



Disability-Related Laws and the SCSEP Program

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What is CRC's relationship to the SCSEP program?

- CRC administers and enforces laws:
 - that apply to recipients of Federal financial assistance, and
 - that impose obligations related to:
 - ✓ nondiscrimination
 - ✓ equal opportunity

What we'll talk about

- Context – where you'll encounter disability issues
- Technicalities
 - The Federal disability nondiscrimination laws that apply to the SCSEP program
 - Understanding the different definitions of “disability” that you'll encounter (and why they matter)

What we'll talk about (cont'd)

- Your obligations under Federal disability nondiscrimination law
 - Nondiscrimination
 - Equal opportunity – taking positive actions
 - ✓ Accessibility
 - ✓ Reasonable accommodations / modifications
 - ✓ Equally effective communication

Two main contexts in which you'll encounter disability issues

- Deciding who's *eligible* for the SCSEP program
- Complying with disability nondiscrimination requirements

Disability and SCSEP eligibility

- Person with a disability may be treated as “family of one” for calculating income (20 CFR § 641.500(a))
- “Preference eligible” individuals include spouses of veterans (living or dead) with service-connected disabilities (20 CFR § 641.520(a)(2))
- Persons with “greatest social need” include people with physical or mental disabilities (20 CFR § 641.525)

SCSEP and disability nondiscrimination laws

- Several ***different*** disability nondiscrimination laws apply to the SCSEP program
- You need to know about ***all*** the laws that apply to the program

Applicable Federal disability nondiscrimination laws

- *Section 504 of the Rehabilitation Act of 1973, as amended (Section 504)*
 - applies to *all* recipients of financial assistance from DOL
 - prohibits discrimination on basis of disability, imposes obligations
- *CRC's regulations implementing Section 504 (29 CFR part 32)*

Applicable Federal disability nondiscrimination laws (cont'd)

- *Section 188 of the Workforce Investment Act of 1998 (WIA Section 188)*
- *CRC's regulations implementing Section 188 (29 CFR part 37)*
 - apply to programs and activities that are:
 - ✓ Operated by One-Stop partners listed in WIA Section 121(b) (including SCSEP)
 - ✓ Part of the One-Stop system

Applicable Federal disability nondiscrimination laws (cont'd)

- *The Americans with Disabilities Act of 1990, as amended*
 - Title I: covers employment
 - Title II: covers public entities (State and local governments, their departments/agencies)
 - Title III: covers private entities that operate “places of public accommodation” (such as social service centers)



Federal disability
nondiscrimination laws
aren't *identical*,
but they are *consistent*

General principles underlying disability nondiscrimination laws

- Two major types of obligations:
 - Nondiscrimination
 - Equal opportunity

“Equal treatment” vs. “equal opportunity”

- Most civil rights laws require “equal treatment” – treating everyone the same
- Unequal treatment is usually based on unfair stereotypes re: what members of various groups are capable of accomplishing

“Equal treatment” vs. “equal opportunity” (cont’d)

- Disability nondiscrimination laws are ***different*** from other civil rights laws
 - Just treating people with disabilities the same as everyone else is *not enough*
 - Legal duty to *work with* people with disabilities to make sure they have an equal opportunity to *benefit from* the SCSEP program

“Nondiscrimination” vs. “equal opportunity”

- Your obligations include both:
 - actions that are *prohibited* (things you must not do) because they are *discriminatory*, and
 - actions that are *required* (positive steps you must take) to level the playing field for people with disabilities – in other words, provide *equal opportunity*

Different definitions of disability!

- The definition varies by context
 - Eligibility
 - ✓ “Family of one,” “greatest social need” – definition from the Older Americans Act (OAA)
 - ✓ “Service-connected disability” – definition from statutes and regulations related to veterans’ benefits
 - Complying with disability nondiscrimination requirements – definition from Federal disability nondiscrimination laws

Veterans benefits definition

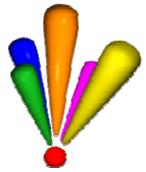
- Based on effect of particular illness / injury / condition on a person's ability to earn a living as a civilian
- Determined on basis of "schedule" issued by U.S. Secretary for Veterans Affairs
- No need for you to determine – vet or spouse will provide you with documentation
- Completely different from definition for disability nondiscrimination laws!

