assigning priorities.

6) The timetables for enforcement of Section 504 must be no more expansive than those set forth in the court orders in *Adams v. Mathews.* Any deviation should be rare and should occur only in instances where the complaint could be resolved more effectively with additional time. In such cases, OCR should be required to inform the complainant of the reasons for delay, and obtain the consent of the complainant.

In addition, when a recipient promises to comply in a discriminatory action, a short period should be allowed for fulfilling that obligation. However, subsequent on-site investigation must be made within six months of the finding to assure compliance. An annual report from all recipients should be required to assist the Department in making compliance reviews.

7) State or local agencies should not be used for initial processing of an individual complaint, or for investigative activities. Such agencies generally have a large caseload and inadequate resources. Since the remedies for a violation of Section 504 involve the suspension or termination of federal

funds, it would be inappropriate and legally questionable for state or local agencies to have a direct role in such a process.

NCLH maintains that in order to provide a strong impetus to the enforcement process and to prevent confusion, it is imperative that the consolidated procedural regulations be issued simultaneously with Section 504 regulations. Furthermore, appropriate measures should be taken to inform handicapped individuals, and those obligated under the law, of their legal rights.

NCLH Staff Openings

In light of the NCLH grant approval, the Center announces two new openings:

Director of Research

The Director of Research will assist in the training of staff attorneys, legal interns, and social science personnel, as well as help in the establishment of goals for the agency. Prime responsibilities will include authenticating and supervising social science studies relating to the delivery of services to the mentally and physically handicapped, and assistance to attorneys in considering the social science aspects of issues.

The Director of Research should possess a graduate degree in sociology, social psychology, or other recognized social science disciplines, and should have at least two years of experience in dealing with consumerism, civil rights, civil liberties, and the needs of the handicapped.

Washington Liaison

The Washington, D.C. liaison will establish contacts and coordinate NCLH efforts with legal advocacy and consumer-provider organizations in the D.C. vacinity. Achievements in working with the handicapped and their spokespersons, members of Congress, and executive and independent agencies are essential.

Organization Assists In Affirmative Action For Handicapped

It takes more than a handshake to hire the handicapped. With that slogan and the Rehabilitation Act of 1973 behind it, Mainstream, Inc., has set out to help make affirmative action and non-discrimination in employment for the handicapped a reality.

Mainstream is a non-profit, tax-exempt organization which was created last summer to assist industry, labor, education, health institutions, and government grantees who are required to comply with affirmative action and reasonable accommodation provisions of the Rehabilitation Act. It is supported largely by foundation grants and private donations.

Leslie Milk, the organization's acting executive director, says Mainstream believes that most companies want to comply, but are not aware of how to do it or who to go to for assistance. In addition, she says, companies hesitate to ask the Department of Labor about compliance because they fear their questions may prompt an investigation.

Mainstream is trying to bridge this gap between government and industry by offering a consultation service to help develop affirmative action programs, by sponsoring conferences, by issuing a quarterly newsletter, by offering a telephone hotline service, and by operating a job referral service.

To date, most of Mainstream's work has been with businesses which come under the provisions of Section 503 of the Rehabilitation Act,

The Center also announces an opening for the following position:

Director of Education

The Director of Education will be primarily responsible for organizing and supervising the continuing education of professionals, workers, consumers, and the general public in the field of law and the handicapped. With the Editor, this individual will supervise the publication of the Center's bi-monthly magazine, *Amicus,* as well as all other media productions. Responsibilities will also include the arrangement of meetings, workshops, and institutes, and the packaging of information relating to current activities in the field of law and the handicapped.

The Director of Education should have a degree in communications, education, social science or, law, in addition to experience in media advocacy on behalf of handicapped persons.

Resumes, writing samples, and letters of reference relating to the above positions should be sent directly to Harvard Hollenberg, Deputy Director, NCLH, 1235 North Eddy Street, South Bend, Indiana 46617. *NCLH is an Affirmative Action/ Equal Opportunity Employer and encourages applications from the handicapped, women, and members of minority groups.*

according to Ms. Milk. Section 503 requires that all contractors doing business with the federal government in excess of $2,500 annually must take affirmative action to hire and promote qualified handicapped individuals. Final 503 regulations were issued in April.

In September when final regulations are issued for Section 504, which prohibits any organization receiving federal funds from discriminating against handicapped persons, Mainstream's clientele is expected to broaden, Ms. Milk said.

Mainstream has gained national attention for a model compliance program which it is helping Kaiser Aluminum and Chemical Company develop. Ms. Milk said Mainstream hopes to conduct one model project in each major industry.

"Most companies are interested in complying, but they are afraid of the expense," she said. "Headlines talking of a $35,000 wheelchair door and a $14,000 optical scanner for a blind person scare business. It is true that some accommodations are necessary, but we are coming to believe that the expense can be minor."

She cited the Kaiser project in Oakland, California, as an example. The company estimated it would cost $160,000 to make its headquarters barrier-free, but Mainstream believes it can be accomplished for under $8,000.

To facilitate affirmative action in another way, Mainstream encourages businesses to look at job descriptions differently. Instead of thinking of a handicapped person and the jobs that person could not handle, Mainstream would like businesses to identify the qualifications needed for a job and then "edit in" everyone who has those qualifications, including handicapped persons.

Ms. Milk said the organization wants to show businesses that handicapped persons make good employees, and in its newsletter, it features examples of employment situations in which the handicapped are successful. The newsletter is distributed free to 6,000 businesses and consumer groups.

To assist both businesses and individuals, Mainstream has also begun an employment referral service. It does not make direct placements, but refers businesses to the agency or rehabilitation counselor which represents the

handicapped job-seeker.

Mainstream is also beginning to set up a legal resource center which will direct both handicapped persons and businesses to an appropriate agency or office for the information they seek. In addition, the organization provides a telephone "hotline" in which questions of both individuals and companies are answered while identities are kept confidential. The number is (202) 833-1139.

Mainstream, Inc. has a staff of seven and can call on expert consultants for information and advice. Its legal counsel and one of its founders is Harold E. Krents, the blind lawyer who inspired the Broadway hit and subsequent motion picture, "Butterflies are Free."

Mainstream's offices are located at 1200 15th Street, NW, Washington, DC 20005.

Legal Resource Center Publishes New Journal

A new publication, the *Mental Disability Law Reporter,* has been launched by the Mental Disability Legal Resource Center, a component of the American Bar Association (ABA) Commission on the Mentally Disabled. The July-August inaugural issue has been sent out on a complimentary basis to legal services programs, public defender offices, and to organizations and individuals involved in the mental disability field.

The *Reporter* has been designed with the needs of legal services attorneys, public defenders, and public interest lawyers in mind. It will focus on case law, and legislative and regulatory developments in the area of mental disability.

Each issue will contain the full texts of selected major court decisions, most of which either have not been published or have not been widely disseminated. A feature article will also be published in each issue, as well as a bibliography of recent books and articles from legal and non-legal journals, arranged according to a numerical subject matter index.

One section of *The Reporter* will be devoted to providing attorneys with valuable tools which will be useful in their practice of mental disability law.

The material reported on in each issue will be made available to readers at a nominal fee to cover reproduction and mailing costs.

The yearly rate for subscriptions to *The Reporter* is $35 (six issues), with a reduced rate of $25 (six issues) for public defenders and legal services attorneys.

While the supply lasts, complimentary copies of the first issue may be obtained by writing the ABA Commission on the Mentally Disabled, 1800 M Street, NW, Washington, DC 20036.

New Attorneys at NCLH

Two new attorneys, Thomas O'Donnell and Ronald Soskin, have joined the staff of the National Center for Law and the Handicapped (NCLH).

O'Donnell was formerly employed as a partner in the firm of Larrimer and O'Donnell in Columbia, Missouri. He holds degrees in creative writing, American literature, and law from the University of Missouri.

Prior to establishing his law firm, O'Donnell served as associate director of the Legal Assistant Program at Stephens College in Columbia, where he taught law and English for five years.

For the past three years, Soskin has been a staff attorney with the Mental Health Information Service in New York City. As part of his responsibilities, he supervised the legal services of a local state hospital with a population of over 600.

Soskin graduated *cum laude* in economics and received his law degree from the University of Pennsylvania.

Both attorneys have experience as public interest advocates. While at the Mental Health Information Service, Soskin established the first office providing legal services for the mentally retarded in the state of New York. O'Donnell, through his law firm, represented individuals whose civil rights had been denied.

in the courts

The Cuyahoga County Association for Retarded Children and Adults, et al. v. Essex, et al.
No. C 74-587
(N.D. Ohio, E.D.)

In a setback to legal efforts to establish the right of the mentally handicapped to a free mandatory public education, a three-judge federal district court held that Ohio statutes which exclude the mentally handicapped from the public education system and establish special training programs dependent upon available funds do not violate U.S. constitutional rights to equal protection. The ruling was made April 5, 1976.

However, on the motion for summary judgment, the court ruled as unconstitutional certain regulations of the Ohio Departments of Education and Mental Health which do not afford basic rights of due process.

The Ohio statutes in question exclude from public education those children found "incapable of profiting substantially from further instruction".

The plaintiffs in this class action suit are all residents of the State of Ohio between the ages of 6 and 18 with mental disabilities. They contended that the statutes arbitrarily and capriciously deny them an opportunity to participate in Ohio's system of universal mandatory and compulsory education.

The plaintiffs also contested the statutes which classify children according to their I.Q. They alleged that children with I.Q.'s of 50 or less are excluded from public education and offered a voluntary system of training that is capricious and may or may not exist; and those having I.Q.'s between 50 and 80 are excluded from both the public school system as well as the voluntary system of training.

