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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 IN AND FOR THE COUNTY OF SACRAMENTO

19 AMERICAN NURSES ASSOCIATION;  
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20 CALIFORNIA; CALIFORNIA SCHOOL NURSES  
ORGANIZATION; and CALIFORNIA NURSES  
21 ASSOCIATION,

22 Plaintiffs/Petitioners,

vs.

23 JACK O'CONNELL, STATE SUPERINTENDENT  
OF PUBLIC INSTRUCTION; and CALIFORNIA  
24 DEPARTMENT OF EDUCATION,

25 Defendants/Respondents,

and

26 AMERICAN DIABETES ASSOCIATION, an  
27 organization,

Intervenor.

Case No. 07AS04631

APPENDIX OF OUT-OF-STATE  
AND OTHER AUTHORITIES

Date: October 17, 2008

Time: 10:30 a.m.

Dept.: 33

Judge: Hon. Lloyd G. Connelly

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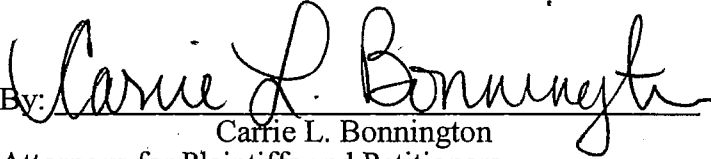
Dated: July 28, 2008.

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**20 USC** SUBCHAPTER I - GENERAL PROVISIONS

01/02/2006

-EXPCITE-

TITLE **20** - EDUCATION

CHAPTER 33 - EDUCATION OF INDIVIDUALS WITH DISABILITIES

SUBCHAPTER I - GENERAL PROVISIONS

-HEAD-

SUBCHAPTER I - GENERAL PROVISIONS



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20 USC Sec. 1400

01/02/2006

-EXPCITE-

TITLE 20 - EDUCATION

CHAPTER 33 - EDUCATION OF INDIVIDUALS WITH DISABILITIES

SUBCHAPTER I - GENERAL PROVISIONS

-HEAD-

Sec. 1400. Short title; findings; purposes

-STATUTE-

(a) Short title

This chapter may be cited as the "Individuals with Disabilities Education Act".

(b) Omitted

(c) Findings

Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were

not being fully met because -

(A) the children did not receive appropriate educational services;

(B) the children were excluded entirely from the public school system and from being educated with their peers;

(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this chapter has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

(4) However, the implementation of this chapter has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by -

(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to -

(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

(C) coordinating this chapter with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;

(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

(10) (A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

(B) America's ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

(C) Minority children comprise an increasing percentage of public school students.

(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these students.

(11) (A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation's students from non-English language backgrounds.

(12) (A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(C) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts.

(D) In the 1998-1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

(E) Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers

of their minority students into special education.

(13) (A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this chapter, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

(d) Purposes

The purposes of this chapter are -

(1) (A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

-SOURCE-

(Pub. L. 91-230, title VI, Sec. 601, as added Pub. L. 108-446, title I, Sec. 101, Dec. 3, 2004, 118 Stat. 2647.)

-REFTEXT-

REFERENCES IN TEXT

The Education for All Handicapped Children Act of 1975, referred to in subsec. (c) (2), (3), is Pub. L. 94-142, Nov. 29, 1975, 89 Stat. 773, as amended. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out below and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c) (5) (C), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (Sec. 6301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

-COD-

## CODIFICATION

Section is comprised of section 601 of Pub. L. 91-230. Subsec. (b) of section 601 of Pub. L. 91-230 set out the table of contents for the Individuals with Disabilities Education Act.

-MISC1-

## PRIOR PROVISIONS

A prior section 1400, Pub. L. 91-230, title VI, Sec. 601, as added Pub. L. 105-17, title I, Sec. 101, June 4, 1997, 111 Stat. 37, contained short title for this chapter and related to congressional findings and purposes, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1400, Pub. L. 91-230, title VI, Sec. 601, Apr. 13, 1970, 84 Stat. 175; Pub. L. 94-142, Sec. 3, Nov. 29, 1975, 89 Stat. 774; Pub. L. 101-476, title IX, Sec. 901(a)(1), (b)(1)-(9), Oct. 30, 1990, 104 Stat. 1141, 1142; Pub. L. 102-119, Sec. 25(b), Oct. 7, 1991, 105 Stat. 607, contained short title for this chapter and related to congressional statements and declarations, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17. This section had been classified as a note under former section 1401 of this title prior to being amended by Pub. L. 94-142.

