

Civil Rights Council

First Modifications to Proposed Government Code Section 11135 et seq. Regulations

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Civil Rights Department

Chapter 5. Civil Rights Council

Subchapter ~~69~~. Nondiscrimination in State-Supported Programs and Activities

[These regulations are divided into new articles; all previous articles and subarticles will be deleted.]

TEXT

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Article 1. General Matters

~~§ 11140~~14000. Purpose of This ~~Division~~Subchapter.

(a) The purpose of this ~~Division~~subchapter is to implement Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, ~~Sections 11135 through 11139.5~~Sections 11135 through 11139.8, inclusive (hereinafter "the Act" or "Article 9.5"), ~~Section 11135 which provides, inter alia, that:~~

"No person in the State of California shall, on the basis of ~~ethnic group identification, religion, age, sex, race, color, religion, ancestry, national origin, ethnic group identification, age, or physical or mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation,~~ be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated or administered by the state or any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding section 11000, this section applies to the California State University."

~~Article 9.5 requires the Secretary of the Health and Welfare Agency with the advice and concurrence of the Fair Employment Practice Commission (hereinafter referred to as the Fair Employment and Housing Commission or "FEHC" in accordance with the terms of the Governor's Reorganization Plan Number 1 (1980)), to establish standards for determining which persons are protected by Article 9.5 and guidelines for determining what practices are discriminatory. This Division establishes such standards and guidelines.~~

~~(b) Article 9.5 also requires the Secretary of the Health and Welfare Agency, with the cooperation of the Fair Employment and Housing Commission, to assist State agencies in coordinating their programs and activities and consult with such agencies, as necessary, to ensure that consistent policies, practices and procedures are utilized by such agencies with respect to the enforcement of Article 9.5. This~~

~~Division~~ These rules, regulations, and standards are established ~~establishes guidelines regarding such policies, practices and procedures~~ in order to advance the objectives of Article 9.5 and this subchapter; to protect against unlawful discrimination and denial of full and equal access; to ensure that consistent practices are utilized by state agencies with respect to Article 9.5; to eliminate conflicting interpretations and standards of enforcement insofar as they afford less protection; and 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.

(c) All definitions and prohibitions set forth in other subchapters of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are hereby incorporated by reference. Acts or omissions that are violations of said prohibitions are also violations of this subchapter, and subject to the sanctions provided for in this subchapter, when the jurisdictional requirements of Article 9.5 are met. In the event of any conflict between the definitions and prohibitions of the provisions incorporated by this reference and the definitions and prohibitions set forth in this subchapter, the definitions and prohibitions set forth in this subchapter shall prevail.

(d) Article 9.5, this subchapter and other implementing regulations provide protections independent of those in federal anti-discrimination laws. Although federal laws provide the floor of protection relating to discrimination, Article 9.5, this subchapter and other implementing regulations afford additional protections to provide robust protection of protected classes in state and state-supported programs and activities, including by recognizing that Article 9.5 of the Government Code prohibits discrimination independently of guarantees of equal protection and the prohibition against denial of full and equal access. The provisions of Article 9.5, this subchapter and other implementing regulations shall be construed liberally for the accomplishment of the purposes of this part.

(e) Article 9.5's prohibition against discrimination includes intersectional discrimination, discrimination on more than one basis, harassment, coercion, intimidation, and retaliation for exercising a protected right or refusing to engage in an act prohibited by Article 9.5.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139.58, and 12993, Government Code.

§ 11141. Legal Scope.

~~The rights and remedies under this Division are not exclusive and do not affect rights and remedies provided elsewhere by law or contract.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Section 11139, Government Code.~~

§ 14001. History of this Subchapter.

These regulations formerly were promulgated at Chapters 1-3 of Division 8 of Title 22 of the California Code of Regulations (22 C.C.R. sections 98000 et seq.) Pursuant to legislative action in 2016, which was

effective in 2017, those regulations were transferred to title 2 of C.C.R. sections 11140 et seq., and have been subsequently renumbered as 2 C.C.R. sections 14000 et seq. Those regulations were effective on the date of their original promulgation and continue to apply unless amended. Any subsequent amendments apply to matters pending as of the effective date of the amendment. These amendments are not intended to reduce substantive rights available under any previous regulations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Section 11135 and 12935, Government Code.