OAA definition and nondiscrimination definition

- OAA: Covers only one category of people – those who have an *actual, current* disability
- Disability nondiscrimination laws: Covers three categories of people – those who:
 - have an *actual, current* disability
 - have a *record* of a *past* disability
 - have been *regarded as* having a disability

OAA definition & Category One nondiscrimination definition

- These two definitions are related
 - Both involve people with *actual, current* disabilities
 - Both require:
 - ✓ a physical or mental impairment
 - ✓ substantial limitations on major life activity
 - Difference: which “major life activities” are considered



Term to Know:

“Physical or Mental Impairment”

Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

- neurological
- musculoskeletal
- special sense organs
- respiratory (including speech organs)
- cardiovascular
- reproductive
- digestive
- genitourinary
- hemic and lymphatic
- skin
- endocrine

**Source: 29 CFR 37.4,
definition of “disability,”
paragraph (1)(i)(A)**

Physical or Mental Impairment (cont.)

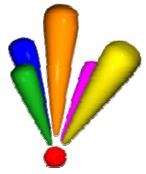
- Any mental or psychological disorder, such as:
 - mental retardation
 - organic brain syndrome
 - emotional or mental illness
 - specific learning disabilities
- **Source: 29 CFR 37.4, definition of “disability,” paragraph (1)(i)(B)**

Physical or Mental Impairment

(cont.)

Examples:

- Various types of impairments:
 - ✓ orthopedic
 - ✓ visual
 - ✓ speech
 - ✓ hearing
- Cerebral palsy
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Cancer
- Heart disease
- Diabetes
- Mental retardation
- Emotional illness
- Specific learning disabilities
- HIV
- tuberculosis
- Drug addiction
- Alcoholism



Term to Know:

“Substantial Limitation”

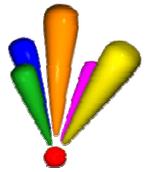
- Not all “limitations” are “substantial” enough to constitute a disability!
- In general, a “substantial limitation” either:
 - *Prevents* the person from performing an activity that the *average person* can perform, or
 - *Significantly restricts* the person in performing such an activity (as compared to the average person)

What constitutes a “significant restriction”?

- Look at whether/how much the impairment restricts:
 - the *conditions under which* the person can perform the activity
 - the *manner (way)* in which s/he can perform the activity
 - the *duration (length of time)* for which s/he can perform the activity

Must take “*mitigating measures*” into consideration

- Medication, devices (crutches, prostheses), anything else that *mitigates* (lessens) the effect of disability
- You must consider both *positive* and *negative* effects



Term to Know: “Major Life Activity”

- OAA and Federal disability nondiscrimination laws define “major life activity” differently

Disability nondiscrimination laws' definition of "major life activity"

- Supreme Court says it's an activity "of central importance to daily life"
 - Examples: Caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning
 - "Working" is questionable

OAA definition of “major life activity”

Physical or mental impairment must substantially limit one or more of *these specific* activities:

- self-care
- receptive and expressive language
- learning
- mobility
- self-direction
- capacity for independent living
- economic self-sufficiency
- cognitive functioning
- emotional adjustment

What's the practical effect of these differences?

- The OAA definition is *narrower*
 - Fewer people qualify for “family of one” and “greatest social need”
 - More people are protected from discrimination / entitled to specific types of positive actions

Category Two (nondiscrimination definition): Does the person have a *record of a disability*?

- Past history of a genuine disability
- Misclassified as having a disability
- The record or misclassification *has to meet the three elements* of an actual disability (impairment, major life activity, substantial limitation)

Category Three (nondiscrimination definition): *Has the person been regarded as having a disability?*

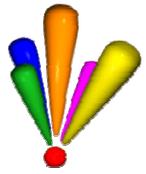
- Has an impairment, but:
 - Impairment doesn't substantially limit a major life activity, or
 - Impairs a major life activity because of other people's attitudes
- Doesn't have an impairment, but is treated as having one

Who is entitled to equal opportunity/ positive actions under disability nondiscrimination law?

- Only people who have *actual, current* disabilities (Category One)
- Categories Two and Three (with records or “regarded as”) are *not entitled* to positive actions such as reasonable accommodations

Is the person with a disability “qualified”?