## EFFECTIVE DATE

Pub. L. 108-446, title III, Sec. 302(a), (b), Dec. 3, 2004, 118 Stat. 2803, provided that:

"(a) Parts A, B, and C, and subpart 1 of part D. -

"(1) In general. - Except as provided in paragraph (2), parts A, B, and C, and subpart 1 of part D, of the Individuals with Disabilities Education Act [subchapters I, II, and III and part A of subchapter IV of this chapter], as amended by title I, shall

take effect on July 1, 2005.

"(2) Highly qualified definition. - Subparagraph (A), and subparagraphs (C) through (F), of section 602(10) of the Individuals with Disabilities Education Act [**20** U.S.C. 1401(10)], as amended by title I, shall take effect on the date of enactment of this Act [Dec. 3, 2004] for purposes of the Elementary and Secondary Education Act of 1965 [**20** U.S.C. 6301 et seq.].

"(b) Subparts 2, 3, and 4 of part D. - Subparts 2, 3, and 4 of part D of the Individuals with Disabilities Education Act [parts B, C, and D of subchapter IV of this chapter], as amended by title I, shall take effect on the date of enactment of this Act [Dec. 3, 2004]."

#### SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-446, Sec. 1, Dec. 3, 2004, 118 Stat. 2647, provided that: "This Act [enacting subchapters I to IV of this chapter, part E of subchapter I of chapter 76 of this title, and sections 9567 to 9567b of this title, amending sections 927, 1087ee, 1087ii, 4304, 5802, 6103, 6311, 6317, 7221g, 7273b, 9511, 9515, 9516, and 9605 of this title, section 2164 of Title 10, Armed Forces, section 121 of Title 17, Copyrights, sections 721, 725, 772, and 773 of Title 29, Labor, and sections 280c-6, 290bb-25, 290ff-1, 290ff-2, 1396b, 1396n, 5011, 9835, 9836, 9837, 12511, 15025, and 15064 of Title 42, The Public Health and Welfare, repealing section 1444 of this title, redesignating former part E of subchapter I of chapter 76 of this title as part F, omitting sections 1445, 1456, and 1483 to 1487 of this title, enacting provisions set out as notes under this section and section 9567b of this title, and amending provisions set out as a note under section 285g of Title 42] may be cited as the 'Individuals with Disabilities Education Improvement Act of

2004'."

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-17, Sec. 1, June 4, 1997, 111 Stat. 37, provided that: "This Act [enacting subchapters I to IV of this chapter, repealing former subchapters III and V to IX of this chapter, and enacting provisions set out as notes under this section and sections 1431 and 1451 of this title] may be cited as the 'Individuals with Disabilities Education Act Amendments of 1997'."

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102-119, Sec. 1, Oct. 7, 1991, 105 Stat. 587, provided that: "This Act [see Tables for classification] may be cited as the 'Individuals with Disabilities Education Act Amendments of 1991'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-476, Sec. 1(a), Oct. 30, 1990, 104 Stat. 1103, provided that: "This Act [see Tables for classification] may be cited as the 'Education of the Handicapped Act Amendments of 1990'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-630, Sec. 1, Nov. 7, 1988, 102 Stat. 3289, provided that: "This Act [amending sections 101, 1401, 1404, 1406, 1407, 1411 to 1419, 1421 to 1425, 1431 to 1433, 1441, 1443, 1451, 1452, 1461, 1471, 1472, and 1475 to 1482 of this title, sections 702, 705, 706, 709, 711, 713, 717, 720 to 723, 731, 732, 740, 741, 750, 752, 761 to 762, 770, 772, 774 to 776, 777 to 777b, 777d, 777f, 780, 781 to 783, 791 to 794, 794b, 794d, 795a, 795g to 795i, 795l to 795n, 795q, 796a to 796g, 796i, and 1904 of Title 29, Labor, and section 155 of Title 36, Patriotic Societies and Observances, enacting provisions set out as notes under sections 101, 1419, and 1432 of this title and sections 731 and 777c of Title 29, and

repealing provisions set out as a note under section 795m of Title 29] may be cited as the 'Handicapped Programs Technical Amendments Act of 1988'."