~~§ 11142. Private Right of Action.~~

~~Except as provided in Section 98003, nothing in this Division shall be construed to preclude or restrict a person from judicially enforcing rights accruing under this Division pursuant to California Code of Civil Procedure Section 1094.5.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Section 11139, Government Code.~~

~~§ 11143. Exhaustion of Administrative Remedies.~~

~~Exhaustion of administrative remedies available under this Division or implementing regulations shall not be a prerequisite to the bringing of actions for judicial enforcement of violations of Chapters 2 and 3 or regulations implementing such Chapters if a showing is made that the state agency involved has not adhered to the time limit set forth in Section 98346 of this Division.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11139 and 11139.5, Government Code.~~

~~§ 11144~~14002. Applicability of This Division Subchapter by Operation of Law.

~~The procedures set forth in this Division~~This subchapter governs all disputes relating to compliance with responsibilities under this Division subchapter by operation of law.

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137, and 11139, Government Code.~~

~~§ 11145~~14003. Preemption of Relationship to Local Law Laws.

~~To the extent that any local law, regulation, ordinance, resolution, policy or practice is in conflict with Article 9.5, this Division subchapter, or other implementing regulations, insofar as it affords less protection to any protected class or protected class member to persons of a particular ethnic group identification, religion, age, sex, color or physical or mental disability than Article 9.5, this Division subchapter, or other implementing regulations, it shall be superseded by Article 9.5, this Division subchapter, and other implementing regulations.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136 and 11139, Government Code.

§ 14004. Legal Scope

(a) The protections, prohibitions, rights, duties, sanctions, and remedies imposed by Article 9.5, this subchapter, and other implementing regulations are not exclusive and are in addition to any other protections, prohibitions, rights, duties, sanctions, and remedies, imposed by other federal or state laws. Compliance with other laws does not in itself constitute compliance with or discharge the protections, prohibitions, rights, duties, sanctions, and remedies imposed by Article 9.5, this subchapter or other implementing regulations, nor does compliance with Article 9.5, this subchapter or other implementing regulations necessarily constitute compliance with other laws where those other laws impose requirements that are more protective of protected classes. Compliance with such other laws does not in itself exempt the state, a state agency, or a recipient from complying with Article 9.5 or other implementing regulations.

(b) Article 9.5 shall not be interpreted in a manner that would frustrate its purposes.

(c) Article 9.5 shall not be interpreted in a manner that would adversely affect lawful programs or activities that benefit members of protected classes in order to overcome the effects of conditions that result or have resulted in limited participation in, or receipt of benefits from, any program or activity provided by a covered entity.

(d) Nothing in Article 9.5, this subchapter, and other implementing regulations is intended to prohibit practices that otherwise are allowed or to require practices that otherwise are not required under Article 9.5.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.

§ ~~11146~~-14005. Recipient - Duration of Obligation: Real Property.

(a) In the case of ~~s~~State support extended in the form of real property or to acquire or improve real property, the recipient, or in the case of a subsequent transfer, the subsequent transferee, shall comply with ~~Article 9.5, this Division~~Article 9.5, this subchapter, and other implementing regulations for the period during which the real property is used for the purpose for which the ~~S~~state support was extended, or for another purpose involving the provision of similar services or benefits.

(b) In the case of ~~S~~state support extended in the form of real property or to acquire or improve real property, the instrument effecting or recording such transfer shall contain a covenant of nondiscrimination running with the land assuring nondiscrimination for the period during which the property is used for the purpose for which the ~~S~~state support was extended, or for another purpose involving the provision of similar services or benefits.

(c) In the case of real property acquired or improved with ~~§~~state support, the instrument effecting any subsequent disposition by the recipient shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for the purpose for which the ~~§~~state support was extended, or for another purpose involving the provision of similar services or benefits.

(d) If a recipient or a transferee of a recipient fails to comply with ~~§~~subsections (b) and (c) of this ~~§~~section, the covenants required by those ~~§~~subsections shall be deemed to be a part of any instrument effecting or recording disposition of the real property involved.

(e) Ultimate beneficiaries may enforce regulatory agreements or covenants, conditions and restrictions required pursuant to this section.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ ~~11147~~.14006. Recipient - Duration of Obligation: Personal Property.

In the case of ~~§~~state support extended to acquire personal property, or in the form of personal property, the recipient shall be obligated to comply with Article 9.5, this Division subchapter, and other implementing regulations for the period during which it retains ownership or possession of the property.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136 and 11139, Government Code.