- The person with a disability must be *qualified* for the program or job:
 - to be protected from discrimination
 - to be entitled to equal opportunity / positive actions



Term to Know:

“Qualified Person with a Disability”

- For participation in SCSEP program: the person must meet the *essential eligibility requirements* of the program
- For employment: s/he must be capable of performing the *essential functions* of the *specific job*
- In either case, take *reasonable accommodations / modifications* into account
- *Don't* pay attention to *barriers* (architectural, transportation, etc.)

What are your obligations under disability nondiscrimination laws?

- Nondiscrimination
 - General prohibitions
 - Integrated settings (non-segregation)
- Equal opportunity (positive actions):
 - Accessibility (architectural and programmatic)
 - Reasonable accommodations / modifications
 - Equally effective communication

General prohibitions

- These are the “don’ts” – actions that are considered discriminatory
- Impossible to list every single action that may violate the law
- **Important:** these actions are unlawful *even if* the person(s) who take them *do not intend* to discriminate

Examples of general types of discriminatory actions

- *Denying* a qualified older person with a disability the *opportunity to participate in, or benefit from*, a particular activity because of his/her disability
- *Failing to give* a qualified older person with a disability an *equal opportunity* to get the same results or benefits from a particular activity that older people without disabilities receive
- *Charging* a particular older person with a disability any *extra fees* to cover the costs of accommodating the disability

Specific examples of discriminatory actions

- Referring a customer to an employer or training agency that will not accept qualified persons with disabilities
- Stereotyping older people with disabilities when evaluating their skills, needs, abilities, and interests
- Referring qualified older people with disabilities to different agencies / training programs / employers / types of jobs than other qualified older people

Actions that are NOT discriminatory

- Your program is generally *not* required to provide these items or services (although you may choose to do so):
 - Personal devices such as wheelchairs
 - Individually prescribed devices, such as eyeglasses or hearing aids
 - Readers for personal use and study
 - Services of a personal nature, such as assistance with eating, toileting, or dressing

Integration / non-segregation

- You must:
 - Administer your program in the most integrated setting possible
 - Not provide segregated aid, benefits, services, or training to customers with disabilities unless the specific program or activity meets certain criteria (see next slide)

What is segregation?

- Are you *excluding*, or providing *different* or *separate* services, for/to:
 - *all* people with disabilities?
 - all members of a *particular class* of people with disabilities?
 - *specific individuals* with disabilities?
- If yes, it's *segregation* – you must determine whether it's *lawful*

Segregation – is it lawful?

- Can you *prove*:
 - that segregation is *necessary*?
 - that you provide *alternate services* that are *as effective* as services for customers without disabilities?
 - that you gave customers with disabilities the *option* of participating *in either* the segregated or regular program?

When is segregation “necessary”?

- Reg language says only in order to provide people with disabilities with services “that are as effective as those provided to others”
- It’s not “necessary” simply because:
 - your facilities aren’t accessible
 - serving/employing people with disabilities alongside other people is expensive or inconvenient

Accessibility vs. reasonable accommodations

- Providing *accessibility*: taking *generalized action in advance* (so you'll be ready for people with disabilities)
 - Not tied to a particular person with a disability
- Providing *reasonable accommodations*: taking *individualized action when a particular person* with a disability seeks aid, benefits, services, training, or employment

Accessibility – architectural and programmatic

- In general, both refer to *physical* accessibility
- What's the difference?
 - Architectural: compliance with a particular set of standards
 - Programmatic (or program): taking common-sense actions where permitted / possible

Which must you provide – architectural or programmatic?

- It depends!
 - *How old* is the facility? (When was it built?)
 - Has the facility been, or will it be, *altered or renovated* for you to use?
 - If so, *when* was it/will it be altered or renovated? (What date?)
 - *When* did you first receive Federal financial assistance?

The “hierarchy of obligations”

- New construction
- Alteration or renovation
 - Done by you, on your behalf, or for your use?
 - Before or after you received Federal financial assistance?
- “Existing facilities”



New construction

Facility must *fully meet*
legal standards for
architectural accessibility

[required by 29 CFR 32.28(a)]

Alteration or renovation

- Was it done:
 - by you?
 - on your behalf?
 - for your use?
- If *no*, use *existing facilities* rules

Alteration or renovation (cont'd)

- If yes, when was it/will it be done?
 - *Before* you received Federal financial assistance: use *existing facilities* rules
 - *After* you received Federal financial assistance: altered/renovated part must comply with *architectural accessibility* standards
- 29 CFR 32.28(b)

