



Category/Subject: Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended
Colorado Policy Guidance Letter#: ADM-2019-08
Revise/Replace PGL#: ADM-2002-06
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Distribution: CDLE Management/Finance, State/Local Workforce Directors & Staff, Partners

Changes from Comment Period are Yellow Highlighted

I. REFERENCES:

- Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, as amended
- [29 CFR Part 38](#), Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act (WIOA) of 2014, specifically 29 CFR 38.12, Discrimination Prohibited Based on Disability
- [29 CFR Part 32](#), Implementing Non-Discrimination on the Basis of Handicap [current term - disability] in Programs and Activities Receiving Federal Financial Assistance
- Section 188 of the Workforce Innovation and Opportunity Act of 2014
- Americans with Disabilities Act of 1990, Pub. L. No. 101-336, and ADA Amendments Act of 2008

II. PURPOSE:

This Policy Guidance Letter (PGL):

Provides the requirements set forth in 29 CFR, Part 38, which implement the Non-Discrimination and Equal Opportunity provisions of WIOA Section 188 and 29 CFR, Part 32 - covering Non-Discrimination on the Basis of Handicap [current term - disability] in Programs and Activities Receiving Federal Financial Assistance. The regulations at 29 CFR, Part 32, in turn, implement Section 504 of the Rehabilitation Act of 1973, as amended, and relevant provisions of the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act of 2008.

III. BACKGROUND:

The US Department of Labor and the Colorado Department of Labor and Employment are committed to ensuring that programs, activities, services, benefits and aids under WIOA are accessible to all qualified individuals with disabilities, which may include applicants, registrants, participants, employees and applicants for employment. Individuals with disabilities, as well as any group covered by civil rights laws, represent a valuable resource to the labor market and to society.

The federal requirements for fair and equitable services to individuals with a disability are not new. However, the Workforce Innovation and Opportunity Act of 2014 presents an enhanced focus

on new challenges to ensuring access and accommodation in federally funded employment and training programs. The increased use of core and other required partnerships with agencies such as Vocational Rehabilitation is a clear example of this. In addition, policy makers and service providers need to assess how the current employment and training infrastructure meets the requirements of equity and fairness for individuals with disabilities. Resources for self-assessment are readily available through a number of sources, including Internet sites. Examples include:

- Reference Guide from the LEAD Center at: <http://www.leadcenter.org/resources/tool-manual/new-promising-practices-achieving-nondiscrimination-and-equal-opportunity-section-188-disability-reference-guide>
- USDOL site at: www.doleta.gov (click on “About our Programs” at the top of the home page and then “Disability and Employment Online”)
- US Department of Justice site at: <https://www.ada.gov> (a basic site with links to other resources)
- [Web Content Accessibility Guidelines 2.0](#)
- **Attachment 1** to this PGL (WIOA Section 188 Disability Best Practices Guide) will also serve as an aid to ensure access to WIOA funded facilities and programs

While all of the definitions under WIOA are important and must be reviewed, please pay special attention to the definitions found at 29 CFR Part 38, Section 38.4 for:

- “Auxiliary aids or services”
- “Disability”
- “Facility”
- “Financial assistance under Title I of WIOA”
- “Fundamental alteration”
- “Illegal use of drugs”
- “Individual with a disability”
- “Reasonable accommodation”
- “Recipient”
- “Section 504”
- “Undue hardship”
- “WIOA Title I financially assisted-funded program or activity”

The definitions at 29 CFR Part 38 are consistent with those found at 29 CFR Part 32 – the regulations implementing Section 504 of the Rehabilitation Act of 1973.

Requirements for nondiscrimination and Equal Opportunity in serving individuals with disabilities are found at:

- Section 38.12 – What specific discriminatory actions based on disability are prohibited by this part?;
- Section 38.14 – What are a recipient’s responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities?; and
- Section 38.15 – What are a recipient’s responsibilities to communicate with individuals with disabilities?

IV. POLICY/ACTION:

- A. It is the responsibility of all program administrative and operating staff to ensure that WIOA Title I financially assisted programs, services, activities, benefits or aids are accessible to individuals with disabilities and that there is a general state of preparedness to accommodate the reasonable requests or needs of qualified individuals with disabilities. Accordingly, steps should be taken to review access to facilities (as defined at 29 CFR Part 38.13), programs, services, activities, benefits and aids and to make modifications as necessary. Qualified individuals with disabilities may include applicants, registrants, participants, employees, or applicants for employment. In addition, to the extent possible, Title I staff should provide technical assistance and on-line resources to their required WIOA partners regarding the same responsibilities.
- B. Physical access to a facility includes but is not limited to driveways, walkways, bathrooms, meeting rooms, cubicles, furniture, computers/keyboards, telephones, and water fountains. If a convenience such as a public telephone or water fountain is in place, then it or a similar convenience should be available to individuals with disabilities.
- C. Program access includes but is not limited to computer software/internet access by individuals with a visual and/or hearing impairment, customer services, application process, benefit determinations, testing and assessment instruments and procedures, other selection criteria, counseling, hearings, classroom instruction, orientation sessions, and job placement services that take into account the needs of individuals with disabilities.
- D. Every staff person and guest agency or partner of a One-Stop, Workforce Center or local office, and local workforce area operating agency should be cognizant of the policies, procedures, and postings relative to not only Equal Opportunity but also to individuals with disabilities. Orientation to new employees will include access and accommodation issues.
- E. Maximum efforts must be made to administer and operate programs, activities, services, benefits, and aids in the most integrated setting possible so that participation by qualified individuals with disabilities is possible.
- F. Ensure that recruitment brochures and other materials routinely made available to the public include the statement "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities."
- G. Reasonable accommodations should be made when requested by individuals with disabilities to enable their participation in self-services, basic and individualized career services, training, and any other benefits or aids. Accommodations must result in the delivery of effective and, at minimum, qualitatively equivalent services, training, benefits, or aids. An automatic referral to a program/agency that is designed solely for individuals with disabilities may not suffice as a reasonable accommodation if the customer desires (and it is reasonable) to participate in "mainstream" services, activities, training, benefits or aids.