§ ~~11148~~.14007. Recipient - Duration of Obligation: Other Cases.

In all other cases, the recipient shall be obligated to comply with Article 9.5, this Division subchapter, and other implementing regulations for the period during which ~~§~~state support is received and continuing thereafter for the period during which the recipient enjoys the benefit or advantage of the state support it received.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ ~~11149~~.14008. Severability.

If any provision of this ~~Division subchapter~~, or any portion thereof, is adjudged to be invalid by a court of competent jurisdiction, or if any provision of this ~~Division subchapter~~, or a portion thereof, loses its force or effect as a result of legislative action, that judgment or action does not affect the remainder of the provisions of this ~~Division subchapter~~.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136 and

11139, Government Code.

[§§ 14009-14019. Reserved.]

Article 2. General Definitions

§ ~~11150-14020~~. Definitions.

As used in Article 9.5 and this Division subchapter, the following definitions shall govern the meaning of terms defined, unless the terms are otherwise defined or modified in the context in which they are used in Article 9.5, this subchapter, or any other implementing regulations:

(a) “The Act” or “Article 9.5” refer to Government Code Article 9.5, section 11135 et seq., and are used interchangeably.

(b) “Adverse action” includes any action that harms or has a negative effect on an aggrieved person, including harassment, intimidation, threats, coercion, inferior or unfavorable treatment, discrimination, or any denial of full and equal access.

(c) “Age” means how old a person is or is perceived to be, or the number of years elapsed from the date of a person’s birth or perceived to have elapsed from that date. “Age distinction” means any action using age or an age-related term. “Age-related term” means a word or words which describe or imply a particular age or range of ages (for example: “children,” “adult,” “older persons,” but not “student”).

(d) “Aggrieved person” includes any person who believes that they have been injured by a discriminatory practice or denial of full and equal access, or believes that the person will be injured by a discriminatory practice or denial of full and equal access that is about to occur. “Aggrieved person” shall include unpaid interns, volunteers, and persons providing services pursuant to a contract.

(e) “Ancestry” means an individual’s actual or self-identified family or ethnic origin, descent or lineage, nationality group, tribal affiliation, or geographical place of origin in which the individual or the individual’s parents or ancestors originated, or the perception of the individual’s ancestry.

(f) “Assistance animals” include service animals and support animals, as described in subsections (1) and (2) below. An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional, cognitive, or similar support that alleviates one or more identified symptoms or effects of an individual’s disability.

(1) “Service animals” are animals that are trained to perform specific tasks to assist individuals with disabilities, including individuals with mental health disabilities. Service animals do not need to be professionally trained or certified, but may be trained by the individual with a disability or another individual. Specific examples include, but are not limited to:

(A) "Guide dog," as defined at Civil Code section 54.1, or other animal trained to guide a blind individual or individual with low vision.

(B) "Signal dog," as defined at Civil Code section 54.1, or other animal trained to alert a deaf or hard-of-hearing individual to sounds.

(C) "Service dog," as defined at Civil Code section 54.1, or other animal individually trained to the requirements of an individual with a disability.

(D) "Miniature horses" meeting the requirements of 28 CFR 35.136(i) (March 13, 2011) and 28 CFR 36.302(c)(9) (October 11, 2016).

(E) "Service animals in training," including guide, signal, and service dogs being trained by individuals with disabilities, persons assisting individuals with disabilities, or authorized trainers under Civil Code sections 54.1(c) and 54.2(b).

(2) "Support animals" are animals that provide emotional, cognitive, or other similar support to an individual with a disability. A support animal does not need to be trained or certified. Support animals are also known as comfort animals or emotional support animals.

(g) "Associated with" means linked or related to a person who is or is perceived to be a member of a protected class, or who identifies with or advocates for a member of a protected class, or who expresses support or sympathy for, encourages, or participates in groups composed of or representing members of a protected class or groups organized for the protection or assertion of rights protected under this subchapter. "Associated with" includes an individual's current or prior social or professional relationship with, marriage to, or domestic partnership with a member of a protected class; an individual's familial relationship with a person who is a member of the class, including an adoptive, step, or foster care relationship; a person's relationship as an attendant, aide, or caregiver of an individual with a disability; membership in or association with an organization identified with or seeking to promote the interests of a protected class; attendance or participation in schools, clubs, associations, organizations, or places of worship, churches, temples, or mosques, generally associated with a protected class; being on the premises of a facility or building owned or rented by an entity, group, or person that has, or is identified with people who have, one or more characteristics of a protected class; or actual or perceived association of a person's name or other characteristics with a protected class.

