



Disability and Guardianship Project

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Fair Employment and Housing Council
2218 Causen Drive, Suite 100
Elk Grove, CA 95758

Re: Addendum to Request to Revise Proposed Regulations for Government Code § 11135
<https://spectruminstitute.org/fehc-regs-11135-addendum.pdf>

Dear Councilmembers:

After submitting a request to revise proposed regulations for Government Code § 11135, I noticed some other aspects of the regulations that should be made more specific.

According to § 14000 of the proposed regulations, they are intended to increase efficiency and ensure that the ultimate beneficiaries of Article 9.5 have a clear understanding of their rights and the means by which to enforce them. There are sections of the regulations that are ambiguous and should be clarified to accomplish this objective.

Define “Responsible State Agency”

The term “responsible state agency” is used 10 times in the regulation. Unfortunately, that term is not defined.

A subdivision should be added to § 14020 to define this term as “a state agency providing funding to the covered entity or that has statutory responsibilities for oversight or administration of the program or activity alleged to be in violation of Article 9.5.”

Clarify Complaint Options

Under state law, a victim of discrimination under Government Code § 11135 has various administrative options. The aggrieved person may file a complaint directly with DFEH. Alternatively, under Government Code § 11136 (and implicit in regulation § 14051) the person may file a complaint with a state agency that administers the program or activity in question. However, some covered entities receive state funding from a variety of state agencies. Service recipients are often not aware of which state agencies are funding the covered entity in general or which one is funding the particular program or activity in which the discrimination allegedly occurred.

Language should be added in appropriate places of the regulations to require a covered entity, including any recipient of state funds: (1) to disclose to the public, on its website or

otherwise, all state agencies from which it receives state funding and identify the specific state agency from which it receives the majority of its state funding; and (2) to disclose the names of the state agencies other than DFEH to which an administrative complaint may be filed for alleged violations of Government Code § 11135.

Government Code § 11136

This statute requires a state agency “administering” a program or activity funded by the state to take specific actions when it has reasonable cause to believe that a covered entity to which it is connected has violated Government Code § 11135. The most likely way in which the state agency would obtain reasonable cause to believe a violation has occurred would be a complaint from an aggrieved party or notification from a third party who is aware of the violation. The statute implicitly contemplates complaints being filed with the oversight agency but it does not specify the procedures for filing such a complaint.

Language should be added to the regulations to require a covered entity with 15 or more employees to notify the public and service recipients, on its website or otherwise, of the procedures an aggrieved person should use to file a complaint with the entity or that a third party should use to notify the entity of alleged violations of Government Code § 11135. Service recipients or third parties should not have to guess as to where or to whom they should file a complaint or whether there are administrative procedures within the agency for such complaints.

Self-Evaluation Process

Under § 11334 of the proposed regulations, a recipient with 15 or more employees should be required by the responsible state agency to evaluate its current policies and practices and the effects thereof that may not meet the requirements of Government Code § 11135 or its regulations pertaining to persons with disabilities. Such self-evaluation is laudable but unlikely to occur without prodding from the responsible state agency. Which agency would do the prodding? Also, if a disability rights organization wants to participate in that process, but the recipient does not have one, to whom should the organization complain?

Language should be added to § 14334 to clarify, when a recipient receives funding from one or more state agencies, which agency or agencies has authority to ensure that a self-evaluation process occurs. Language should also be added to require recipients with 15 or more employees to notify the public and service recipients when and how such self-evaluation process will occur and who to contact to request participation in that process.

Very truly yours,



Thomas F. Coleman
Legal Director