The court, however, held that a state school system may utilize classifications for educating children if a rational basis can be proved. Contrary to the plaintiffs' argument, the court ruled that children are not disqualified from the public school system on the basis of their I.Q., but because they are "incapable of profiting substantially from further instruction," and the court held such classification to be permissable.

"In dealing with a system of mandatory free public education, a state which determines that only those children who can derive actual benefit from a broadly based public educational system are to be included therein cannot be said to be acting arbitrarily," according to Judge Ben Green.

Judge Green did advise, however, that if children of particular I.Q. levels were being "rubber-stamped" into special education and/or out of the public school system without regard for statutory standards, and as a consequence of statewide policies fostered or condoned by defendants, this action might constitute denial of equal protection.

Although the court denied that the establishment of special education classes was a discretionary matter with the state, as the plaintiffs claimed, it agreed that the programs and services for the special training of the mentally retarded are based upon the state's discretion, dependent upon available funding, and afford priority to the mentally retarded and to those with greater intellectual capacity.

Relying on the principles stated in *Dandridge v. Williams,* which establish the constitutionality of classifications if they have a "reasonable basis," the court held that the Ohio special education classes were not unconstitutional.

If, however, there is a statewide policy whereby children of compulsory school age have not been tested to determine whether they are capable of substantially profiting from further instruction, and they are not within the public school system, the constitutional issue of equal protection could be raised.

The court ordered the defendants, persons individually and representing the Ohio Department of Education, Ohio State Board of Education, and Ohio Department of Mental Health and Mental Retardation, to institute supplemental regulations in compliance with constitutional rights to due process.

Specifically, the court stated, the Ohio regulations neglected to provide plaintiffs with proper notice of action,

opportunity for review of evidence for proper placement, opportunity to introduce into record additional material, and guarantees that the responsible person will receive all pertinent information prior to rendering a decision.

The Little Neck Community Association, et al. v. the Working Organization for Retarded Children, et al. No. 7494 (Sup.Ct., App.Div., N.Y.)

May 3, 1976, a New York appellate court affirmed a previous lower court decision that a group home for mentally retarded children constitutes a "family" and, therefore, complies with the legal requisites for single-family zoning.

The Little Neck Community Association, representing property owners of one-family residences in Queens, New York, filed suit September 23, 1975, to enjoin the Working Organization for Retarded Children (WORC) from using a single-family residence as a group home for mentally retarded children.

The New York trial court rejected their arguments and granted WORC's motion for summary judgment based upon the group's qualification as a "family". A "family" is defined by the New York City Zoning Resolution for purposes of residential zoning, as "not more than four unrelated persons occupying a dwelling, living together, and maintaining a common household."

WORC is authorized by the New York State Department of Social Welfare to operate a "group home," a facility for the care and maintenance of not less than seven, nor more than twelve mentally retarded children, who are at least five years of age. Significantly, the rules of the Department of Social Welfare also specify that the "group home shall be in an appropriate neighborhood and so located that it is readily accessible to religious, school, and recreational facilities, and other community resources".

As legal precedent, the appellate court cited *City of White Plains v. Ferraioli.* It stated that "the group home is structured as a single housekeeping unit and is. . .a relatively normal, stable and permanent family unit."

The appellants contended, however, that because of the children's mental disability they would not interact as a family and the home would, therefore, resemble a mini-institution. Consequently, they argued that the proposed home should be located in a residential zone other than one restricted to single-family homes.

Judge J. Titone disagreed, stating that "institutionalization has been the traditional means of accommodating and caring for the mentally retarded. However, the recent trend has been toward the establishment of community residence programs for the mentally disabled, including mentally retarded children. . . .Although WORC will provide services to children who would otherwise be subject to institutionalization, the services will be provided in a non-institutional environment."

Furthermore, the court noted, in the event that the group home did not constitute a family, it would qualify as a health related facility which is also permitted in a single-family residential zone.

Drennon v. Philadelphia General Hospital No. 76-239 (E.D. Pa.)

LaVon Drennon is a qualified laboratory technician who has epilepsy which is controlled by medication. Subsequent to a successful period of training and employment, and ranking high on the Philadelphia Civil Service Exam, she was denied employment by Philadelphia General Hospital due to her history of epileptic seizures.

Although the plaintiff's personal doctor assured her fitness to perform the job, and during her prior employment and training there were no harmful incidents, the Municipal Medical Dispensary after a superficial examination recommended that she be denied the position of Clinical Laboratory Technician I.

Following a series of per-

sonal visits and correspondence with the defendants, including officials of Philadelphia General Hospital, the City of Philadelphia, and the Civil Service Commission, she was finally rejected for the position.

Consequently, Drennon filed suit January 26, 1976, in the United States District Court for the Eastern District of Pennsylvania. She charges that the defendants violated her constitutional rights to equal protection and due process under the 14th Amendment and the Civil Rights Act of 1871. She also alleges violation of her statutory right to be free from discrimination under Sections 503 and 504 of the Rehabilitation Act of 1973.

The plaintiff has asked the court to issue a preliminary and permanent injunction stopping the defendants from continuing their present policies and practices, as well as a final judgment declaring these policies and practices unconstitutional. She also requests appointment to the position of laboratory technician at the rate of pay she would have been earning had she not been discriminated against, in addition to back pay awarded from the date she originally became eligible for the position.

Moreover, she requests reasonable attorneys fees, and compensation for injuries resulting from employment discrimination.

The policy which the plaintiff contends violates her constitutional rights is that of rejecting for municipal employment persons who have had an epileptic seizure within the two years prior to appointment. She argues that the policy bears no rational relationship to any legitimate state goal, and has no substantial relationship to any stated governmental interest.

Suspect Classification

The plaintiff also alleges that a physical handicap, such as epilepsy, constitutes a suspect classification. She claims that "such a classification creates an irrebuttable presumption," that is, it presumes that persons with a history of epilepsy cannot be competent laboratory technicians and, therefore, deprives the plaintiffs of due process. Additionally, she contends the policies lack standards to judge capability and procedures to challenge or appeal a disqualification.

"Among the greatest burdens of persons with epilepsy is not the disability itself but rather the attitude of others towards them. . . .The policy of denial of employment based on the condition of epilepsy is founded on prejudice against handicapped persons which has no basis in fact," the complaint asserts.

Furthermore, the complaint points out that "the major obstacle to employment of epileptics is not their inability to perform job tasks or the actual potential danger of the employment but rather misconceptions about the effects of epilepsy and feelings of discomfort associated with disability in general."

The plaintiff also claims a right of action under Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against qualified handicapped persons in federally assisted programs. Although final regulations and procedures for enforcement have not been issued, the suit contends that a private remedy is valid based upon the standards outlined in *Cort v. Ash* (1975). However, when these standards were applied to *Lloyd, et al. v. Illinois Regional Transportation Authority, et al.,* the federal district court held that Section 504 did not create a private cause of action. That case is currently on appeal to the United States Court of Appeals for the Seventh Circuit.

504 Recognized

In the case of *Hairston v. Drosick,* however, the court recognized that, although final regulations to implement Section 504 have not been issued, reliance could be placed directly on the statute.

Defendants have filed a motion to dismiss the case and that motion is now pending.

United Handicapped Federation, et al. v. Andre, et al. 409 F. Supp. 1297 (D. Minn. 1976)

On March 11, 1976, the United States district court in Minnesota held that no federal legal authority requires transit buses to be totally accessible to persons confined to wheelchairs. Therefore, the defendants' motions to dismiss the complaint were granted.

The defendants include officials of the Metropolitan Transit Commission (MTC), the Urban Mass Transportation Administration (UMTA), the U.S. Department of Transportation, and AM General Corporation.

The plaintiffs are the United Handicapped Federation, a Minnesota non-profit corporation, and the North County, Minnesota Chapter of the National Paraplegia Foundation. They brought suit challenging the defendants' acquisition of transit buses, with financial assistance from UMTA, which were not specially equipped to transport the wheelchair handicapped.

As statutory authority for the right of every person to public transportation, the plaintiffs cited the Urban Mass Transportation (UMT) Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

The UMT Act states that handicapped persons have a right to mass transportation, that special efforts be made in the planning and design of mass transportation to accommodate the handicapped, and that programs receiving federal aid should comply with this policy.

The court ruled, however, that this Act does not require that every standard-size transit bus be specially equipped to transport the wheelchair handicapped.

Court Cites Snowden

As authority for its ruling, the court cited *Snowden v. Birmingham-Jefferson County Transit Authority, et al.* (Reported in *Amicus,* November 1975), which is presently on appeal. In that case, an Alabama district court found that disabled persons do not have a fundamental right to public transportation, based upon the federal statutes also cited in *United Handicapped Federation v. Andre.*

In addition, the *Andre* court found that it was unreasonable to interpret the Act as requiring total accessibility, because at that time no bus manufacturer in the U.S. manufactured a standard-size bus specially equipped to safely transport those confined to wheelchairs.

Similarly, the court held that the Federal-Aid Highway Amendments of 1974 do not require total accessibility for every standard-size transit bus.

Allege Violation of Section 504

The complaint also cited Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination of the handicapped by any program receiving federal aid. The court ruled, as in the *Snowden* case, that the Act sets forth a statement of congressional policy and, therefore, does not require that all standard-size, regular route transit buses be totally accessible to handicapped persons. As in *Snowden,* the transit authority does not exclude the wheelchair handicapped from riding the buses if they can arrange for assistance, the court commented.

Finally, the plaintiffs alleged a cause of action based upon a denial of equal protection and a denial of their right to travel. The court, however, ruled that no invidious discrimination existed, again affirming the *Snowden* case. Defendants do not prohibit plaintiffs from riding mass transit buses, and the Constitution does not require defendants to provide special facilities for a special class of people, the court held.

Unified School District No. 1 v. Thompson No. 416-488 (Cir.Ct., Dane County, Wis.)