(h) "Auxiliary aids and services" include:

(1) qualified interpreters; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, video relay services, video remote interpreting (VRI), or other

telecommunications devices that make communication as equally effective as oral communication in English; videotext displays; accessible electronic and information technology; tactile sign language; or other equally effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing or assisting those individuals to communicate;

(2) qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision or assisting those individuals to communicate;

(A) “Qualified reader” means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

(3) qualified interpreters, speech-to-speech relay services, or other effective methods of making aurally delivered information available to individuals who have speech disabilities or assisting those individuals to communicate;

(4) acquisition or modification of equipment or devices; and

(5) other similar services and actions, including newly developed forms of electronic information systems and technology as they become available.

(i) “Benefit” means anything offered or provided with the intention of or for the purpose of contributing to an improvement in condition, maintaining a condition, or preventing anticipated deterioration of a condition over time, including, but not limited to, the aid or services offered or provided as a result of State support by a covered entity.

(j) “Color” means the actual or perceived physical characteristics of an individual’s complexion, pigmentation, or skin tone.

(k) “Contract” means any agreement, upon sufficient consideration, to do or not do a particular act or acts.

(l) “Contractor” means, unless otherwise indicated includes, a person or local agency recipient which that receives any State support under contract or subcontract, and “Contractor” includes prime contractors and subcontractors at any tier.

(m) “Covered entity” includes:

(1) the state or a state agency, including the California Judicial Branch;

(2) any entity or individual involved in carrying out any program or activity that is conducted,

operated or administered by the state or by any state agency;

(3) any entity or individual, including local agencies, recipients, contractors, and grantees, that is funded directly by the state, or receives any state support;

(4) a local agency, and any entity or individual involved in carrying out any program or activity of a local agency if any part of the local agency receives state support;

(5) a public college, university, or other postsecondary institution, or a public system of higher education; or a local educational agency system of career and technical education, or other public school system;

(6) a corporation, partnership, other private organization, or a sole proprietorship, or a private college, university, or other postsecondary institution, or system of education; or a private career or technical education school, or other private school if:

(A) state support is extended to or received by such entity; or

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

(C) the entire facility, plant or other comparable, geographically separate facility, if any part of it receives state support or to which state support is extended, in the case of any corporation, partnership, private organization, or sole proprietorship;

(7) any program, activity, benefits or services outside of California that receive state support or to which state support is extended;

(8) any other entity which is established by two or more covered entities; and

(9) the California State University, notwithstanding Government Code section 11000.

(n) “~~DFEHCRD~~” or “the Department” means the Civil Rights Department ~~of Fair Employment and Housing~~ as defined in section 12901 of the California Government Code ~~Section 1413.1 of the California Labor Code.~~

(o) “Direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.

(p) “Disability” means a physical or mental impairment that limits one or more major life activities of an individual, a record of such an impairment, or being regarded as having such an impairment. It includes any mental or physical disability as defined in this section, and shall be construed as follows:

(1) This subchapter provides protections that are independent from those in the federal

Americans with Disabilities Act of 1990 (P.L. 101-3361) and the American with Disabilities Amendments Act of 2008 (P.L. 110-325) (collectively, “the ADA”), and may afford additional protections, but in no event shall be construed to provide fewer protections than the ADA. Notwithstanding the definitions of physical disability and mental disability in this section, if the definition of “disability” used in the ADA would result in broader protection of the civil rights of individuals with a mental disability or physical disability, or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in this section.

(2) All definitions shall be interpreted in accordance with the expansive construction mandates of section 12926.1 of the Government Code. ~~To the extent that codified definitions or interpretations are expanded in the future, such new, more expansive definitional mandates shall be incorporated into Article 9.5. To the extent that such codified definitions or interpretations are narrowed or restricted in the future, the more expansive definitions referenced in this sub-paragraph shall nevertheless continue to govern Article 9.5.~~

(3) “Mental disability” includes:

(A) having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity;

(B) any other mental or psychological disorder or condition not described in paragraph (A) that requires special education or related services;

(C) having a diagnosis, record or history of a mental or psychological disorder or condition described in paragraph (A) or (B);

(D) being regarded or treated as having, or having had, any mental condition that makes achievement of a major life activity difficult; or

(E) being regarded or treated as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (A) or (B).