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99-457, Sec. 1(a), Oct. 8, 1986, 100 Stat. 1145, provided that: "This Act [enacting sections 1408, 1461, 1462, and 1471 to 1485 of this title, amending sections 1401, 1406, 1411 to 1413, 1418, 1419, 1421 to 1424, 1424a, 1425, 1427, 1431 to 1433, 1435, 1441, 1443, 1444, 1452, and 1454 of this title, repealing sections 1403 and 1453 of this title, and enacting provisions set out as notes under sections 1419 and 1485 of this title] may be cited as the 'Education of the Handicapped Act Amendments of 1986'."

Pub. L. 99-372, Sec. 1, Aug. 5, 1986, 100 Stat. 796, provided that: "This Act [amending section 1415 of this title and enacting provisions set out as notes under section 1415 of this title] may be cited as the 'Handicapped Children's Protection Act of 1986'."

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-199, Sec. 1, Dec. 2, 1983, 97 Stat. 1357, provided: "That this Act [enacting sections 1407 and 1427 of this title, amending sections 1401 to 1404, 1406, 1411 to 1414, 1416 to 1426, 1431 to 1435, 1441 to 1444, 1452, 1454, and 1461 of this title, repealing section 1461 of this title, omitting section 1436 of this title, enacting a provision set out as a note under section 1401 of this title, and amending provisions set out as notes under sections 101, 681, and 1411 of this title] may be cited as the 'Education of the Handicapped Act Amendments of 1983'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-49, Sec. 1, June 17, 1977, 91 Stat. 230, provided: "That this Act [amending sections 1426, 1436, 1441, 1444, and 1454

of this title, and enacting provisions set out as a note under section 1426 of this title] may be cited as the 'Education of the Handicapped Amendments of 1977'."

#### SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94-142, Sec. 1, Nov. 29, 1975, 89 Stat. 773, provided: "That this Act [enacting sections 1405, 1406, 1415, 1416, 1417, 1418, 1419, and 1420 of this title, amending this section and sections 1232, 1401, 1411, 1411 notes, 1412, 1412 note, 1413, 1413 note, 1414, and 1453 of this title, and enacting provisions set out as a note under section 1411 of this title] may be cited as the 'Education for All Handicapped Children Act of 1975'."

#### SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-380, title VI, Sec. 611, Aug. 21, 1974, 88 Stat. 579, provided that: "This title [enacting section 1424a of this title, amending sections 1402, 1403, 1411 to 1413, 1426, 1436, 1444, 1452, 1454, and 1461 of this title, and enacting provisions set out as notes under sections 1402 and 1411 to 1413 of this title] may be cited as the 'Education of the Handicapped Amendments of 1974'."

#### TRANSITION

Pub. L. 108-446, title III, Sec. 303, Dec. 3, 2004, 118 Stat. 2803, provided that:

"(a) Orderly Transition. -

"(1) In general. - The Secretary of Education (in this section referred to as 'the Secretary') shall take such steps as are necessary to provide for the orderly transition from the Individuals with Disabilities Education Act [this chapter], as such Act was in effect on the day preceding the date of enactment of this Act [Dec. 3, 2004], to the Individuals with Disabilities Education Act [this chapter] and part E of the Education Sciences

Reform Act of 2002 [**20** U.S.C. 9567 et seq.], as amended by this Act.

"(2) Limitation. - The Secretary's authority in paragraph (1) shall terminate 1 year after the date of enactment of this Act.

"(b) Multi-year Awards. - Notwithstanding any other provision of law, the Secretary may use funds appropriated under part D of the Individuals with Disabilities Education Act [subchapter IV of this chapter] to make continuation awards for projects that were funded under section 618 [**20** U.S.C. 1418], and part D, of the Individuals with Disabilities Education Act (as such section and part were in effect on September 30, 2004), in accordance with the terms of the original awards.

"(c) Research. - Notwithstanding section 302(b) [set out as a note above] or any other provision of law, the Secretary may award funds that are appropriated under the Department of Education Appropriations Act, 2005 [Pub. L. 108-447, div. F, title III, 118 Stat. 3142, see Tables for classification] for special education research under either of the headings 'Special Education' or 'Institute of Education Sciences' in accordance with sections 672 and 674 of the Individuals with Disabilities Education Act [**20** U.S.C. 1472, 1474], as such sections were in effect on October 1, 2004."

