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The Secretary amends the regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with statutory amendments made by the Civil Rights Restoration Act of 1987 (CRRA). These amendments add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA. (AA)
Monday,
November 13, 2000

Part IV

Department of Education

34 CFR Parts 100, 104, 106, and 110
Conforming Amendments to the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Sex, and Age Under the Civil Rights Restoration Act of 1987; Final Rule
DEPARTMENT OF EDUCATION
34 CFR Parts 100, 104, 106, and 110

RIN 1870-AA10

Conforming Amendments to the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Sex, and Age Under the Civil Rights Restoration Act of 1987

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with statutory amendments made by the Civil Rights Restoration Act of 1987 (CRRA). These amendments add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA.

DATES: These regulations are effective December 13, 2000.

ADDRESSES: After December 13, 2000, a complete version of the revised regulations will be available on request from OCR's Customer Service Team listed in FOR FURTHER INFORMATION CONTACT and will be available on the Internet at the following site: http://www.ed.gov/ocr/regs

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lint, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036 MES, Washington, DC 20202-1100. Telephone: (202) 260-0471. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 260-0471. Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to OCR’s Customer Service Team at (202) 260-5557 or toll-free at 1-800-421-3481.

SUPPLEMENTARY INFORMATION: On May 5, 2000, we published a notice of proposed rulemaking (NPRM) in the Federal Register (65 FR 26464) proposing to amend the regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with the CRRA.

We are amending these civil rights regulations to conform to provisions of the CRRA regarding the scope of coverage under civil rights statutes administered by the Department of Education (Department or ED). These statutes include Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq. (Title VI), Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., (Title IX), Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), and the Age Discrimination Act of 1975, 42 U.S.C. 6101, et seq. (Age Discrimination Act). Title VI prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance; Title IX prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance; Section 504 prohibits discrimination on the basis of disability in all programs or activities that receive Federal financial assistance; and the Age Discrimination Act generally prohibits discrimination on the basis of age in all programs or activities that receive Federal financial assistance.

The conforming change amends each of these regulations to add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA. We believe that adding this statutory definition to the regulatory language is the best way to avoid confusion on the part of recipients, students, parents, and other interested parties about the scope of civil rights coverage. These amendments also conform in this regard to the final Title IX regulations for 24 Federal agencies published on August 30, 2000 (65 FR 52858). That common rule incorporated the statutory definitions of "program or activity" or "program" enacted as part of the CRRA.

The Department's civil rights regulations, when originally issued and implemented, were interpreted by the Department to mean that acceptance of Federal assistance by a school resulted in broad institutional coverage. In Grove City College v. Bell 465 U.S. 555 (1984) (Grove City College), the Supreme Court held, in a Title IX case, that if the Department provided student financial assistance to a college, the Department had jurisdiction to ensure Title IX compliance in the specific program receiving or benefiting from the assistance, in this case, the student financial aid program, but that the Federal student financial assistance would not provide jurisdiction over the entire institution. Following the Supreme Court's decision in Grove City College, the Department did change its interpretation, but not the language, of those regulations to be consistent with the Court's restrictive, "program specific" definition of "program or activity" or "program." Since Title IX was patterned after Title VI, Grove City College significantly narrowed the scope of jurisdiction of Title VI and two other statutes based on it: the Age Discrimination Act and Section 504. See S. Rep. No. 100-64, 100th Cong., 1st Sess. 2-3, 11-16 (1987).

Then, in 1988, the CRRA was enacted to "restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered" (20 U.S.C. 1687 note 1.) Congress enacted the CRRA in order to remedy what it perceived to be a serious narrowing by the Supreme Court of a longstanding administrative interpretation of the coverage of the regulations. At that time, the Department reinstated its broad interpretation to be consistent with the CRRA, again without changing the language of the regulations. It was and remains the Department's consistent interpretation that—with regard to the differences between the interpretation of the regulations given by the Supreme Court in Grove City College and the language of the CRRA—the CRRA, which took effect upon enactment, superseded the Grove City College decision and, therefore, the regulations must be read in conformity with the CRRA.

This interpretation reflects the understanding of Congress, as expressed in the legislative history of the CRRA, that the statutory definition of "program or activity" or "program" would take effect immediately, by its own force, without the need for Federal agencies to amend their existing regulations (S. Rep. No. 100-64 at 32). The legislative history also evidences congressional concern about the Department's immediate need to address complaints and findings of discrimination in federally assisted schools under the CRRA definition of "program or activity," citing examples to demonstrate why the CRRA was "urgently" needed (S. Rep. No. 100-64 at 11-16).