Barbara Thompson, Wisconsin Superintendent of Public Instruction, ordered the Racine School District to provide an appropriate physical education program for Michael R. Byrd, a mentally retarded child.

May 21, 1976, the Dane County Circuit Court held that the superintendent's decision was invalid.

Prior to the Thompson ruling, Byrd's father had requested the school district to provide his son with an alternative, mainstreamed education (integration into a regular classroom) and a physical education program based upon the Wisconsin special education laws.

The school board, however, decided the child's program should not be changed. Byrd's father appealed the decision to Superintendent Thompson.

Thirty-one days following the father's appeal, the superintendent issued her order that the child should be provided with a physical education program, but affirmed that he should not be placed in a mainstreamed educational program.

The school district filed suit against the superintendent under the Wisconsin Administrative Procedure Act. The board argued that the decision came one day after the statutory 30 day limit for the superintendent to issue a decision following an appeal from a local school board's ruling.

Furthermore, the defendants contended that Wisconsin special education laws require that if no decision is made by the superintendent within 30 days, the school board's decision is automatically affirmed.

The child's father, represented by the National Center for Law and the Handicapped, intervened in the court proceeding, arguing that the superintendent's action was in compliance with Wisconsin special education statutes.

The court rejected that argument, as well as arguments by Byrd and the superintendent, ruling that the Wisconsin Administrative Procedure Act did not permit such a review of a special education decision. The court, however, strongly criticized the Wisconsin legislature for poor drafting of the special education law and made several recommendations for amendments.

Although the merits of the case were never reached in this suit, Byrd was successful in obtaining an individualized physical and academic education program for his son, as a result of voluntary changes made by the school district.

Update: *Kremens v. Bartley* No. 75-1064 (U.S. Supreme Court)

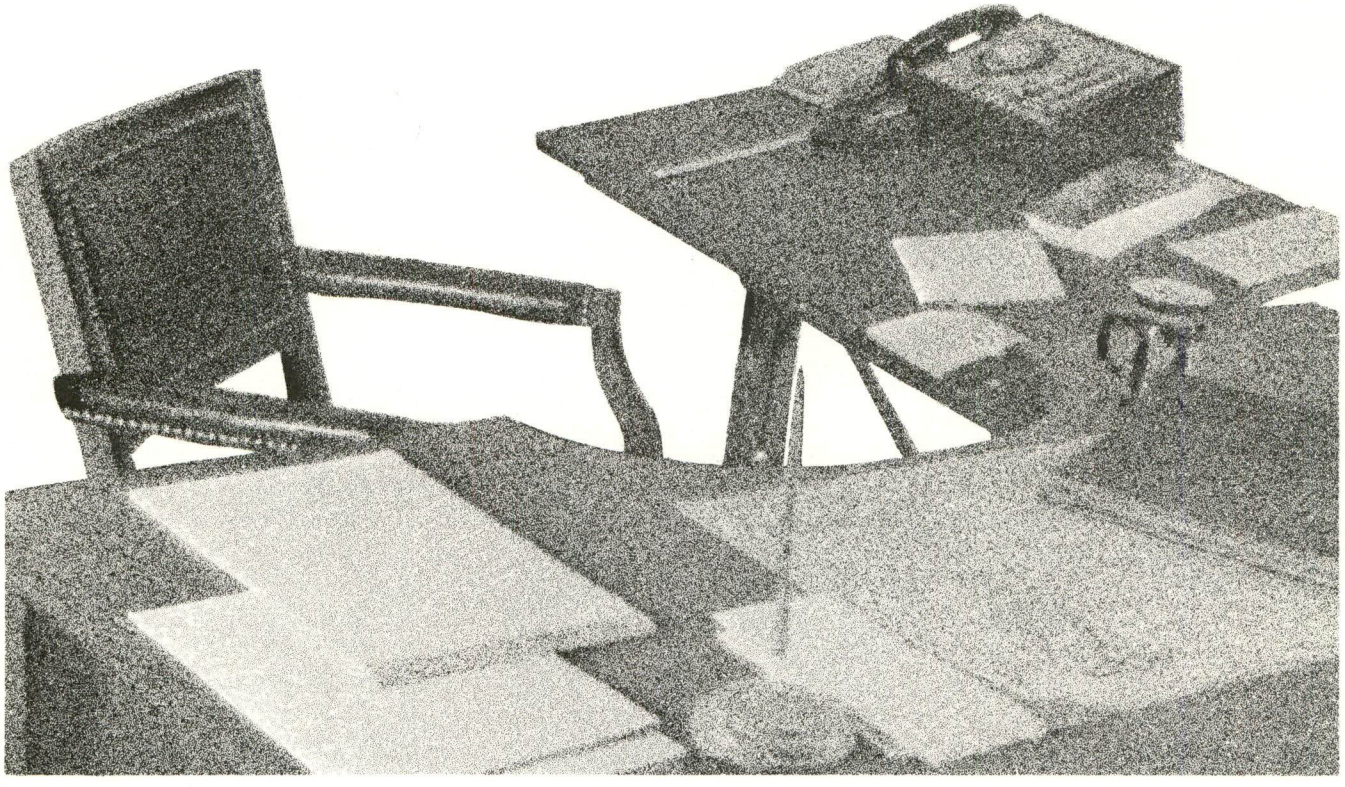
The United States Supreme Court has agreed to hear the case of *Kremens v. Bartley* (reported in *Amicus,* November 1975 and January 1976), appealed from the United States District Court for the Eastern District of Pennsylvania.

On July 24, 1975, the Pennsylvania court declared unconstitutional, in violation of the due process clause of the 14th Amendment, several sections of the state Mental Health and Mental Retardation Act. These sections permit parents and guardians to place their child in mental health facilities without the benefit of a full hearing or provision for independent counsel for the child.

The court, on November 17, 1975, ordered the defendants to implement the relief to which the plaintiffs were entitled. The defendants were directed to hold due process hearings on future commitments and to compensate all persons who had been committed under the unconstitutional statutes.

On December 15, 1975, the Supreme Court issued a stay of the order, which allowed Pennsylvania to refrain from following the terms of relief until consideration of the case by the Court.

Affirmative Action: Opening Doors To Employment



Since its beginning in 1941, equal employment opportunity legislation, in many cases, has required employers to set up Affirmative Action (AA) programs for the hiring and advancement of various minority groups.

The Rehabilitation Act of 1973, in an effort to protect the employment rights of the handicapped, includes a section requiring all contractors and subcontractors with federal contracts of $2,500 or more to take affirmative action to employ and promote qualified handicapped individuals. Regulations for this part of the Act, Section 503, took effect April 16, 1976, and were published in the *Federal Register.*

Those with federal grants and federally assisted contracts are not included in Section 503, but are covered by a separate section of the Rehabilitation Act, Section 504. This section prohibits discrimination against disabled persons in federally funded programs.

Covered under Section 503, however, are approximately half of all businesses in the United States. In addition to hiring handicapped individuals, these employers must also take affirmative action in job assignments, promotions, training, transfers, and terminations.

The Office of Federal Contract Compliance Programs (OFCCP), charged with enforcement of

Section 503, has been assisting employers obligated under this section in establishing affirmative action programs and in settling discrimination complaints.

According to Dave Brigham, an employment specialist with the OFCCP, approximately 1600 complaints have been received by his office since Section 503 went into effect. The issuance of final regulations has precipitated a substantial increase in complaints, and he estimates that the number received per month averages about 150.

The procedure for initiating a complaint requires that it be sent in writing to one of the 10 regional offices for the Department of Labor. (These offices are listed in the Special Report Section of this issue.) The regional office then conducts an on-site investigation for discovery purposes and to examine the existing AA program.

A determination based on this investigation is directed to and reviewed by one of two divisions of the OFCCP. If the division concludes that the determination is fair, conciliation talks are handled through the regional office.

However, in the event that the allegation is not substantiated, the complaint is returned to the regional office for additional findings. A further investigation is also conducted when a dispute arises between the division and the regional office.

According to Brigham, four teams have been established by the Department of Labor to review AA plans with federal agencies negotiating contracts. Each team is comprised of contract agents assigned to one or more such agency. Brigham noted, however, that reviews of AA programs required by Section 503 have not been conducted on any large scale.

Of the nearly 1200 complaints received between July, 1975, and July, 1976, approximately 50 percent have been resolved, Brigham said. In resolving the complaints to date, the OFCCP has not yet had to resort to any of the sanctioning powers outlined in Section 503.

In accordance with the regulations, one of three sanctions can be used by the director of the OFCCP if it is decided that such contractors have acted in a discriminatory manner and have refused to negotiate an equitable settlement: 1) any expected funds, usually awarded quarterly, can be withheld until compliance is made; 2) the contract can be terminated; or 3) the OFCCP can refuse to allow the contractor to bid in the future.

Brigham noted that contractors are aware of the sanctions which can be taken and thus far have made the efforts necessary to continue their contract.

In settling discrimination complaints, Brigham said a precedent was recently established to award back pay from the date a qualified person was interviewed, but was not hired and, in fact, should have been employed.

In resolving other cases where another individual was hired instead, the handicapped person was offered a different job, one mutually agreeable to both parties.

Since the enactment of Section 503 regulations, few individuals who have alleged discrimination in employment have had to result to the courts for relief. Strong enforcement on the part of the federal government can prevent the need for such action, and help to reinforce the authority and intent of the law.

Employment Legislation: A Look at Its History

The development of equal employment opportunity legislation began in 1941, when President Franklin D. Roosevelt issued an executive order[1] establishing a federal fair employment practices commission and requiring a nondiscrimination clause in defense contracts. An executive order issued in May, 1943[2] required that all government contracts contain a nondiscrimination clause. Because of World War II, many companies held such contracts, and the orders applied to a large number of employers. During the Korean War, in 1951, President Truman issued a similar order,[3] which prohibited discrimination on the basis of race in federal contracts.