#### REFERENCES TO EDUCATION OF THE HANDICAPPED ACT

Pub. L. 101-476, title IX, Sec. 901(a)(3), Oct. 30, 1990, 104 Stat. 1142, provided that: "Any other Act and any regulation which refers to the Education of the Handicapped Act shall be considered to refer to the Individuals with Disabilities Education Act."



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29 USC Sec. 791

01/02/2006

-EXPCITE-

TITLE 29 - LABOR

CHAPTER 16 - VOCATIONAL REHABILITATION AND OTHER REHABILITATION  
SERVICES

SUBCHAPTER V - RIGHTS AND ADVOCACY

-HEAD-

Sec. 791. Employment of individuals with disabilities

-STATUTE-

(a) Interagency Committee on Employees who are Individuals with Disabilities; establishment; membership; co-chairmen; availability of other Committee resources; purpose and functions

There is established within the Federal Government an Interagency Committee on Employees who are Individuals with Disabilities (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman of the Equal Employment Opportunity Commission (hereafter in this section referred to as the "Commission"), the Director of the Office of Personnel Management, the Secretary of Veterans Affairs, the Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services. Either the Director of the Office of Personnel Management and the Chairman of the Commission shall serve as co-

chairpersons of the Committee or the Director or Chairman shall serve as the sole chairperson of the Committee, as the Director and Chairman jointly determine, from time to time, to be appropriate. The resources of the President's Committees on Employment of People With Disabilities and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of individuals with disabilities, and to review, on a periodic basis, in cooperation with the Commission, the adequacy of hiring, placement, and advancement practices with respect to individuals with disabilities, by each department, agency, and instrumentality in the executive branch of Government and the Smithsonian Institution, and to insure that the special needs of such individuals are being met; and (2) to consult with the Commission to assist the Commission to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Commission such recommendations for legislative and administrative changes as it deems necessary or desirable. The Commission shall timely transmit to the appropriate committees of Congress any such recommendations.

(b) Federal agencies; affirmative action program plans

Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch and the Smithsonian Institution shall, within one hundred and eighty days after September 26, 1973, submit to the Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities in such department, agency, instrumentality, or

Institution. Such plan shall include a description of the extent to which and methods whereby the special needs of employees who are individuals with disabilities are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with disabilities.

(c) State agencies; rehabilitated individuals, employment

The Commission, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for individuals with disabilities, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

(d) Report to Congressional committees

The Commission, after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of individuals with disabilities by each department, agency, and instrumentality and the Smithsonian Institution and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the

Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the activities of the Commission under subsections (b) and (c) of this section.

(e) Federal work experience without pay; non-Federal status

An individual who, as a part of an individualized plan for employment under a State plan approved under this chapter, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(f) Federal agency cooperation; special consideration for positions on President's Committee on Employment of People With Disabilities

(1) The Secretary of Labor and the Secretary of Education are authorized and directed to cooperate with the President's Committee on Employment of People With Disabilities in carrying out its functions.

(2) In selecting personnel to fill all positions on the President's Committee on Employment of People With Disabilities, special consideration shall be given to qualified individuals with disabilities.

(g) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied

under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

-SOURCE-

(Pub. L. 93-112, title V, Sec. 501, Sept. 26, 1973, 87 Stat. 390; Pub. L. 98-221, title I, Sec. 104(b)(3), Feb. 22, 1984, 98 Stat. 18; Pub. L. 99-506, title I, Sec. 103(d)(2)(C), title X, Secs. 1001(f)(1), 1002(e)(1), (2)(A), Oct. 21, 1986, 100 Stat. 1810, 1843, 1844; Pub. L. 100-630, title II, Sec. 206(a), Nov. 7, 1988, 102 Stat. 3310; Pub. L. 102-54, Sec. 13(k)(1)(B), June 13, 1991, 105 Stat. 276; Pub. L. 102-569, title I, Sec. 102(p)(29), title V, Sec. 503, Oct. 29, 1992, 106 Stat. 4360, 4424; Pub. L. 103-73, title I, Sec. 112(a), Aug. 11, 1993, 107 Stat. 727; Pub. L. 105-220, title III, Sec. 341(c), title IV, Sec. 408(a)(1), Aug. 7, 1998, 112 Stat. 1092, 1202.)

-REFTEXT-

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (a), is set out in section 5315 of Title 5, Government Organization and Employees.