These regulatory amendments eliminate an issue recently raised by the Third Circuit Court of Appeals in Cureton v. NCAA, 198 F. 3d 107 (1999) (Cureton). That court determined that, because the Department did not amend its Title VI regulations after the CRRA amended Title VI, application of the Department's Title VI regulations to disparate impact discrimination claims is "program specific" (i.e., limited to specific programs in an institution affected by the Federal funds), rather than institution-wide (i.e., applicable to all of the operations of the institution regardless of the use of the Federal...
The Department disagrees with the Cureton decision for the reasons described in this preamble. That decision would thwart clearly expressed congressional intent. In any event, the regulatory changes address the concerns raised by the Third Circuit in that the regulations track the statutory language and apply to both disparate impact discrimination and different treatment discrimination. Different treatment discrimination, "i.e., intentional discrimination, refers to policies or practices that treat individuals differently based on their race, color, national origin, sex, disability, or age, as applicable. That different treatment is generally barred by the civil rights statutes and regulations. "Disparate impact" refers to criteria or methods of administration that have a significant disparate effect on individuals based on race, color, national origin, sex, disability, or age, as applicable. Those criteria or practices may constitute impermissible discrimination based on legal standards that include consideration of their educational necessity.)

The statutory definition, which is now incorporated into the regulations, addresses four broad categories of recipients: (1) State or local governmental entities. (2) Colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies (LEAs), systems of vocational education, and other school systems. (3) Private entities, such as corporations, partnerships, and sole proprietorships, including those whose principal business is providing education. (4) Entities that are established by a combination of two or more of the first three categories of entities.

Under the first part of the definition, if State and local governmental entities receive financial assistance from the Department, the "program or activity" or "program," in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the Federal assistance is extended. For example, if the Department provides financial assistance to a State educational agency, all of the agency's operations are subject to the nondiscrimination requirements of the regulations. In addition, "program or activity" or "program," also includes all of the operations of the entity of a State or local government that distributes the Federal assistance to another State or local governmental agency or department and all of the operations of the State or local governmental entity to which the financial assistance is extended. For example, if the Department provides financial assistance under Title I of the Elementary and Secondary Education Act to a State educational agency and the State educational agency distributes the financial assistance to a local educational agency, then all of the operations of the State educational agency are subject to the nondiscrimination requirements of the regulations, and all of the operations of the local educational agency are covered.

Under the second part of the definition of "program or activity" or "program," if colleges, universities, other postsecondary institutions, public systems of higher education, local educational agencies, systems of vocational education, or other public or private schools or school systems receive financial assistance from the Department, all of their operations are subject to the nondiscrimination requirements of the regulations. For example, if a public school district receives funds from the Department under the Safe and Drug Free Schools and Communities Act, the entire school district is covered, not just the district's Safe and Drug Free Schools and Communities component. Additionally, for example, if a college or university receives student financial assistance from the Department, all of the operations of the college or university are covered, not solely the operations of the student financial assistance office. In addition, the legislative history of the CRRA made it clear that "all of the operations" was not limited to traditional educational operations, but was intended to include other benefits and services of the educational institution, such as faculty and student housing, transportation services, and commercial activities, such as bookstores and cafeterias.

Under the third part of the definition, in the case of private entities not already covered by one of the first three parts of the definition is established by two or more of the entities listed under the first three parts of the definition, then all of the operations of that new entity are covered. Under the illustrative example in the legislative history, a public school district (an entity listed under the second part of the definition) and a private corporation (an entity listed under the third part of the definition) may establish a new entity, which is a public-private partnership designed to provide remediation, training, and employment to high school students who are at risk of dropping out of school. If the new company applied for and received financial assistance from the Department, then, as an entity listed under the fourth part of the definition, all of its operations would be covered, even if the assistance from the Department were only to one division or component of the new company.

The regulatory changes also modify or delete some sections of the Department regulations that have become superfluous following the enactment, to conform with the CRRA definitions of "program or activity" or "program." These regulatory changes do not change the requirements of the existing regulations. This is consistent with the approach in the Title IX common rule. As explained in the preamble to the NPRM for the Title IX common rule, that regulatory language in ED's Title IX regulations made...
superfluous by the enactment of the CRRA was omitted in that rule (64 FR 58571).