- H. An individual need not reference either ADA or Section 504 of the Rehabilitation Act when asking for an accommodation. Also, if it appears that an otherwise eligible or qualified individual may need an accommodation, a program official may ask the individual if he or she can participate in a specific activity with or without a reasonable accommodation. The individual's response is controlling; if the individual indicates that an accommodation is not needed, further inquiries about the disability or accommodation must cease.
- I. All applications related to services, activities, training, benefits or aids must indicate that any question regarding whether or not a person is disabled (yes or no answer) is for statistical purposes and to meet federal affirmative action obligations. The application should also state that a response to a question relating to disability status is strictly voluntary. This language should be reviewed by the local area's legal advisors before publication.
- J. Specific medical information gathered at an intake or counseling session (including the response to the Disabled/Not Disabled question) should generally be collected for arranging an accommodation for an otherwise qualified individual with a disability, but may also include purposes such as determining eligibility. Such medical information must be maintained in a separate, secure file that is only available to authorized individuals. Per 29 CFR 38.41(b)(3), authorized individuals are divided into two levels of access:

"(i) Knowledge of disability status or medical condition and access to information in related files. Persons in the following categories may be informed about an individual's disability or medical condition and have access to the information in related files under the following listed circumstances:

- (A) Program staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity.*
- (B) First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency.*
- (C) Government officials engaged in enforcing this part, any other laws administered by the Department, or any other Federal laws. See also §38.44.*

(ii) Knowledge of disability status or medical condition only. Supervisors, managers, and other necessary personnel may be informed regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals."

Medical information cannot be stored in the same file (hard copy or electronic) as the rest of the client information. The law is clear on this and uses the term "separate files with limited access."

NOTE: Connecting Colorado is not currently configured to provide separate files with limited access. Until such time as the system is updated, medical information must be filed in a separate software system or a separate physical filing cabinet.

- K. Reasonable accommodation efforts or declination of same by the program for reasons of undue hardship must be documented to such an extent that an authorized review of these records will show that the civil rights of individuals with disabilities were not violated. When an accommodation is not granted because of undue hardship or fundamental alteration of a program, service, activity, training, benefit or aid, then a written statement to this effect must be provided to the individual for whom the accommodation was being considered. In either case, the program (to the maximum extent possible) must take any other action that would not result in either an undue hardship or fundamental alteration in order to provide an individual with a disability, a service, activity, benefit or aid.
- L. Communication issues as described in 29 CFR 38.15 need to be addressed. These include but are not limited to outreach and recruitment efforts, which target the disabled community and contact with community-based organizations.
- M. Communications with individuals with disabilities must be as effective as communications with others. As necessary, this includes but is not limited to auxiliary aids or services, telecommunication devices or relay services, information about the existence and location of accessible services, activities, and facilities. The international signage for accessibility must be placed at the appropriate entrances to a facility that houses programs, services, activities, benefits or aids financially assisted by WIOA Title I funds. Signs should be posted in public reception areas stating, "If you need assistance or an accommodation, please alert one of the staff of this facility."
- N. As electronic-based formats become the primary means of service transactions, it is strategically critical for all WIOA recipients and sub-recipients to engage their respective Information Technology leadership to ensure new systems are accessible to persons with disabilities at the point where a new system is in the initial stages of planning and continuing throughout development to completion.
- O. Program management must ensure that sub-recipients acting as service providers comply with the requirements set forth in this Equal Opportunity PGL and any other state and local policies regarding access and accommodation to individuals with disabilities.
- P. Recipients of WIOA Title I financial assistance are not required to furnish personal services such as assistance in eating, toileting, and dressing.

V. IMPLEMENTATION DATE:

The guidance contained in this PGL take effect immediately. The civil rights laws referred to in this document have been in effect prior to WIOA. 29 CFR Part 38, which implements the Equal Opportunity provisions of WIOA has been in effect since July 1, 2014.

VI. INQUIRIES:

Inquiries regarding this PGL should be directed to the CDLE WIOA Equal Opportunity Officer at 303-318-8206.



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ATTACHMENTS:

1. WIOA Section 188 Disability Best Practices Guide