The Americans with Disabilities Act of 1990, referred to in subsec. (g), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended. Title I of the Act is classified generally to subchapter I (Sec. 12111 et seq.) of chapter 126 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

-MISC1-

PRIOR PROVISIONS

Prior similar provisions were set out in section 38 of this title.

AMENDMENTS

1998 - Subsec. (a). Pub. L. 105-220, Sec. 408(a)(1)(A), substituted "President's Committees on Employment of People With Disabilities" for "President's Committees on Employment of the Handicapped" in third sentence.

Pub. L. 105-220, Sec. 341(c)(1), inserted "and the Smithsonian Institution" after "Government" in fourth sentence.

Subsec. (b). Pub. L. 105-220, Sec. 341(c)(2), in first sentence, inserted "and the Smithsonian Institution" after "in the executive branch" and substituted "such department, agency, instrumentality, or Institution" for "such department, agency, or instrumentality".

Subsec. (d). Pub. L. 105-220, Sec. 341(c)(3), inserted "and the Smithsonian Institution" after "instrumentality".

Subsec. (e). Pub. L. 105-220, Sec. 408(a)(1)(B), substituted "individualized plan for employment" for "individualized written rehabilitation program".

1993 - Subsec. (a). Pub. L. 103-73 in first sentence inserted comma after "Veterans Affairs".

1992 - Pub. L. 102-569, Sec. 102(p)(29)(A), substituted "disabilities" for "handicaps" in section catchline.

Subsec. (a). Pub. L. 102-569, Sec. 503(a), substituted "the Director of the Office of Personnel Management, the Secretary of Veterans Affairs" for "the Secretary of Veterans Affairs, and", and amended second sentence generally. Prior to amendment, second sentence read as follows: "The Secretary of Education and the

Chairman of the Commission shall serve as co-chairpersons of the Committee."

Pub. L. 102-569, Sec. 102(p)(29)(B), (C), substituted "Interagency Committee on Employees who are Individuals with Disabilities" for "Interagency Committee on Handicapped Employees" and "individuals with disabilities" for "individuals with handicaps" in two places.

Subsec. (b). Pub. L. 102-569, Sec. 102(p)(29)(C), (D), substituted "individuals with disabilities" for "individuals with handicaps" after "advancement of" and after "opportunities for" and "employees who are individuals with disabilities" for "employees with handicaps".

Subsecs. (c), (d), (f)(2). Pub. L. 102-569, Sec. 102(p)(29)(C), substituted "individuals with disabilities" for "individuals with handicaps".

Subsec. (g). Pub. L. 102-569, Sec. 503(b), added subsec. (g).

1991 - Subsec. (a). Pub. L. 102-54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

1988 - Subsec. (a). Pub. L. 100-630, Sec. 206(a)(3)(C), which directed substitution of "Employment of People With Disabilities" for "Employment of the Handicapped" in second sentence, could not be executed because the words did not appear in second sentence.

Pub. L. 100-630, Sec. 206(a)(1)-(3)(B), (4), inserted "(hereafter in this section referred to as the 'Commission')" after first reference to "Equal Employment Opportunity Commission" and substituted "Commission" for "Equal Opportunity Employment Commission" wherever appearing, "Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services" for "Secretaries of Labor and Education and Health and Human Services"

in first sentence, "co-chairpersons" for "co-chairmen" in second sentence, and "Commission" for "Office" in cl. (2).

Subsec. (b). Pub. L. 100-630, Sec. 206(a)(2), (5), substituted "submit to the Commission" for "submit to the Equal Employment Opportunity Commission", "employees with handicaps" for "handicapped employees", and "Commission, if the Commission determines" for "Office, if the Office determines".

Subsecs. (c), (d). Pub. L. 100-630, Sec. 206(a)(2), substituted "Commission" for "Equal Opportunity Employment Commission" wherever appearing.

Subsec. (e). Pub. L. 100-630, Sec. 206(a)(6), substituted "an individualized" for "a individualized".

Subsec. (f)(1), (2). Pub. L. 100-630, Sec. 206(a)(7), substituted "Employment of People With Disabilities" for "Employment of the Handicapped".

1986 - Pub. L. 99-506, Sec. 103(d)(2)(C), substituted "individuals with handicaps" for "handicapped individuals" in section catchline.