The Department's Title IX regulations, promulgated in 1975 by the Department of Health, Education, and Welfare in 49 FR 24128 and adopted by the Department of Education upon its establishment in 1980, 45 FR 30955, defined "recipient" as an entity "to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives or benefits from such assistance." At that time, the words "or benefits from" were necessary to clarify that all of the operations of a university or other educational institution that receives Federal funds—not just the particular programs receiving financial assistance—are covered by Title IX's nondiscrimination requirements. As previously discussed, this interpretation was rejected by the Supreme Court in 1984 in Grove City College, which held that Federal student financial aid established Title IX jurisdiction only over the financial aid program, not the entire institution. However, Congress' 1988 enactment of the CRRA counteracted this decision by defining "program or activity" and "program" to provide expressly that Title IX covers all educational programs of a recipient institution. Because of this statutory change, the words "or benefits from" are no longer necessary as a regulatory matter, and we deleted them. For the same reason, we deleted the words "or benefits from" that refer to the Section 504 regulations. These deletions do not affect the reach of Title VI.

In addition, we deleted references to "program" or "program or activity" in the regulations that do not refer to the CRRA broad definition of that phrase, in order to eliminate potential confusion in the use of these terms and to continue the longstanding Department interpretation of the statutes and regulations. For example, in some instances, we deleted "program" or "program or activity" and substituted "Federal financial assistance" or "aid, benefits, and services." In others, we changed "programs and activities" to "programs or activities" or "or program or activity" to conform the regulations to the phrase used in the CRRA—when it is used in the broad manner defined in the CRRA. We did not modify the term "activity" when it appears separately from the phrase "program or activity" and is used in a manner unrelated to the CRRA phrase "program or activity." These final regulations use the plural terms "programs" and "programs or activities" to refer generally to multiple programs or activities operated by multiple recipients. The singular terms "program" or "program or activity" are used in all other instances. We have chosen to use the singular in all of those cases because, under the CRRA and these regulations, virtually all of our recipients, such as institutions of higher education, will have only one "program" or "program or activity" encompassing all of the recipient's operations. In addition, since the use of

We replaced the current definition of "program" in 34 CFR 100.13 with the definition of "program or activity" and "program." We added the definition of "program or activity" and "program" to 34 CFR 104.2. We added the definition of "program or activity" to 34 CFR 104.3 and to 34 CFR 110.3. Conforming changes to the corresponding guidance in Appendix B of Part 100, Appendix A of Part 104, and Appendix A of Part 106 will be published in the Federal Register in a separate notice. Nothing in these changes affects coverage under the Federal employment nondiscrimination statutes, including Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act, and the Age Discrimination in Employment Act.

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In the NPRM, we invited comments on the proposed regulations. We did not receive any comments. However, we have reviewed the regulations, in consultation with the Department of Justice, since publication of the NPRM and have made minor editorial and technical changes.
benefits both quantitative and
and efficiently.
administering these programs effectively
from statutory requirements and those
the final regulations are those resulting
potential costs and benefits of this
of the order we have assessed the
Executive Order 12866. Under the terms
regulations in accordance with
Executive Order 12866

The potential costs associated with
these final regulations are those resulting
from longstanding Department policy and do
not change the Department’s practices in addressing issues of discrimination.
We also have determined that this
regulatory action would not unduly
interfere with State, local, and tribal
governments in the exercise of their
governmental functions.
We summarized the potential costs
and benefits of these final regulations in
the preamble to the NPRM (65 FR
26467).

Paperwork Reduction Act of 1995
These regulations do not contain any
information collection requirements.

Assessment of Educational Impact
In the NPRM we requested comments
on whether the proposed regulations
would require transmission of
information that any other agency or
authority of the United States gathers or
makes available.
Based on the response to the NPRM
and on our review, we have determined that these final regulations do not
require transmission of information that
any other agency or authority of the
United States gathers or makes available.

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List of Subjects
34 CFR Part 100
Administrative practice and
procedure, Civil rights.
34 CFR Part 104
Civil Rights, Equal educational
opportunity, Equal employment
opportunity, Individuals with
disabilities.
34 CFR Part 106
Education, Sex discrimination.
34 CFR Part 110
Administrative practice and
procedure, Aged, Civil rights, Grant
programs—education, Loan programs—
education.

Dated: September 1, 2000.
Richard W. Riley,
Secretary of Education.