Although additional executive orders were issued in the intervening years, an order[4] issued by President Kennedy was thought to be particularly effective because it applied not only to the individual plant which has a federal contract, but also to all employment practices of the federal contractor. This order also contained the affirmative action language which is still used in equal employment legislation.

. . . equal employment opportunity laws which protect handicapped persons contain many parallels to earlier civil rights legislation.

In 1963, Congress passed the Equal Pay Act[5] so that women who performed the same work as men would receive equal wages. That statute is enforced by the Wage and Hour Division of the U.S. Department of Labor.

Perhaps the most significant federal equal employment opportunity law, Title VII of the Civil Rights Act,[6] was passed in 1964. That statute prohibits discrimination on the basis of race, sex, or national origin, and applies to all employers who have 15 or more employees. It is administered by the Equal Employment Opportunity Commission (EEOC). Although a person alleging discrimination must first file an administrative complaint with the EEOC, there is a right to bring a lawsuit in federal court if the EEOC does not act on the complaint within a specific period of time. This alternative is called a private cause of action.

In September, 1965, Executive Order 11246, was issued to prohibit federal contractors from discriminating in employment on the basis of race, creed, color, or national origin. This order, which requires that such contractors also take affirmative action to ensure equal opportunity, was amended in 1967, by Executive Order 11375, to prohibit discrimination on the basis of sex as well. These orders, and regulations to implement them, are enforced by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP).

The Equal Employment Opportunity Act, passed by Congress in 1972, provided the EEOC with authority to bring suits, expressly applied Title VII to state and local governments, and added provisions relating to federal employees and applicants who had previously been protected by a series of executive orders.

Although these statutes, regulations, and executive orders prohibit discrimination only on the basis of race, sex, color or national origin, the equal employment opportunity laws which protect handicapped persons contain many parallels to earlier civil rights legislation.

In 1948, Congress amended the Civil Service Act to prohibit discrimination in federal employment because of a physical handicap, provided "that such employment will not be hazardous to the appointee or endanger the health or safety of his fellow employees or others."[7]

Although the Civil Service Commission has promulgated regulations to implement the Civil Service Act,[8] there has been little awareness of such requirements by job applicants or federal agency personnel themselves.

A recent lawsuit involves the successful reliance on the statute and its regulations. In *Smith v.*

Fletcher,[9] plaintiff Charlotte Smith claimed that the National Aeronautics and Space Administration (NASA) discriminated against her in job assignments and promotions, both because she is a woman and a paraplegic. Ms. Smith filed a complaint with the Civil Service Commission in December, 1971, and a hearing examiner found that she had been severely mistreated as a result of arbitrary and unfounded decisions concerning her physical capabilities.

However, although both the hearing examiner and an appeals board recommended that the agency provide relief, no relief was specified and the parties could not agree on what was adequate.

The Federal District Court for the Northern District of Texas ordered that NASA appoint Ms. Smith to a GS-13 position effective February, 1974. The court awarded damages in the amount of the difference in pay she had received as a GS-9 employee and what she would have been paid as a GS-13. The defendants have appealed the decision to the U.S. Court of Appeals for the Fifth Circuit. Briefs have been filed, but oral argument has not yet been scheduled.

In another case involving a federal employee, *McNutt v. Hills,*[10] the plaintiff has relied not only on the statutes and regulations described above, but has also pointed out that several sections of the Federal Personnel Manual,[11] as well as Section 501 of the Rehabilitation Act of 1973[12] prohibit discrimination on the basis of handicap by any federal agency. Section 501 provides that each department, agency and instrumentality in the executive branch submit an affirmative action plan for the hiring, placement, and advancement of handicapped individuals. Such a plan is to be submitted to both the U.S. Civil Service Commission and the newly created Interagency Committee on Handicapped Employees.

William McNutt, a blind employee of the Department of Housing and Urban Development (HUD), first filed an administrative grievance alleging discrimination because of his handicap. Although the grievance examiner found that McNutt was correct and, although the final agency decision did not deny those findings, McNutt was not provided any relief as a result of his grievance. Therefore, in August, 1975, he filed a lawsuit. Both sides have submitted motions for summary judgment which ask that the case be decided on the record without the necessity of a full scale trial. The judge has not yet ruled on these cross motions.

Recent Legislative Developments

Another federal statute which relates to the employment of handicapped persons is commonly referred to as the Randolph Sheppard Act Amendments of 1974.[13] These amendments are designed to promote economic opportunities for the blind and encourage them to strive to be self-supporting. To accomplish these goals, the Act mandates that, in authorized vending operations on federal property, priority be given to blind persons.

. . . unless the laws are effectively implemented and enforced, the small number of lawsuits . . . may rapidly increase.

An administrative complaint and a federal suit based on these amendments were filed last year in Ohio and are still pending. In this class action suit, *Ohio Rehabilitation Services Commission v. United States Postal Service,*[14] the plaintiffs contend that the U.S. Postal Service contracted for food services at a newly constructed bulk mail center without considering that priority. The United States District Court for the Southern District of Ohio granted an injunction to maintain the status quo while arbitration of the administrative complaint takes place.

The Vietnam Era Veteran's Readjustment Act of 1974 and implementing regulations[15] requires affirmative action by government contractors with federal contracts or subcontracts of $10,000 or more, as well as by federal agencies in the hiring and advancement of qualified veterans of the Vietnam era and disabled veterans.

As noted previously, Section 501 of the Rehabilitation Act of 1973 also requires federal

Earlier this year, a federal judge in Philadelphia held that the Philadelphia School District cannot refuse to consider blind persons to be teachers of sighted students.

agencies to take affirmative action to hire and advance in employment qualified handicapped individuals. For purposes of that section, as well as for Section 503, affirmative action by contractors, and Section 504, nondiscrimination by recipients of federal funds, a handicapped individual is defined as "any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such an impairment, or is regarded as having such an impairment."[16]

Section 503[17] of the Rehabilitation Act and the regulations[18] issued by the OFCCP, the agency charged with the responsibility of enforcement, provide that any contract in excess of $2,500 entered into by any federal department or agency for the procurement of personal property and nonpersonal services contains a provision requiring the contracting party to take affirmative action in hiring and advancing qualified handicapped individuals. The aggrieved individual may file a complaint with the OFCCP, which will defer action for 60 days if the contractor has its own internal grievance procedure.

In addition to Section 503, Section 504[19] of the Rehabilitation Act provides that no otherwise qualified handicapped individual "shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Although the statute has been in effect since 1973, regulations to implement it have only recently been proposed. By executive order,[20] President Ford required the Department of Health, Education, and Welfare (HEW) to coordinate the implementation of Section 504 by all federal departments and agencies empowered to extend federal financial assistance to any program or activity. Thus, the regulations issued by HEW will be used as guidelines by other federal agencies in the drafting of their own regulations.

HEW's proposed regulations[21] for Section 504 contain general provisions, as well as provisions relating to employment practices; program accessibility; preschool, elementary, and secondary education; postsecondary education; and health, welfare, and social services.

The eight provisions included under the heading "employment practices" include a general description of the types of discrimination which are prohibited, the concept of reasonable accommodation, employment criteria or tests, preemployment inquiries, recruitment, compensation, job classification and structure, and fringe benefits. The proposed rules offer specific, concrete standards which will apply to all recipients of federal funds and which can be utilized by private employers for guidance in establishing nondiscriminatory hiring practices.

Cases in Point

Although neither Section 503 nor Section 504 expressly provides a person with the right to bring a lawsuit in federal court, suits have been brought under the theory that a private cause of action is implied for the effective enforcement of these statutes.

In *Drennon v. Philadelphia General Hospital*,[22] the plaintiff, a laboratory technician who is an epileptic, filed suit in federal court on the basis of these sections, as well as on the basis of the equal protection and due process clauses of the 14th Amendment to the U.S. Constitution. Although she successfully completed the civil service exam, LaVon Drennon alleges that she was not hired by the city hospital because of her epilepsy. The defendants have filed a motion to dismiss the case,

and that is now pending. (Reported in this issue's In the Courts section.)

Earlier this year, a federal judge in Philadelphia held that the Philadelphia School District cannot refuse to consider blind persons to be teachers of sighted students. In a case entitled *Gurmankin v. Costanzo,*[23] the court determined that Judith Gurmankin's due process rights were violated because of the "irrebutable presumption" that blind persons could not be teachers. The judge also noted that such discrimination was also the kind which is prohibited by Section 504 of the Rehabilitation Act.

Although the plaintiff had also alleged a denial of the equal protection of the laws, the court did not find it necessary to address that additional constitutional argument in light of its holding. The decision has been appealed to the U.S. Court of Appeals for the Third Circuit by the Philadelphia School District. (Reported in *Amicus,* May 1976.)

State Nondiscrimination Statutes

Although these federal statutes as described do not have as broad a scope as Title VII of the Civil Rights Act of 1964, they do provide remedies which can be utilized by handicapped persons who believe they have been discriminated against. Besides the statutory basis for a claim of discrimination, an applicant for public employment may also rely on the due process and equal protection clauses of the 14th Amendment to the U.S. Constitution. Beyond that, however, there are state constitutional or statutory provisions which also prohibit discrimination in employment on the basis of handicap. Some state laws provide for a fair employment practices commission or a civil rights commission to accept and investigate individual complaints of discrimination. Other states merely provide a broad statement of public policy without providing for either an administrative mechanism or private cause of action for the aggrieved individual to utilize. (See State Chart in this Section of *Amicus*.)