Subsecs. (a) to (c). Pub. L. 99-506, Secs. 103(d)(2)(C), 1002(e)(1), substituted "Equal Employment Opportunity Commission" for "Office of Personnel Management" and "individuals with handicaps" for "handicapped individuals" wherever appearing.

Subsec. (d). Pub. L. 99-506, Secs. 103(d)(2)(C), 1002(e)(1), (2)(A), substituted "Equal Employment Opportunity Commission" for "Office of Personnel Management" wherever appearing, "individuals with handicaps" for "handicapped individuals", and "of the activities" for "of the the activities".

Subsec. (e). Pub. L. 99-506, Sec. 1001(f)(1), substituted "a individualized" for "his individualized".

Subsec. (f) (2). Pub. L. 99-506, Sec. 103(d) (2) (C), substituted "individuals with handicaps" for "handicapped individuals".

1984 - Subsec. (a). Pub. L. 98-221, Sec. 104(b) (3) (A)-(D), substituted "the Chairman of the Office of Personnel Management" and "Education and Health and Human Services" for "the Chairman of the Civil Service Commission" and "Health, Education, and Welfare", respectively, in first sentence, "Secretary of Education and the Chairman of the Office of Personnel Management" for "Secretary of Health, Education, and Welfare and the Chairman of the Civil Service Commission" in second sentence, "Office of Personnel Management" for "Civil Service Commission" in four places, and "Office" for "Commission".

Subsec. (b). Pub. L. 98-221, Sec. 104(b) (3) (C), (D), substituted "Office of Personnel Management" for "Civil Service Commission" and substituted "Office" for "Commission" in two places.

Subsec. (c). Pub. L. 98-221, Sec. 104(b) (3) (C), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (d). Pub. L. 98-221, Sec. 104(b) (3) (C), (E), substituted "Office of Personnel Management" for "Civil Service Commission" in two places and "the activities of the Office of Personnel Management" for "Civil Service Commission's activities".

Subsec. (f) (1). Pub. L. 98-221, Sec. 104(b) (3) (F), substituted "Secretary of Education" for "Secretary of Health, Education, and Welfare".

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 341(c) of Pub. L. 105-220 effective Aug. 7, 1998, and applicable to and may be raised in any administrative or judicial claim or action brought before Aug. 7, 1998, but pending on such date, and any administrative or judicial claim or action

brought after such date regardless of whether the claim or action arose prior to such date, if the claim or action was brought within the applicable statute of limitations, see section 341(d) of Pub. L. 105-220, set out as a note under section 633a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-569, title I, Sec. 138, Oct. 29, 1992, 106 Stat. 4397, as amended by Pub. L. 103-73, title I, Sec. 102(3), Aug. 11, 1993, 107 Stat. 718, provided that:

"(a) Effective Date. - Except as provided in subsection (b), this title [enacting sections 718 to 718b, 725 to 728a, and 740 to 744 of this title, amending this section and sections 701, 705 to 707, 709, 711 to 715, 717, 720 to 724, 730 to 732, 740, 741, 750, 761a to 762, 770, 772 to 776, 777a, 777b, 777d to 777f, 780, 781, 783, 792 to 794, 795, 795d, 795e, and 795h of this title, repealing section 752 of this title, enacting provisions set out as notes under section 712 of this title, and amending provisions set out as a note under section 701 of this title] and the amendments made by this title shall take effect on the date of enactment of this Act [Oct. 29, 1992].

"(b) Compliance. - Each State agency subject to the provisions of title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] shall comply with the amendments made by this subtitle [subtitle B (Secs. 121-138) of title I of Pub. L. 102-569, enacting sections 725 to 728a and 740 to 744 of this title, amending sections 705, 720 to 724, and 730 to 732 of this title, and repealing section 752 of this title], as soon as is practicable after the date of enactment of this Act [Oct. 29, 1992], consistent with the effective and efficient administration of the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], but not later than October 1, 1993."

## EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-506, title X, Sec. 1006, Oct. 21, 1986, 100 Stat. 1846, provided that: "Except as otherwise provided in this Act [see Short Title of 1986 Amendment note set out under section 701 of this title], this Act shall take effect on the date of its enactment [Oct. 21, 1986]."

## TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which reports required under subsecs. (a) and (d) of this section are listed on page 188), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

-EXEC-

## EXECUTIVE ORDER NO. 10640

Ex. Ord. No. 10640, Oct. 10, 1955, 20 F.R. 7717, formerly set out as a note under section 39 of this title, which related to President's Committee on Employment of the Physically Handicapped, was superseded by section 6(a) of Ex. Ord. No. 10994, Feb. 14, 1962, 27 F.R. 1447, which established President's Committee on Employment of the Handicapped.

## EXECUTIVE ORDER NO. 10994

Ex. Ord. No. 10994, Feb. 14, 1962, 27 F.R. 1447, as amended by Ex. Ord. No. 11018, Apr. 27, 1962, 27 F.R. 4143, which established the President's Committee on Employment of the Handicapped, was superseded by Ex. Ord. No. 11480, Sept. 9, 1969, 34 F.R. 14273, formerly set out below.

## EXECUTIVE ORDER NO. 11480

Ex. Ord. No. 11480, Sept. 9, 1969, 34 F.R. 14273, as amended by Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, which established and provided for the functions of the President's Committee on Employment of the Handicapped, was superseded by Ex. Ord. No. 12640, May 10, 1988, 53 F.R. 16996, formerly set out below.

EX. ORD. NO. 11830. ENLARGING MEMBERSHIP OF INTERAGENCY COMMITTEE  
ON HANDICAPPED EMPLOYEES

Ex. Ord. No. 11830, Jan. 9, 1975, 40 F.R. 2411, as amended by Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053; Ex. Ord. No. 12450, Dec. 9, 1983, 48 F.R. 55409; Ex. Ord. No. 12672, Mar. 21, 1989, 54 F.R. 12167; Ex. Ord. No. 12704, Sec. 1, Feb. 26, 1990, 55 F.R. 6969, provided:

By virtue of the authority vested in me by section 501(a) of the Rehabilitation Act of 1973 (Public Law 93-112; 87 Stat. 390)

[subsec. (a) of this section], it is hereby ordered as follows:

Section 1. In accord with Section 501 of the Rehabilitation Act of 1973 (**29** U.S.C. 791) and Section 4 of Reorganization Plan No. 1 of 1978 (43 FR 19808) [set out in the Appendix to Title 5, Government Organization and Employees], the Interagency Committee on Handicapped Employees is enlarged and composed of the following, or their designees whose positions are Executive level IV or higher:

- (1) Secretary of Defense.
- (2) Secretary of Labor.
- (3) Secretary of Education, Co-Chairman.
- (4) Director of the Office of Personnel Management.
- (5) Administrator of Veterans Affairs.

- (6) Administrator of General Services.
- (7) Chairman of the Federal Communications Commission.
- (8) Chairman of the Equal Employment Opportunity Commission, Co-Chairman.
- (9) Secretary of Health and Human Services.
- (10) Postmaster General of the United States Postal Service.
- (11) Chairman of the President's Committee on Employment of People with Disabilities (Ex Officio).
- (12) Such other members as the President may designate.

Sec. 2. The Interagency Committee on Handicapped Employees shall also be referred to as the Interagency Committee on Employment of People with Disabilities.

EXECUTIVE ORDER NO. 12640

Ex. Ord. No. 12640, May 10, 1988, 53 F.R. 16996, as amended by Ex. Ord. No. 12945, Jan. 20, 1995, 60 F.R. 4527, which established the President's Committee on Employment of People with Disabilities, the Executive Committee of the President's Committee on Employment of People with Disabilities, and the Advisory Council on Employment of People with Disabilities, and provided for the membership, functions, and administration of those bodies, and superseded Ex. Ord. No. 11480, was revoked by Ex. Ord. No. 13187, Sec. 4(a), Jan. 10, 2001, 66 F.R. 3858, set out as a note under section 701 of this title.

EX. ORD. NO. 13163. INCREASING THE OPPORTUNITY FOR INDIVIDUALS WITH

DISABILITIES TO BE EMPLOYED IN THE FEDERAL GOVERNMENT

Ex. Ord. No. 13163, July 26, 2000, 65 F.R. 46563, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote an increase in the opportunities for individuals with

disabilities to be employed at all levels and occupations of the Federal Government, and to support the goals articulated in section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), it is hereby ordered as follows:

Section 1. Increasing the Federal Employment Opportunities for Individuals with Disabilities. (a) Recent evidence demonstrates that, throughout the United States, qualified persons with disabilities have been refused employment despite their availability and qualifications, and many qualified persons with disabilities are never made aware of available employment opportunities. Evidence also suggests that increased efforts at outreach, and increased understanding of the reasonable accommodations available for persons with disabilities, will permit persons with disabilities to compete for employment on a more level playing field.

