

MATTIE COHAN CONDRAY

From: Marc Dubin [m_dubin@comcast.net]
Sent: Wednesday, June 14, 2006 9:34 AM
To: MATTIE COHAN CONDRAY
Cc: 'Cantos, Olegario D.'; 'karen dickerhoof'; Soflamil@aol.com; alvarez33161@comcast.net; akarret@legalaid.org
Subject: Comments to Proposed changes to LSC's Prohibition Against Discrimination on the Basis of Disability
Importance: High

Wednesday, June 14, 2006

Mattie Cohan Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
3333 K Street, NW.
Washington, DC 20007
mcondray@lsc.gov

Dear Ms. Condray:

I respectfully submit my comments, set forth below, concerning proposed changes to LSC's Prohibition Against Discrimination on the Basis of Disability.

Comments To Legal Services Corporation Regarding Proposed Changes to Its Prohibition Against Discrimination on the Basis of Disability.

Submitted by Marc Dubin, Esq.
Director of Advocacy, Center for Independent Living of Broward
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Former Senior Trial Attorney, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, Washington, D.C.

Background:

Form 1993-2005, I served as a Senior Trial Attorney at the U.S. Department of Justice, in the Disability Rights Section of the Civil Rights Division. In that capacity, I was responsible for nationwide enforcement of the ADA and the Rehabilitation Act on behalf of the United States. In addition to investigating and litigating alleged violations, I was also responsible for providing technical assistance, writing or reviewing much of the technical assistance materials issued. I have reviewed LSC's proposed changes, and have several concerns, set forth below. Please feel free to contact me if I can be of any further assistance.

Proposed Change:

LSC is also proposing to add a definition of the term "auxiliary aids and/or other assistive technology." Under section 1624.4, grantees with more than fifteen employees are required to

The current regulation specifies only that LSC's enforcement procedures at 45 CFR part 1618 shall apply to alleged violations of this Part. Under part 1618, LSC is obligated to investigate complaints of violations of the LSC Act, appropriations acts, LSC regulations or grant assurances and to work with grantees to resolve matters informally when possible. Ultimately, if no informal resolution is agreed upon, LSC's enforcement powers involve reducing or eliminating funding generally. LSC does not have authority to directly order "injunctive relief" however, as do other Federal, state and local agencies charged with ADA and other disability-based discrimination law enforcement. Moreover, LSC's Office of Compliance and Enforcement, although taking those complaints of disability-based discrimination it

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receives seriously, has limited resources available and does not generally have significant expertise in investigating these types of claims.

In light of the above, LSC's policy when such complaints have been filed with the Office of Compliance and Enforcement has been to recommend that complainants pursue claims with appropriate Federal, state or local agencies which may be in a better position to investigate their claims and order the relief being sought. In cases where a claim is filed with another agency, LSC generally defers to that investigation during its pendency and relies upon the findings of the other agency in resolving the complaint filed with LSC. LSC has found this policy to be efficient and effective. Accordingly, LSC is proposing to explicitly incorporate this policy into the regulation.

LSC believes this action will clarify expectations for LSC enforcement staff, grantees, and potential claimants alike. Of course, LSC retains the discretion and authority to conduct its own investigations into any claim of disability-based discrimination grounded in this Part or the grant assurances and make its own findings upon the conclusion of such investigation, irrespective of whether a complaint based on the same circumstances is pending at another agency.

Comment:

I recommend that LSC create a tracking system to flag repeat offenders, to help LSC determine patterns of noncompliance among its grantees. Absent such a tracking mechanism, recipients with patterns of noncompliance may continue to violate the law without adequate consequences. I also recommend that LSC engage in increased efforts to represent individuals with disabilities who bring allegations of the ADA to the attention of LSC, rather than have a practice of referring these cases elsewhere. Engaging in these cases will likely increase the number of legitimate claims coming to the attention of LSC, and will increase the experience of LSC attorneys and staff with ADA violations and the ADA regulations. LSC should also consider hiring ADA consultants to train staff and to consult on cases. I suggest that the proposed change be modified so as to allow LSC to retain for purposes of enforcement those cases which it believes appropriate for enforcement by LSC, as a policy of referring out all cases would likely result in LSC failing to identify patterns of discrimination among its recipients, and a higher number of referrals being delayed in enforcement.

Respectfully submitted,

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Visit www.cavnet.org for information and resources on violence against women, bullying, human rights, and crime victims with disabilities.