The existence of federal and state legislation is an important part of the effort to provide equal employment opportunities for handicapped individuals. However, unless the laws are effectively implemented and enforced, the small number of lawsuits presently in the courts may rapidly increase. Acknowledgement and effective enforcement of these laws by employers, consumers, and government officials is a necessary and important step in breaking down the barriers which exclude disabled people from leading full lives.

FOOTNOTES

1. Executive Order 8802. An executive order is issued by the President pursuant to his general powers as Chief Executive.
2. Executive Order 9346, May, 1943.
3. Executive Order 10308, 1951.
4. Executive Order 10925.
5. 29 U.S.C. Section 206(d).
6. 42 U.S.C. Section 2000e.
7. P.L. 80-617, codified as 5 U.S.C. Section 7153.
8. 5 CFR Section 713.401.
9. 393 F. Supp. 1366 (S.D. Tex. 1975).
10. Civ. Act. No. 75-1422, D.D.C., filed August 29, 1975.
11. Chapter 713 and Chapter 306.
12. 29 U.S.C. Section 791.
13. P.L. 93-516, 20 U.S.C. Section 107 *et seq.*
14. HEW Admin. No. 75-1 and C-1-75-263 (S.D. Ohio, 1975).
15. P.L. 93-508, 38 U.S.C. Section 2012 *et seq.* and 41 CFR Part 50-250.
16. 29 U.S.C. S.C. Section 706(6).
17. 29 U.S.C. Section 793.
18. 41 *Federal Register* 16147, April 16, 1976.
19. 29 U.S.C. Section 794.
20. Executive Order 11914, April 26, 1976.
21. Proposed Rules, Programs and Activities Receiving or Benefiting From Federal Financial Assistance, Nondiscrimination on the Basis of Handicap, 41 *Federal Register* 29548, Friday, July 16, 1976.
22. No. 76-239 (E.D. Pa. 1976).
23. 411 F. Supp. 982 (E.D. Pa. 1976).

An Interview With

The President's Committee on Employment of the Handicapped

Earlier this year the President's Committee on Employment of the Handicapped (PCEH) in Washington, DC, established a new division to work particularly in the area of affirmative action. The following interview was conducted with H. Paul Messmer, director of AA Programs for PCEH, and takes a look at the activities and findings of the division since its inception.

AMICUS: When was the Affirmative Action Division of the President's Committee on Employment of the Handicapped formed, and what is the major purpose of the Division?

MESSMER: The Affirmative Action (AA) Division was formed in January of this year - 1976. Harold Russell, the chairman of PCEH, on the basis of the Rehabilitation Act of 1973, Section 503 and Section 504 particularly which requires affirmative action or nondiscrimination, felt that PCEH ought to have a program to coordinate the activities of its subcommittees with the agencies responsible for those sections of the Act. He felt PCEH should provide information which would assist these agencies by conferring with the people who are being regulated, namely the employers or institutions, and the people who are expected to benefit, namely handicapped persons.

PCEH wants to insure that in carrying out the affirmative action programs the real benefits to handicapped persons will be realized to their maximum. The Committee hopes employers and agencies work out methods of conducting the programs without too much difficulty and without spending all of their time debating and arguing with each other, rather than assisting handicapped people.

AMICUS: How many people staff the AA Division?

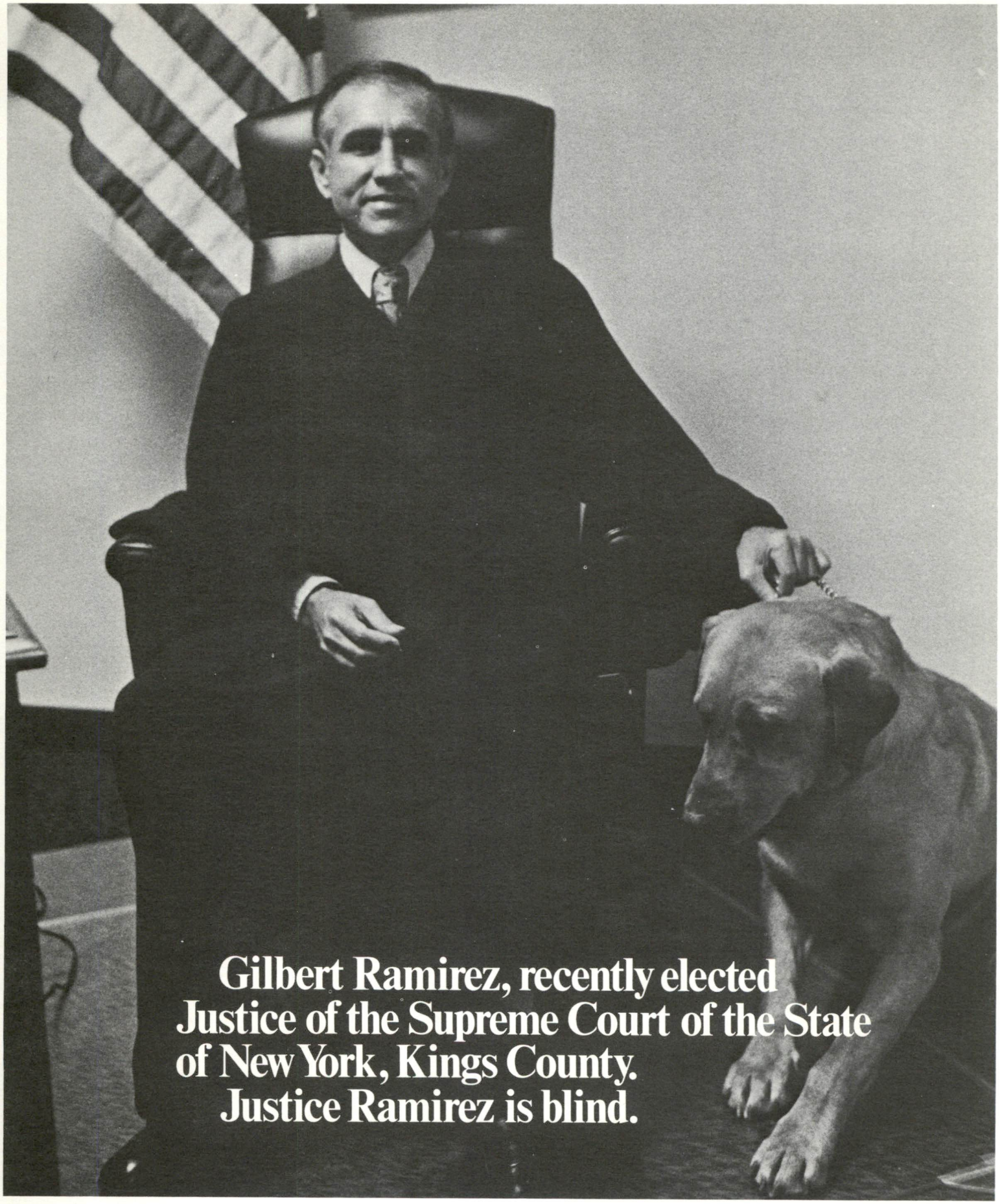
MESSMER: The staff includes an administrative assistant and myself as director of AA Programs. We also have an advisory group of 20 persons who represent the employer and employer groups, organized labor, veterans, and consumer groups. We work with and through them.

Of course there are many people on the staff of PCEH who become involved in one part or another of the program through their contacts with Governor's committees or with employer or consumer groups.

AMICUS: What specifically is the purpose of the advisory group?

MESSMER: As the affirmative action program has developed, it's been necessary to educate, to provide technical assistance to individuals, and to be able to answer questions that come in to PCEH from a variety of sources. In order to be realistic in our responses, in the technical assistance we provide, or in the educational or promotional materials that we produce, we rely on the advisory group for guidance based on their experiences and their review of questions coming to our attention. The group recommends the type of action necessary to resolve problems or give direction to PCEH programs.

For example, we learned that there are certain regulatory agencies other than the Office of Federal Contract Compliance Programs (OFCCP) or the Office for Civil Rights (OCR) in HEW who have certain rules or licensing procedures which may, in fact, hinder an affirmative action program. Where we recognize problems of this nature, we work with the responsible agencies to see what can be done.



The President's Committee on Employment of the Handicapped.
Washington, D.C. 20210

School of Visual Arts Public Advertising System

AMICUS: Are you referring specifically to federal agencies and in what ways can their rules or procedures hinder an affirmative action program?

MESSMER: Yes. For example, in order to obtain a license, the licensing agency has certain physical and mental requirements which must be met. An employer could and has said "these requirements are not necessary; we want to hire this person." However, the licensing agency refuses to issue a license on the basis of the standards. And so the employer, who is willing to employ the individual, who feels that individual is capable or that they will be a safe employee, is in a position where the person cannot be hired because a license is not issued.

AMICUS: Were any efforts made prior to promulgation of final regulations for Section 503 to incorporate those type of requirements or to have such agencies conform to the regulations.

MESSMER: Well, I doubt that it was done at the time the regulations were being developed.

AMICUS: But, according to Section 501 of the Rehabilitation Act of 1973, which requires federal agencies to take affirmative action in employing the handicapped, aren't such licensing procedures illegal?

MESSMER: Well, if you're asking my opinion, and I'm not a lawyer, I would say no, because Section 501 does not say anything about the operation of the agency other than the employment, promotion, etc., of a qualified handicapped person in federal service.

AMICUS: So even though their licensing requirements are discriminatory those agencies are still not liable under Section 501?

MESSMER: It doesn't appear that they are.

AMICUS: And the AA Division of PCEH is now working with such agencies to work out problems of this type?

MESSMER: Yes, and the reception we're receiving is favorable. It's similar to the situation that existed when PCEH went into what was then known as the Architectural Barrier Removal Program. It wasn't that everybody actually built buildings or designed them to prohibit use by the handicapped, it was just that nobody thought about it. The point is that we need to bring it to their attention, say "Hey, you better think about this."