For the reasons discussed in the
preamble, the Secretary amends parts
100, 104, 106, and 110 of title 34 of the
Code of Federal Regulations as follows:

PART 100—NONDISCRIMINATION
UNDER PROGRAMS RECEIVING
FEDERAL ASSISTANCE THROUGH
THE DEPARTMENT OF EDUCATION
EFFECTUATION OF TITLE VI OF THE
CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 100
continues to read as follows:

Authority: Sec. 503, 78 Stat. 225; 42 U.S.C.
2000d-1, unless otherwise noted.

§ 100.2 [Amended]
2. Section 100.2 is amended by—
A. Removing the words “program for
which” and adding, in their place,
“program to which” in the introductory
text;
B. Removing the words “assisted
programs and activities” and adding,
in their place, “financial assistance” in
the introductory text;
C. Removing the words “under any
such program” in paragraph (c); and
D. Removing the words “, under any
such program” in paragraph (d).

§ 100.3 [Amended]
3. Section 100.3(d) is amended by
removing the words “the benefits of a
program”, and adding, in their place,
the word “benefits”.

§ 100.4 [Amended]
4. Section 100.4 is amended as follows—
A. Removing the words “to carry out
a program” in the first sentence of
paragraph (a); and
B. Removing the words “except a
program” and adding, in their place, the
words “except an application” in
the first sentence of paragraph (a); and
C. Removing the words “for each
program” and the words “in the
program” in the fifth sentence of
paragraph (a); and
D. Removing the words “State
programs” and adding, in their place, the
words “Federal financial
assistance” in the heading of paragraph
(b); and
E. Removing the words “to carry out
a program involving” and adding, in
their place, the word “for” in the
introductory text of paragraph (b); and
F. Revising paragraph (d)(2).

The revision reads as follows:

§ 100.4 Assurances required.
• • • • • • •
(d) • • • •
(2) The assurance required with
respect to an institution of higher
education, hospital, or any other
institution, insofar as the assurance
relates to the institution’s practices with
respect to admission or other treatment
of individuals as students, patients, or
clients of the institution or to the
opportunity to participate in the
provision of services or other benefits to
such individuals, shall be applicable to
the entire institution.

5. Section 100.5 is amended as follows—
A. Revising paragraph (b); and
B. Removing the last sentence of
paragraph (d).

The revision reads as follows:

§ 100.5 Illustrative application.
• • • • • • •
(b) In a research, training,
demonstration, or other grant to a
university for activities to be conducted
in a graduate school, discrimination in
the admission and treatment of students
in the graduate school is prohibited, and
the prohibition extends to the entire
university.

§ 100.6 [Amended]
6. Section 100.6(b) is amended by
removing the words “of any program
under” in the last sentence and adding,
in their place, the word “in”;

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§ 100.9 [Amended]

7. Section 100.9(e) is amended by removing the word "programs" in the first sentence and adding, in its place, the words "Federal assistance statutes".

8. Section 100.13 is amended by—
   A. Removing "any program," and "under any such program" in paragraph (i);
   B. Removing "for the purpose of carrying out a program" in paragraph (j);
   C. Revising paragraph (g); and
   D. Adding an authority citation following paragraph (g).

The revision and addition read as follows:

§ 100.13 Definitions.
   * * * * *

(g) The term program or activity and the term program mean all of the operations of—
   (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
   (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
   (2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or
   (ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;
   (3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship;
   (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
   (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
   (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
   (4) Any other entity that is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section, any part of which is extended Federal financial assistance.

9. Appendix A to part 100 is amended by revising the heading of part 1 and the heading of part 2 to read as follows:

APPENDIX A TO PART 100—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

Part 1—Assistance Other Than Continuing Assistance to States
   * * * * *

Part 2—Continuing Assistance to States
   * * * * *

PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

10. The heading for part 104 is revised to read as set forth above.

11. The authority citation for part 104 continues to read as follows:


§ 104.2 [Amended]

12. Section 104.2 is amended by removing the word "each" before the words "program or activity" and adding, in its place, the word "the"; and by removing the words "or benefits from".

