

**COMMENTS ON PROPOSED REVISIONS
TO PART 1624 OF THE LSC REGULATIONS**

PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY

**SUBMITTED BY
THE CENTER FOR LAW & SOCIAL POLICY
ON BEHALF OF
THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION**

June 21, 2006

These comments are submitted to the Legal Services Corporation (LSC) by the Center for Law and Social Policy (CLASP) on behalf of the National Legal Aid and Defender Association (NLADA). NLADA is a membership organization that represents civil legal services programs, including those funded by LSC. CLASP serves as counsel to NLADA.

On May 12, 2006, LSC published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* (71 FR 27654) for Part 1624 of the LSC regulations (Prohibition Against Discrimination on the Basis of Disability). The NPRM seeks comments on the proposal to amend the rule. Comments are due by June 26, 2005.

The NPRM proposed very modest changes to the current rule, among other things, to update its terminology, add a reference to the Americans with Disabilities Act (ADA) which was enacted after Part 1624 was originally adopted, remove an obsolete provision, and add language on LSC's enforcement policies and practices in responding to complaints alleging discrimination based on disability. We acknowledge and appreciate that the NPRM would not add any substantive new requirements or any new administrative burdens on LSC recipients.

The proposed changes were made largely in response to the issues that were raised during the December 2005 rulemaking workshop that LSC convened to obtain input from field programs and the disability rights community about changes that might be desired or needed in the rule. There was a general consensus that the current rule had worked well over the years, that there had been relatively few complaints and that, by and large, recipients were in compliance with the requirements of the rule. The principal concerns were that since the rule was adopted in 1979 and had not been revised since, the language of the rule needed to be updated and the rule should acknowledge the passage of the ADA, which was enacted long after the adoption of the rule.

NLADA is in complete agreement with all of the revisions that are proposed in the NPRM, with one relatively minor exception. We fully support the

substitution throughout the rule of the term “person(s) with disabilities” for “handicapped person(s)” or other forms or uses of the words as are grammatically appropriate. We also fully support the addition of new references to the ADA and the notation that the requirements of Part 1624 apply in addition to any responsibilities that legal services programs may have under the ADA and any implementing regulations. We appreciate that the new language does not impose any new substantive obligations on grantees and appropriately does not suggest that LSC has any authority for enforcing the ADA.

In addition, we support the substitution throughout the rule of the phrase “auxiliary aids and/or other assistive technologies” for the term “auxiliary aids” and the inclusion of a definition of the phrase that reflects the range of technologies, systems and devices that have been developed since the rule was adopted and are now available to help grantees make legal services and employment opportunities accessible and beneficial to persons with a range of disabilities.

Our one area of disagreement is with proposed Section 1626.7 that discusses enforcement of the requirements of the rule. In addition to the language from the current rule referencing the procedures described in Part 1618 of the LSC regulations, the NPRM adds a new section to the provisions on enforcement. This new §1624.7(b) describes the policy and process that LSC uses in responding to complaints that it receives alleging discrimination on the basis of disability. It explains that it is LSC’s policy “*generally* to refer such complainants promptly to the appropriate Federal, state or local agencies....” The proposal then goes on to state that “LSC retains the *discretion* to investigate all complaints and/or to maintain an open complaint file during the pendency of an investigation being conducted by such other federal, state or local agency.” Finally, the section notes that “LSC *may use, at its discretion*, information obtained by such other agency as may be available to LSC including findings of such other agency of whether discrimination on the basis of disability has occurred.”

We fully support the substance of the policy described in the proposed section and understand that it reflects LSC’s current policy and practice. Nevertheless, we believe that the descriptive and highly qualified language that is suggested in the NPRM is not sufficiently specific or definitive to be included in the regulatory text and is more suitable to be included in the preamble discussion that accompanies publication of the rule. The preamble provides guidance to both grantees and LSC in interpreting LSC regulations, and the proposed language will be useful in describing to grantees the manner LSC anticipates that it will use to follow-up on the complaints that it receives and the way that it plans to enforce the requirements of the rule.

Given that not everyone who consults the rule will also read the preamble that accompanies its publication (and since the preamble does not appear with

the text of the rule when it is printed in the Code of Federal Regulations (“CFR”)), it may be appropriate to include a more definitive and less qualified statement of LSC enforcement policy within the text of the rule. Thus, as an alternative to inclusion of the proposed language in the preamble, we propose that LSC include the following language in the text of the rule:

§1624.7-- LSC will promptly refer a complainant who alleges a violation that appears to fall within the scope of this Part to the appropriate Federal, state or local agency or agencies with authority to investigate discrimination on the basis of disability. Pending completion of such other agency’s investigation, LSC may also investigate the complaint. As part of its investigation, LSC may also use such agency’s findings, conclusions or information that the other agency makes available to LSC.

If you have any questions about these comments, please feel free to contact our counsel, Linda Perle, at 202-906-8002 or lperle@clasp.org.