(b) Based on current hiring patterns and anticipated increases from expanded outreach efforts and appropriate accommodations, the Federal Government, over the next 5 years, will be able to hire 100,000 qualified individuals with disabilities. In furtherance of such efforts, Federal agencies shall:

(1) Use available hiring authorities, consistent with statutes, regulations, and prior Executive orders and Presidential Memoranda;

(2) Expand their outreach efforts, using both traditional and nontraditional methods; and

(3) Increase their efforts to accommodate individuals with disabilities.

(c) As a model employer, the Federal Government will take the lead in educating the public about employment opportunities

available for individuals with disabilities.

(d) This order does not require agencies to create new positions or to change existing qualification standards for any position.

Sec. 2. Implementation. Each Federal agency shall prepare a plan to increase the opportunities for individuals with disabilities to be employed in the agency. Each agency shall submit that plan to the Office of Personnel Management within 60 days from the date of this order.

Sec. 3. Authority to Develop Guidance. The Office of Personnel Management shall develop guidance on the provisions of this order to increase the opportunities for individuals with disabilities employed in the Federal Government.

Sec. 4. Judicial Review. This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

William J. Clinton.

EX. ORD. NO. 13164. REQUIRING FEDERAL AGENCIES TO ESTABLISH PROCEDURES TO FACILITATE THE PROVISION OF REASONABLE ACCOMMODATION

Ex. Ord. No. 13164, July 26, 2000, 65 F.R. 46565, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), as amended, and in order to promote a model Federal workplace that provides reasonable accommodation for (1) individuals with disabilities in the application process for Federal employment; (2) Federal employees with disabilities to perform the essential functions of a position; and (3) Federal employees with disabilities to enjoy

benefits and privileges of employment equal to those enjoyed by employees without disabilities, it is hereby ordered as follows:

Section 1. Establishment of Effective Written Procedures to Facilitate the Provision of Reasonable Accommodation. (a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation by employees and applicants with disabilities. The written procedures may allow different components of an agency to tailor their procedures as necessary to ensure the expeditious processing of requests.

(b) As set forth in Re-charting the Course: The First Report of the Presidential Task Force on Employment of Adults with Disabilities (1998), effective written procedures for processing requests for reasonable accommodation should include the following:

(1) Explain that an employee or job applicant may initiate a request for reasonable accommodation orally or in writing. If the agency requires an applicant or employee to complete a reasonable accommodation request form for recordkeeping purposes, the form must be provided as an attachment to the agency's written procedures;

(2) Explain how the agency will process a request for reasonable accommodation, and from whom the individual will receive a final decision;

(3) Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. Time limits for decision making should be as short as reasonably possible;

(4) Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation where the

disability and/or need for accommodation is not obvious;

(5) Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, or the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace;

(6) Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense;

(7) Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position;

(8) Provide that reasonable accommodation denials be in writing and specify the reasons for denial;

(9) Ensure that agencies' systems of recordkeeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulations; and

(10) Encourage the use of informal dispute resolution processes to allow individuals with disabilities to obtain prompt reconsideration of denials of reasonable accommodation. Agencies must also inform individuals with disabilities that they have the right to file complaints in the Equal Employment Opportunity process and other statutory processes, as appropriate, if their requests for reasonable accommodation are denied.

Sec. 2. Submission of Agency Reasonable Accommodation Procedures to the Equal Employment Opportunity Commission (EEOC). Within 1 year from the date of this order, each agency shall submit its procedures to the EEOC. Each agency shall also submit to the EEOC any modifications to its reasonable accommodation procedures at the time that those modifications are adopted.

Sec. 3. Collective Bargaining Obligations. In adopting their reasonable accommodation procedures, agencies must honor their obligations to notify their collective bargaining representatives and bargain over such procedures to the extent required by law.

Sec. 4. Implementation. The EEOC shall issue guidance for the implementation of this order within 90 days from the date of this order.

Sec. 5. Construction and Judicial Review. (a) Nothing in this order limits the rights that individuals with disabilities may have under the Rehabilitation Act of 1973, as amended.

(b) This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

William J. Clinton.



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