13. Section 104.3 is amended by redesignating paragraphs (k) and (l) as paragraphs (l) and (m), respectively; adding a new paragraph (k); and adding an authority citation following paragraph (k) to read as follows:

§ 104.3 Definitions.
   * * * * *

(k) Program or activity means all of the operations of—
   (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
   (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
   (2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or
   (ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;
   (3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—
   (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
   (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
   (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
   (4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.
   [Authority: 29 U.S.C. 794(b)]

* * * * *

§ 104.4 [Amended]

14. Section 104.4 is amended by—
   A. Removing the words "or benefits from" in paragraphs (a) and (b)(5); and
   B. Removing the words "programs or activities" wherever they appear in paragraph (b)(3), and adding, in their place, the words "aid, benefits, or services";
   C. Removing the words "or benefiting from" in paragraph (b)(6); and
   D. In paragraph (c), removing the word "Programs" in the heading and adding, in its place, the words "Aid, benefits, or services"; removing the words "from the benefits of a program" and adding, in their place, the words "from aid, benefits, or services"; and removing the words "from a program" and adding, in their place, the words "from aid, benefits, or services".

§§ 104.4, 104.6, 104.12, 104.32, 104.33, 104.36 [Amended]

15. Remove the word "program" and add, in its place, the words "program or activity" in the following sections:
   A. Section 104.4(b)(1)(v);
   B. Section 104.4(b)(4);
   C. Section 104.6(a)(3), wherever it appears;
   D. Section 104.12(a), (c) introductory text, and (c)(1);
   E. Section 104.32 introductory text;
   F. Section 104.33(a); and
   G. Section 104.36.

§ 104.5 [Amended]

16. Section 104.5(a) is amended in the first sentence by removing the words "for a program or activity" by removing the words "the program" and adding, in their place, the words "the program or activity".

§ 104.8 [Amended]

17. Section 104.8(a) is amended by removing the words "programs and
activities" in the second sentence and adding, in their place, the words "program or activity".

§ 104.11 [Amended]
18. Section 104.11 is amended by—
- A. Removing the words "programs assisted" and adding, in their place, the words "programs or activities assisted" in paragraph (a)(2);
- B. Removing the word "programs" and revising "apprenticeship" to read "apprenticeships" in the last sentence of paragraph (a)(4); and
- C. Removing the word "programs" and adding the words "those that are" before "social or recreational" in paragraph (b)(8).

Subpart C of Part 104—[Amended]
19. The heading of subpart C is amended by removing the word "Program".

§ 104.22 [Amended]
20. Section 104.22 is amended by—
- A. Removing in paragraph (a) the words "Program accessibility" in the heading and adding, in their place, the word "Accessibility" and removing the words "each program or activity to which this part applies so that the program or activity, when viewed in its entirety," in the first sentence and adding, in their place, the words "its program or activity so that when each part is viewed in its entirety, it;"
- B. Removing the words "offer programs and activities to" in the last sentence and adding, in their place, the word "serve" in paragraph (b); and
- C. Removing the word "program and adding, in order to comply with paragraph (a) of this section" after the word "accessibility" in paragraph (e)(3).

§ 104.31 [Amended]
21. Section 104.31 is amended by removing the words "or benefit from" wherever they appear; and by removing the words "programs and activities" and adding, in their place, the words "programs or activities".

§ 104.33 [Amended]
22. Section 104.33 is amended by—
- A. Removing the words "individualized education program" and adding, in their place, the words "Individualized Education Program" in paragraph (b)(2);
- B. Removing the words "in or refer such person to a program other than the one that it operates" and adding, in their place, the words "or refer such a person for aid, benefits, or services other than those that it operates or provides" in the first sentence in paragraph (b)(3); and
- C. Removing the words "in or refers such person to a program not operated" in the second sentence of paragraph (c)(1), and adding, in their place, the words "or refers such person for aid, benefits, or services not operated or provided".
- D. Removing the words "of the program" in the second sentence of paragraph (c)(1) and adding, in their place, the words "of the aid, benefits, or services";
- E. Removing the words "in or refers such person to a program not operated" in paragraph (c)(2), and adding, in their place, the words "or refers such person for aid, benefits, or services not operated or provided";
- F. Removing the words "from the program" in paragraph (c)(2), and adding, in their place, the words "from the aid, benefits, or services";
- G. Removing the words "in the program" in paragraph (c)(2), and adding, in their place, the words "in the aid, benefits, or services";
- H. Removing the words "if placement in a public or private residential program" and adding, in their place, the words "If a public or private residential placement" in paragraph (c)(3); and removing the words "the program", and adding, in their place, the words "the placement"; and
- I. Removing the words "such a program" in the last sentence in paragraph (c)(4), and adding, in their place, the words "a free appropriate public education".