Existing facilities

- Not new construction
- Either:
 - *Not* altered or renovated by you, on your behalf, or for your use; or
 - Altered or renovated *before* you first received Federal financial assistance
- Must meet *program accessibility* requirements

Federal standards for architectural accessibility

- Three different sets of Federal standards
 - Uniform Federal Accessibility Standards (UFAS) – 41 CFR 101-19.6
 - Americans with Disabilities Act Accessibility Guidelines (ADAAG)
 - ADA and ABA Accessibility Guidelines (published in the Federal Register July 23, 2004) -- <http://www.access-board.gov/ada-aba.htm>

Which architectural standards should you use?

- DOL's Section 504 regs say UFAS
- *But . . .* regs also allow “alternative standards” to be used if they will allow “equivalent or greater access”
- *So . . .* you may use *either* UFAS, ADAAG, or new ADA-ABA Guidelines

Where to get more info on architectural standards

- The Access Board
 - Voice: (800) 872.2253
 - TDD/TTY: (800) 993-2822
 - Website: <http://www.access-board.gov>
 - E-mail: info@access-board.gov

Standards for program accessibility

- What program accessibility *does* mean:
 - Your program or activity must be accessible *when viewed in its entirety*
 - Every *aspect* of your program or activity must be accessible
 - ✓ Examples: enrollment, assessment, training courses, recreation / leisure time activities

Program accessibility (con't)

- What it does *not* mean:
 - Making each of your existing facilities accessible
 - Making every part of a facility accessible
 - Making structural changes where *other ways* of providing access are *possible*

Examples of possible changes to provide program accessibility

- Redesigning equipment
- Moving services to accessible locations
- Assigning aides to assist customers / employees

Program accessibility: two key points

- You must provide programs and activities in *most integrated setting possible* for people with disabilities
- You *may* be required to alter or renovate your facilities if there is *no other possible way* of providing program accessibility

What are reasonable accommodations?

- Actions that must be taken when a *particular person with a disability* seeks to apply for / participate in:
 - SCSEP in general
 - a particular program or activity

How are accommodations different from accessibility?

- “Access” and “accessibility” refer to:
 - *Generalized* actions
 - Actions that must be taken *in advance*
 - *Not* tied to a particular person with a disability

What triggers your obligation to provide accommodations?

- When you *receive a request for help* from/on behalf of a qualified person (customer, applicant, or employee) with a disability
 - No “magic words” necessary – doesn’t need to have mentioned “disability” or “accommodation” or referred to the law
 - Just needs to have asked for an *adjustment* or *change* related to a *medical condition*

What triggers your obligation?

(cont'd)

- Does the person seeking the accommodation have an *actual, current disability*?
 - You are allowed to make a *reasonable request for documentation* of the disability / medical condition

What are you required to do in response to a request?

- You must make an *individual determination* about the request
 - Engaging in an *interactive process* with the person asking for an accommodation

Where can you get help in deciding what accommodation will be right?

- Job Accommodation Network
 - FREE information and referral service (funded by USDOL's ODEP)
 - Can provide individualized suggestions for accommodation solutions
 - 800-526-7234 (V/TTY)
 - <http://www.jan.wvu.edu/>

Undue hardship

- You must provide accommodation unless it would impose undue hardship on the operation of your program
- 504 regulations provide specific factors that you must consider (29 CFR 32.13(b))
- WIA nondiscrimination regulations impose additional requirements

Equally effective communication

- Take steps to ensure that communications with people with disabilities are as effective as communications with others
- Furnish appropriate auxiliary aids and services (communication aids) where necessary to give a person with a disability an equal opportunity to participate
- Give primary consideration to the requests of the person with a disability when determining the appropriateness of a particular auxiliary aid or service

Effective communication (some examples)

- Inform applicants, customers, and employees of your obligation to provide auxiliary aids and services
- Provide a list, in accessible formats, of all currently available assistive technology devices and services (such as closed captioned TV monitors or ZoomText)

Where to get more information

- ***CRC website***
(<http://www.dol.gov/oasam/programs/crc/crcwelcome.htm>)
- ***ODEP website***
(<http://www.dol.gov/odep/>)

How to contact me

- *Postal Mail:*
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 - 800-877-8339 (Federal Information Relay Service for TTY/TDD)
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