AMICUS: Are you also working closely with the Office of Federal Contract Compliance Programs (OFCCP) which is charged with enforcing Section 503? And what type of coordination efforts are you making with them?

MESSMER: Yes, we do work with the OFCCP. We have worked with them in developing Section 503 regulations and have assisted them from the beginning. We started a series of public seminars in July of 1974, immediately following the first issuance of regulations in June of '74. We developed and sponsored meetings to which federal contractors, consumers, and public and private service agencies such as rehabilitation agencies, employment services, Goodwill, and Easter Seal Society were invited to participate. These meetings were held in order to provide a broad, uniform understanding of the regulations, and how the program could work with the least difficulty for all persons concerned, and mostly for handicapped persons. We are continuing to arrange similar meetings.

AMICUS: How do you feel about the enforcement efforts of the OFCCP? Do you think they are adequate? Are they doing the job they are supposed to be doing?

MESSMER: I can answer that in two ways. I'll answer first by saying yes, I think at this time they are doing a good job — not necessarily excellent, but a good job. I think that in spite of the newness of this type of program, in spite of the definitions that are provided in the Act, and in spite of the fact that there really isn't a group, a homogeneous group that you can point to and say these are the handicapped, they are doing a good job.

Secondly, I would say that resolving complaints is taking a long time, but there are reasons for this. For example, the degree and the way by

which persons are handicapped varies considerably. And I'm not talking semantics. But a disability which may be identical for two people would not necessarily impose the same kind or the same degree of handicap on those two people.

And this is one of the problems in resolving complaints — the efforts necessary to sort out the cases as the complaints come in. The OFCCP is actually setting precedent and, in order to do this in a very thorough fashion, things may take a little longer.

But although some cases are taking longer, I don't think that they have been deliberately held over. I think once precedent is established and the office gains experience in this particular area, enforcement should move along a little differently and more rapidly.

AMICUS: Have you found the provision in the regulations requiring the employer to make reasonable accommodations to be much of a problem for businesses?

MESSMER: Not so far. The comments that we've heard, both from the advisory group and from other individuals, are that the accommodations that employers have made, and that they've been required to make, are not of the kind to cause problems either in cost or in the actual process.

AMICUS: Have you found in working with these various organizations and in your contacts that when employers find out that the cost involved in making reasonable accommodations is not significant, they change their attitude and are more open to hiring a handicapped individual than they might have been before?

MESSMER: I would say that as they learn that accommodations really aren't all that expensive, it may increase the readiness with which they would consider hiring the handicapped. But I don't know of any case that has developed to the point where an employer has said "until we resolve the accommodation cost I don't want to hire any handicapped persons." At least I am not aware of any like that.

Actually, during the past 25 to 30 years certain accommodations have been made in order to employ handicapped persons. So the idea of accommodations is not new.

AMICUS: What type of assistance does the AA Division of PCEH provide for the handicapped consumer?

MESSMER: A handicapped person may call or write in and want information on Section 503 regulations. We would write them and point out some things they should look at carefully and send them a copy of the regulations.

They may also write in expressing an interest in starting a small business and requesting information on the process for obtaining a loan. We would then respond with information we have available about small business loan provisions for handicapped persons.

PCEH also has a committee on the physically handicapped (composed of handicapped persons only) to provide the organization with information concerning the needs of handicapped persons (consumers). However, the recommendations of this committee may be handled by other committees of PCEH. For example, the Committee on Barrier Free Design, Medical Committee, or Employer Committee may each be assigned a task generated by the Committee on the Physically Handicapped.

AMICUS: What materials has the AA Division published or will they be publishing?

MESSMER: We have published a brochure entitled "Affirmative Action to Employ Handicapped People: A Pocket Guide" which explains in layman's terms the regulations of Section 503. We are considering publishing a similar guide on Section 504; however, this has not been finalized. We also will cooperate in publishing a paper on OFCCP activities in regard to 503. This will include information on the OFCCP's enforcement efforts, as well as on the type of technical assistance that employers are asking of that agency, the nature of complaints the OFCCP is receiving, and how complaints are being resolved.

Guidelines for Employers in Establishing Affirmative Action Programs

I. Review the legal mandates for Affirmative Action (AA) Programs as established by Section 503 of the Rehabilitation Act of 1973. Final regulations to implement this section are published in the *Federal Register* of Friday, April 16, 1976, p. 16147.

For a further explanation of the law and/or assistance, contact the closest regional office of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) (locations of the 10 regional offices are listed in this section); the President's Committee on Employment of the Handicapped, Affirmative Action Division, Washington, D.C.; or your state vocational rehabilitation office, listed in your local phone directory.

II. For information on handicapped individuals in your recruitment efforts, the following sources can be contacted: state employment services, state departments of vocational rehabilitation, college placement offices, local and/or state organizations of and for the handicapped, including the following:

- American Council for the Blind
- Easter Seal Society for Crippled Children and Adults
- Epilepsy Foundation of America
- Governor's Committee on Employment of the Handicapped
- National Association for the Deaf
- National Association of Retarded Citizens
- National Federation of the Blind
- National Paraplegia Foundation
- President's Committee on Mental Retardation
- United Cerebral Palsy

III. Conduct reviews of job descriptions within your organization. Separate discreet functions of each position and realistically assess the qualifications needed to complete them. Be creative in making readjustments where appropriate (i.e. a deaf person could perform secretarial duties if another individual answered the phone).

IV. Define the policy of affirmative action to be followed by your company and appoint a coordinator, preferably an individual familiar with the needs of the handicapped, who will have the necessary authority and clearly defined responsibilities to administrate such a program.

Include regulations in your policy that will apply to any potential sub-contractors and agencies filling purchase orders.

V. In establishing a fair-hiring policy, the following points should be kept in mind:

A. All requirements pertaining to physical and mental abilities should be reviewed to determine if they are absolutely necessary for that particular job.

B. A job description should include only those skills directly related to the performance of the job.

C. Do not assume what functions persons with handicaps can and cannot do; allow them to articulate their own capabilities.

D. Individuals should have the opportunity to demonstrate their abilities in an actual working situation. When employment tests are imperative only those criteria which have a direct relationship to job performance should be judged.

E. Application forms should state that the employer is subject to the regulations of Section 503 of the Rehabilitation Act as defined in the final regulations published in the *Federal Register* and give the applicant the option of identifying any physical or mental disability which may require an accommodation in the job being sought. Such voluntary information must be kept confidential, except in cases where it is necessary for the well-being of the applicant to notify medical personnel and a direct supervisor.

F. Remember that no medical examinations or certificate of a handicap are required at the time the application is being completed.

G. Opportunities of the AA program should also be extended to already employed handicapped persons.

VI. Survey all potential barriers which could prove hazardous or inconvenient to a person with a handicap. Consult experts to assist in making any necessary accommodations. Restrooms, cafeterias, safety warnings, and parking facilities must, in particular, be accessible.

VII. Seek advice in setting up an insurance program from others knowledgeable about such programs. Too often employers assume that costs for insuring the handicapped are exorbitant before obtaining factual information.

VIII. At the time an employee is hired, explain clearly and in an appropriate manner or form the organization's policy for terminations, layoffs, upgrading and advancement. Publicize this information and any changes in policy periodically at staff meetings, through use of bulletin boards, newsletters, etc.

IX. Create an internal grievance procedure for those individuals employed through the AA program. Define the authority of the coordinator for the program and other recourses available to the employee.

X. Review your AA program at periodic intervals, seeking evaluations from disabled employees and other professionals in the field. Maintain records on hirings, advancements, and complaints for a reasonable period of time. Such records are required of employers contracting with the federal government for $50,000 or more.

XI. Publicize your program both within your company and to outside agencies having contact with the disabled. Give notice to local agencies, state departments of vocational rehabilitation, school placement services, unions, etc. Contact with the local media and human service agencies could also serve to further your efforts.

XII. Above all, remember that it is the spirit of such a program that is most important. Persons with handicaps are not to be treated in an inferior manner or pitied. Creativity in defining job responsibilities and maintaining an attitude of openness and fairness is of utmost importance to the success of an affirmative action program.

Guidelines for Disabled Persons Subject to Discrimination in Employment

General:

Before applying for a job, you should review Section 503 of the Rehabilitation Act of 1973 to assure familiarity with requirements that must be met by contractors. Consult the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor, the President's Committee on Employment of the Handicapped, Washington, D.C., or your state vocational rehabilitation office for a further explanation of the law.

Specific:

A. If you feel you have been subject to discrimination, check first with the personnel office or officer to determine if an internal grievance procedure has been established by the contractor. Review their policies and then contact the appropriate individual within the organization with your complaint.

B. If no such procedure has been established, send a complaint in writing to the state human rights or fair employment practices commission, and to the regional office of the OFCCP. The state organizations should be listed in your local telephone directory, and a list of the regional offices are included in this section of *Amicus.*

The written notice should include the following:

1. Your name, address and phone number;
2. The name and address of the contractor having committed the alleged act of violation;
3. A detailed description of the actions taken which you feel are discriminatory;
4. A signed statement indicating the nature of your handicap, a history of a handicap, or why the contractor believes you are handicapped;
5. The steps already taken to have the complaint resolved; and
6. Other agencies you contacted at both the state and federal levels.

This complaint and the "statement of handicap" should be signed by you or an authorized representative (i.e. lawyer, union representative). It should be submitted within 180 days of the alleged discrimination, although an extension may be granted by the director of the OFCCP with sufficient reason.

C. You, as the complainant, should be willing to participate in any investigation required by the regional office of the OFCCP. This may include a physical examination, to be paid by the contractor, for purposes of documenting the condition of disability. Such documentation must be based on the Guides to the Evaluation of Permanent Impairment, as set forth by the American Medical Association.