§ 104.35 [Amended]
23. Section 104.35(a) is amended by removing the words "program shall" and adding, in their place, the words "program or activity shall"; removing the word "a" before the word "regular"; and removing the word "program" before the word "and".

§ 104.37 [Amended]
24. Section 104.37(c)(1) is amended by removing the words "programs and activities" in the first sentence and adding, in their place, the words "aid, benefits, or services"; and by removing the words "in these activities" in the last sentence.

25. Section 104.38 is revised to read as follows:

§ 104.38 Preschool and adult education. A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits or services to be provided.

§ 104.39 [Amended]
26. Section 104.39 is amended by—
- A. Removing the word "programs" in the section heading;
- B. Removing the words "operates a" and adding, in their place, the word "provides" in paragraph (a);
- C. Removing the word "program" after the word "education" in paragraph (a);
- D. Removing the words "from such program" in paragraph (a);
- E. Removing the words "the recipient's program" in paragraph (a), and adding, in their place, the words "that recipient's program or activity"; and
- F. Removing the words "operates special education programs shall operate such programs" in paragraph (c), and adding, in their place, the words "provides special education shall do so".

§ 104.41 [Amended]
27. Section 104.41 is amended by removing the words "programs and activities" wherever they appear in the section and adding, in their place, the words "programs or activities"; and by removing the words "or benefit from" wherever they appear in the section.

§ 104.43 [Amended]
28. Sections 104.43 is amended by—
- A. Removing the words "program or activity" in paragraph (a) and adding, in their place, the words "aid, benefits, or services"; and
- B. Removing the words "programs and activities" in paragraph (d), and adding, in their place, the words "program or activity".

§ 104.44 [Amended]
29. Section 104.44 is amended by—
- A. Removing the words "program of" in the second sentence of paragraph (a); and
- B. Removing the words "in its program" in paragraph (c), and
- C. Removing the words "in the education program or activity operated by the recipient" in paragraph (d)(1).

§ 104.47 [Amended]
30. Section 104.47 is amended by removing the words "programs and activities" in paragraph (a)(1), and adding, in their place, the words "aid, benefits, or services".

§ 104.51 [Amended]
31. Section 104.51 is amended by removing the words "or benefit from" wherever they appear in the section; and by removing the words "and" before the word "activities" and adding, in its place, the word "or".

§ 104.54 [Amended]
32. Section 104.54 is amended by adding the words "that provides aid,
PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

33. The heading for part 106 is revised to read as set forth above.

33a. An authority citation for part 106 is added after the table of contents to read as follows:

Authority: 20 U.S.C. 1681 et seq., unless otherwise noted.

34. Section 106.2 is amended by—

A. Redesignating paragraphs (h) through (r) as paragraphs (i) through (s), respectively;

B. Adding a new paragraph (h) and adding an authority citation following paragraph (h);

C. Amending redesignated paragraph (i) to remove the words “or benefits from”; and

D. Amending redesignated paragraph (k) by removing “(k), (l), (m), or (n)” and adding, in its place, “(l), (m), (n), or (o)”.

The addition reads as follows:

§106.2 Definitions.

(h) Program or activity and program means all of the operations of:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government;

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education;

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

A. If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

B. Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(iii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 20 U.S.C. 1667)
(c)(1) An entire corporation, partnership, other private organization, or an entire sole proprietorship—
   (i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
   (ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
(d) Any other entity that is established by two or more of the entities described in paragraph (a), (b), or (c) of this section; any part of which is extended Federal financial assistance.

(Authority: 42 U.S.C. 6107)

§§ 110.16, 110.17 [Amended]
49. Remove the word "program" wherever it appears in § 110.16 and in § 110.17, and add, in its place, the words "program or activity".

§ 110.20 [Amended]
50. Section 110.20 is amended by removing the words "programs or activities are" in the first sentence and adding, in their place, the words "program or activity is".

§ 110.23 [Amended]
51. Section 110.23 is amended by removing the words "for a program or activity" and by adding the words "or activity" before the word "will" in paragraph (a).

§ 110.25 [Amended]
52. Section 110.25 is amended by removing the words "and their applicability to specific programs" in paragraph (b).

§ 110.33 [Amended]
53. Section 110.33 is amended by removing the word "program" in paragraph (a).

§ 110.35 [Amended]
54. Section 110.35(c)(2) is amended by removing the word "Federal" in the first sentence.

§ 110.37 [Amended]
55. Section 110.37(b)(2) is amended by removing the words "program or activity" and adding, in their place, "Federal financial assistance".

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