D. If the director of the OFCCP finds no basis for the alleged discrimination, you will be so notified. You can request a review of this decision within 30 days.

E. If the director does find reason to support the claim, the contractor has 14 days to request a formal hearing. You, or your representative can be present at such a meeting, and you have the right to present pertinent evidence and to cross-examine.

F. All information, including the evidence presented at a formal hearing, will be reviewed by the regional office of the OFCCP. A recommendation based on this evidence will be sent to the director of the office, who will be so notified, and conciliation meetings will be conducted through the regional OFCCP.

G. If the contractor is found to be acting in a discriminatory manner, the contractor must submit to the director of the OFCCP a plan to remedy such action to be completed at the earliest possible

opportunity. Upon approval, both you and the contractor will be informed that the contractor's remedial actions are subject to review, and may be disapproved if found to be contradictory to the submitted plan. If such action is not remedied, the contract may be subject to termination, or the other sanctioning powers of the director of the OFCCP.

H. If you are subject to harrassment or intimidation in any of the proceedings in filing a complaint, you should consult the regional office of the OFCCP. Such actions are expressly prohibited in Section 503 of the Rehabilitation Act.

Federal Legislation Relating to Employment of the Handicapped

CFR – **Code of Federal Regulations**
P.L. – **Public Law**
U.S.C. – **United States Code**

1948 Amendment to the Civl Service Act

P.L. 80-617, 62 Stat. 351 codified as 5 U.S.C. Section 7153.
Regulations at 5 CFR Section 713.401.

This statute prohibits discrimination on the basis of physical handicap in employment in the Federal Civil Service.

Rehabilitation Act of 1973

P.L. 93-112, 29 U.S.C. Section 701 *et seq.*, **as amended by P.L. 93-516.**

Section 501 (29 U.S.C. Section 791)

This section requires each department and agency in the executive branch to submit an affirmative action program for the hiring, placement, and advancement of handicapped individuals to both the Civil Service Commission and the Interagency Committee on Handicapped Employees.

Section 503 (29 U.S.C. Section 793)
Regulations at 41 *Federal Register* **16147 (1976).**

This section requires that any contract in excess of $2,500 entered into by any federal department or agency for the procurement of goods or nonpersonal services contain a provision requiring the contracting party to take affirmative action in employing and advancing qualified handicapped individuals, as defined in 29 U.S.C. Section 706(6), and by the regulations. In addition, every contractor with a contract for $50,000 or more and having 50 or more employees must prepare and maintain an affirmative action program at each establishment.

Section 504 (29 U.S.C. 794)
Proposed regulations at 41 *Federal Register* **29548 (1976).**

This section prohibits discrimination against qualified handicapped individuals in any program or activity receiving federal financial assistance. Specific areas which are regulated include employment, accessibility, education, and health, welfare, and social services.

Education for All Handicapped Children Act of 1975

P.L. 94-142, amending 20 U.S.C. Section 1401.

Section 6(a) of this Act requires that each recipient of assistance under this Act make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted by the Act.

Developmentally Disabled Assistance and Bill of Rights Act

P.L. 94-103, 42 U.S.C. Section 6001 *et seq.*

Section 106 of this Act requires that each recipient, as a condition of receiving assistance, shall take affirmative action to employ and advance qualified handicapped individuals.

Vietnam Era Veterans' Readjustment Act of 1974

P.L. 93-508, 38 U.S.C. Section 2012 *et seq.*
Regulations at 41 CFR, Part 50-250.

This Act requires affirmative action by federal agencies and

by contractors holding federal contracts of $10,000 or more in the hiring and advancement of qualified veterans of the Vietnam era and disabled veterans.

Randolph Sheppard Act Amendments of 1974

P.L. 93-516, 20 U.S.C. Section 107 *et seq.*

This Act gives blind persons licensed by a state agency priority in operating vending facilities on federal property.

Wagner - O'Day Act

48 Stat. 113, as amended by P.L. 92-28 and P.L. 93-358, 41 U.S.C. Section 46-48.

This Act establishes a committee for the government purchase of goods and services from blind and other severely handicapped persons.

State Statutes Regarding Employment

FEPC – A Fair Employment Practices Commission is a body established by statute to investigate, review, and resolve complaints of discrimination in hiring, dismissal, and terms and conditions of employment.*

HRC – A Human Rights Commission (or Civil Rights Commission) is a body established by statute to investigate, review, and resolve complaints of unlawful discrimination in housing, public accommodations, education, employment, and other areas.*

EOL – An Equal Opportunity Law is a civil rights statute which may or may not provide for administrative enforcement, a criminal penalty, or a private cause of action.

CS – A Civil Service statute is a law which affects only all or part of those persons employed by the state civil service system. Some states which do not have a statute prohibiting discrimination do have an administrative policy to that effect.

WCL – A White Cane Law is a statute designed primarily to define the rights and responsibilities of blind persons, particularly in relation to the use of white canes and guide dogs. In some states, it has been broadened to include other handicapped persons as well.

CP – A Criminal Penalty is provided in some states, either for the initial discrimination or for violation of an order of a Fair Employment Practices Commission or a Human Rights Commission.

PS – A Policy Statement is a statute which says that nondiscrimination is the official policy of the state, but provides no enforcement mechanism.

COA – A Cause of Action is the right of an aggrieved person to bring a lawsuit for unlawful discrimination, either as an exclusive remedy or in addition to an administrative remedy.

* Decisions by these Commissions are always reviewable by the courts as well. Such a review would take place after one of the parties involved in the complaint would appeal the agency's decision.

STATE	TYPE OF STATUTE	CITATION
ALABAMA	CS	Alabama Code Title 55, Section 307(1)
	WCL	Alabama Code 3, Section 6(1); 36, Section 58(53)
ALASKA	HRC	Alaska Statute Section 18.80.010 to Section 18.80.300
	CP	Alaska Stat. Section 18.80.270
	COA	Alaska Stat. Section 18.80.145, Section 22.10.020(c)
	WCL, PS	Alaska Stat. Section 18.06.010 *et seq.*
ARIZONA	WCL	Arizona Revised Statute Section 24-411, Section 28-798, Section 34-402 *et seq.*
ARKANSAS	WCL	Ark. Stat. Section 75-631 and 632, Section 78-211 *et seq.*
		Ark. Stat. Section 82-2901
CALIFORNIA	FEPC	Calif. Labor Code Section 1410 to Section 1433
	CP	Calif. Labor Code Section 1430
	WCL	Calif. Labor Code Pt. 2.5, Section 54 to Section 54.6
		Calif. Penal Code Section 643, Section 643(a), Section 643(b)
	PS	Calif. Gov't Code Section 3550
		Calif. Labor Code Section 1411
COLORADO	WCL	Colo. Rev. Stat. Section 18-13-107
	PS	Colo. Rev. Stat. Section 24-34-801
CONNECTICUT	HRC	Conn. Gen. Stat. Section 31-122 to Section 31-128
	WCL	Conn. Gen. Stat. Section 53-211
DELAWARE	WCL	Del. Code Tit. 16, Chap. 95
		Del. Code Tit. 21, Section 2144 and Section 2150
	PS	Del. Code Tit. 16, Section 9501
DISTRICT OF COLUMBIA	HRC	D.C. Title 34 (Human Rights Law), Chap. 11 and 29
	CP	D.C. Code Encyclopedia Section 6-1501, Tit. 34, Section 35.1(b)
	COA	D.C. Tit. 34, Section 35.2
	WCL, PS	D.C. Code Ency. Section 6-1501 *et seq.*
	CS	D.C. Code Ency. Section 6-1504
FLORIDA	WCL, PS	Fla. Stat. Section 413.08
	CP	Fla. Stat. Section 413.08(5)
GEORGIA	CS	Ga. Code Section 40-2201
	WCL	Ga. Code Section 79-601, Section 79-9901
HAWAII	FEPC	Hawaii Rev. Stat. Section 378-1 to Section 378-10
	CP	Hawaii Rev. Stat. Section 378-10
	CS	Hawaii Rev. Stat. Section 76-1
	WCL, PS	Hawaii Rev. Stat. Section 347-1 *et seq.*

STATE	TYPE OF STATUTE	CITATION
IDAHO	HRC	House Bill 336, amending Idaho Code Section 67-5901 *et seq.*
	CS	Idaho Code Section 56-707, Section 59-1025
	WCL	Idaho Code Section 56-701 *et seq.*, Section 18-5810 to Section 18-5812
	PS	Idaho Code Section 56-701
ILLINOIS	EOL	Ill. Rev. Stat. Chap. 38, Section 65-21 *et seq.*
	FEPC	Ill. Rev. Stat. Chap. 48, Section 851 *et seq.*
	WCL	Ill. Rev. Stat. Chap. 23, Section 3361 *et seq.*
INDIANA	HRC	Ind. Code Section 22-9-1-4
	WCL	Ind. Stat. Section 10-4925 to Section 10-4927 Ind. Code Section 35-29-6-1
	PS	Ind. Code Section 16-7-5-1
IOWA	HRC	Iowa Code Section 601A.1 to Section 601A.17
	WCL	Iowa Code Section 321.332 to Section 321.334
	PS	Iowa Code Section 601D.1
KANSAS	HRC	Kan. Stat. Section 44-1001 to Section 44-1038
	CP	Kan. Stat. Section 44-1013
	WCL	Kan. Stat. Section 8-1542
	PS	Kan. Stat. Section 39-1101
KENTUCKY	EOL	House Bill 407 (1976)
	COA	House Bill 407 (1976), Section 12
	CP	House Bill 407 (1976), Section 13
	WCL	Ky. Rev. Stat. Section 189.575
	HRC	Ky. Rev. Stat., Chap. 207
LOUISIANA	WCL	La. Rev. Stat. Section 32-217
	PS	La. Rev. Stat. Section 46-1951
MAINE	HRC	Me. Rev. Stat. Section 4551 to Section 4613
	COA	Me. Rev. Stat. Section 4621 to Section 4623
	WCL, PS	Me. Tit. 17, Section 1311 *et seq.*
MARYLAND	HRC	Md. Code Art. 49B, Section 1 to Section 20
	CS	Md. Code Art. 64A, Section 12
	WCL	Md. Code Art. 66 1/2, Section 194
	PS	Md. Code Art. 30, Section 33
MASSACHUSETTS	FEPC, CP	Laws of Mass., Chap. 149, Section 24K
	WCL	Mass. Chap. 90, Section 14A
MICHIGAN	HRC	Senate Bill No. 749 (effective 3/30/77)
	WCL	Mich. Stat. Section 28.770(1) *et seq.*

STATE	TYPE OF STATUTE	CITATION
MINNESOTA	HRC	Minn. Stat. Section 363.01 to Section 363.14
	CP	Minn. Stat. Section 363.101
	COA	Minn. Stat. Section 363.14
	CS	Minn. Gov't Code of Fair Practice, 9/1/73
	WCL	Minn. Stat. Section 169.202
	PS	Minn. Stat. Section 363.12, Section 256C.01
MISSISSIPPI	WCL	Miss. Code Section 43-6-1 *et seq.*
	PS	Miss. Code Section 43-6-3
MISSOURI	WCL	Mo. Stat. Section 304.080 to Section 304.110
MONTANA	HRC	Mont. Rev. Code Section 64-301 to Section 64-312
	CP	Mont. Rev. Code Section 64-312
	COA	Mont. Rev. Code Section 64-329
	CS	Mont. Rev. Code Section 64-317
	WCL, PS	Mont. Rev. Code Section 71-1303 *et seq.*
NEBRASKA	FEPC	Neb. Rev. Stat. Section 48.1101 to Section 48.1125
	CP	Neb. Rev. Stat. Section 48.1123
	CS	Neb. Rev. Stat. Section 20.131
	WCL, PS	Neb. Rev. Stat. Section 20.126 *et seq.*, Section 28.478 to Section 28.480
NEVADA	FEPC	Nev. Rev. Stat. Section 613.310 to Section 613.430
	COA	Nev. Rev. Stat. Section 613.420
	WCL	Nev. Rev. Stat. Section 426.510
NEW HAMPSHIRE	HRC	N.H. Rev. Stat. Section 354-A:1 to Section 354-A:14
	CP	N.H. Rev. Stat. Section 354-A:12
	WCL, PS	N.H. Rev. Stat. Section 167-C *et seq.*, Section 263.58
NEW JERSEY	HRC	N.J. Stat. Section 10:5-1 to Section 10:5-28
	CP	N.J. Stat. Section 10:5-26
	WCL	N.J. Stat. Section 10:5-29 and Section 10:5-30
NEW MEXICO	HRC	N.M. Stat. Section 4-33-1 to Section 4-33-13
	WCL, PS	N.M. Stat. Section 12-26-1 *et seq.*
NEW YORK	HRC	McKinney's Consolidated Law Chap. 18, Section 15-290 to Section 15-301
	CP	N.Y. McKinney's Con. Law Section 15-299
	COA	N.Y. McKinney's Con. Law Section 15-297(9)
	CS	Civil Service Law Section 55
	WCL	Vehicle & Traffic Law Section 1153

STATE	TYPE OF STATUTE	CITATION
NORTH CAROLINA	CS	N.C. Gen. Stat. Section 128-15.3
	WCL	N.C. Gen. Stat. Section 20-175.1 *et seq.*
	PS	N.C. Gen. Stat. Section 168-1 *et seq.*
NORTH DAKOTA	WCL, PS	N.D. Centennial Code Section 25-13-01 *et seq.*
OHIO	HRC	Ohio Rev. Code Section 4112.01 *et seq.*
	CP	Ohio Rev. Code Section 4112.99
	WCL	Ohio Rev. Code Section 4511.47
OKLAHOMA	CS	Okl. Stat. Tit. 74, Section 818
	WCL	Okl. Stat. Tit. 7, Section 11 to Section 13, Section 19.1 and Section 19.2
OREGON	FEPC	Ore. Rev. Stat. Section 659.400 to Section 659.435
	WCL	Ore. Rev. Stat. Section 346.610, Section 483.214, Section 487.3
	PS	Ore. Rev. Stat. Section 659.405
PENNSYLVANIA	HRC	Pa. Stat. Tit. 43, Section 951 to Section 963
	CP	Pa. Stat. Tit. 43, Section 961
	COA	Pa. Stat. Tit. 43, Section 962(c)
	WCL	Pa. Stat. Tit. 75, Section 1039
RHODE ISLAND	HRC	R.I. Gen. Laws Section 28-5-1 to Section 28-5-39
	WCL	R.I. Gen. Laws Section 31-18-13 to Section 31-18-16
	PS	R.I. Gen. Laws Section 25-2-13, Section 28-5-3
SOUTH CAROLINA	WCL	S.C. Code Section 46-438 *et seq.*, Section 71-300.51 *et seq.*
	CS	S.C. Code Section 71-300.56
SOUTH DAKOTA	WCL	S.D. Laws Section 32-27-6 *et seq.*
TENNESSEE	EOL	Public Chapter No. 457 L. 1976
	WCL	Tenn. Code Section 59-880 and Section 59-881
	PS	Tenn. Code Section 14-627, Section 14-638

STATE	TYPE OF STATUTE	CITATION
TEXAS	EOL	Vernon's Tex. Civ. Stat. Art. 4419e
	CP	Vernon's Tex. Civ. Stat. Art. 4419e, Section 6(a)
	COA	Vernon's Tex. Civ. Stat. Art. 4419e, Section 6(b)
	WCL	Vernon's Tex. Civ. Stat. Art. 4419e, Art. 6701e
UTAH	WCL	Utah Code Section 41-6-80.1
	CS	Utah Code Section 26-28-3
	PS	Utah Code Section 26-28-1
VERMONT	EOL	Vt. Stat. Tit. 21, Section 498
	COA	Vt. Stat. Tit. 21, Section 498(b)
	WCL	Vt. Stat. Tit. 213, Section 1106
VIRGINIA	EOL	Va. Code Section 401.1-28.7
	COA	Va. Code Section 401.1-28.7
	CS	Va. Code Section 63.1-171.6
	WCL	Va. Code Section 63.1-171.1 *et seq.*, Section 46.1-237
WASHINGTON	HRC	Rev. Code Wash. Section 49.60.010 to Section 49.60.330
	CP	Rev. Code Wash. Section 49.60.310
	WCL, PS	Rev. Code Wash. Section 70.84.010 *et seq.*
WEST VIRGINIA	HRC	W. Va. Code Section 5-11-1 to Section 5-11-16
	CP	W. Va. Code Section 5-11-14
	WCL, PS	W. Va. Code Section 5-15-1 *et seq.*
WISCONSIN	FEPC	Wisc. Stat. Section 111.31 to Section 111.37
	COA	Wisc. Stat. Section 111.36(3)(c)
	CS	Wisc. Stat. Section 16.14, Section 63.32
	WCL	Wisc. Stat. Section 346.26
WYOMING	WCL, PS	Wyo. Stat. Section 42-35.1 to Section 42-35.4

OFCCP Regional Offices

For information regarding Section 503 of the Rehabilitation Act of 1973 and affirmative action programs, contact the Office of Federal Contract Compliance Programs, U.S. Department of Labor, Third and Constitution Ave., NW, Washington, DC 20210, or any of the regional offices listed below.

Boston Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
JFK Building – Room 1612-C
Government Center
Boston, Massachusetts 02203
Telephone: 617/223-4232

New York Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
1515 Broadway – Room 3306
New York, New York 10036
Telephone: 212/971-5563

Philadelphia Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
Gateway Building – Room 15434
3535 Market Street
Philadelphia, Pennsylvania 19104
Telephone: 215/596-1213/16

Atlanta Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
1371 Peachtree Street, N.E.
Room 720
Atlanta, Georgia 30309
Telephone: 404/526-4211

Chicago Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
854 Everett M. Dirksen Building
219 South Dearborn Street
Chicago, Illinois 60604
Telephone: 312/353-8887

Cleveland Area Office
Area Director, OFCCP
U.S. Department of Labor
803 Federal Building
1240 East Ninth Street
Cleveland, Ohio 44199
Telephone: 216/522-3882

Dallas Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
555 Griffin Square Building
Room 506
Dallas, Texas 75202
Telephone: 214/749-1134

Kansas City Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
Federal Office Building – Room 2000
911 Walnut Street
Kansas City, Missouri 64106
Telephone: 816/374-5384

Denver Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
15412 Federal Office Building
1961 Stout Street
Denver, Colorado 80202
Telephone: 303/837-4978

San Francisco Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
Federal Building – Room 10341
450 Golden Gate Avenue
San Francisco, California 94102
Telephone: 415/556-3597

Equal Opportunity Specialist, OFCCP
U.S. Department of Labor
Phelan Building – Room 409
760 Market Street
San Francisco, California 94102
Telephone: 415/556-6017

Los Angeles Area Office
Equal Opportunity Specialist, OFCCP
U.S. Department of Labor
Federal Building – Room 4345
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: 213/688-4961

Seattle Regional Office
Associate Assistant Regional Director, OFCCP/ESA
U.S. Department of Labor
Federal Office Building
909 First Avenue – Room 4095
Seattle, Washington 98174
Telephone: 206/442-4508

Information on the veterans' law may also be obtained from the Veterans' Employment Service, listed in most telephone directories under U.S. Government, Department of Labor.

National Center for Law and the Handicapped, Inc.
1235 North Eddy Street
South Bend, Indiana 46617

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