(4) “Physical Disability” includes:

(A) having any physiological disease, disorder, or condition, cosmetic disfigurement, or anatomical loss that affects one or more body systems (neurological, including immunological; musculoskeletal, special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic, skin; and endocrine systems), and limits a major life activity;

(B) any other health impairment not described in subparagraph (A) that requires special education or related services;

(C) having a diagnosis, record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in subparagraph (A) or (B) of this paragraph;

(D) being regarded or treated as having, or having had, any physical condition that makes achievement of a major life activity difficult; or

(E) being regarded or treated as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in immediately above in (A) or (B) subparagraph (A) or (B) of this paragraph.

(5) "Having a record of such impairment" means has a history of, or has been misclassified as having, an impairment that limits one or more major life activities.

(6) Reserved. "Perceived as having an impairment" means:

~~(A) has an impairment that does not limit major life activities but that is treated or perceived as constituting a limitation;~~

~~(B) has an impairment that limits major life activities only as a result of the attitudes of others toward such impairment; or~~

~~(C) does not have an impairment but is treated or perceived as having such an impairment.~~

(7) The definition of disability in this subchapter shall be construed in favor of broad coverage of individuals under this subchapter, to the maximum extent permitted by the terms of this subchapter. Disabilities include contagious diseases, noncontagious disease, orthopedic impairments, visual impairments, speech impairments, hearing impairments, traumatic brain injuries, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disabilities, developmental disabilities, autism or autism spectrum, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(8) Individuals are protected from discrimination and denial of full and equal access due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived or regarded as disabling or potentially disabling (even if it has no present disabling effect), including when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity, whether or not the impairment actually limits or is perceived to limit a major life activity.

(9) Physical and mental disabilities include chronic or episodic conditions, such as HIV/AIDS,

hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. An impairment that is episodic or in remission is a disability if it would limit a major life activity when active.

(10) The definitions of “physical disability” and “mental disability” require a “limitation” upon a major life activity, but do not require, as does the ADA, a “substantial limitation.” This distinction is intended to result in broader coverage under this subchapter than under the ADA.

(11) “Major life activities” shall be broadly construed and include physical, mental, and social activities; caring for one’s self; performing manual tasks, walking, seeing, hearing, speaking, breathing, eating, sleeping, standing, lifting, bending, learning, reading, concentrating, thinking, communicating, and working. Working is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employment.

(12) For purposes of subparagraph (611), a major life activity also includes the operation of a major bodily function, including functions of the immune system, normal cell growth, digestive, bowel, bladder, cardiovascular, genitourinary, hemic, neurological, lymphatic, brain, respiratory (including speech organs), circulatory, endocrine, and reproductive functions.

(13) A disability limits a major life activity if it makes the achievement of the major life activity difficult.

(14) An impairment that limits one major life activity need not limit other major life activities in order to be considered a disability.

(15) The determination of whether an impairment limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the ADA. Mitigating measures include:

(A) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(B) use of assistive technology devices and assistive technology services;

(i) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(ii) “Assistive technology service” means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

(C) reasonable accommodations or auxiliary aids or services; or

(D) learned behavioral or adaptive neurological modifications.

(16) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment limits a major life activity. As used in this subparagraph:

(A) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(B) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

(17) “Disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs. “Sexual behavior disorders” means pedophilia, exhibitionism, and voyeurism.

(18) “Current unlawful use of controlled substance or drugs” does not include an individual who:

(A) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated and is no longer engaging in such use;

(B) is participating in a supervised rehabilitation program and is no longer engaging in such use;

(C) is erroneously regarded as engaging in such use; or

(D) is using drugs taken under the supervision of a licensed health care professional, or other uses authorized by law.

(19) Notwithstanding other provisions of this subchapter, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of current unlawful use of drugs if the individual is otherwise entitled to such services.

(q) “Ethnic group identification” means the actual or self-identified possession of the physical, cultural or linguistic characteristics associated with a racial, cultural, or ethnic group or country, geographical place of origin, or the status of being a descendent of someone with such actual or self-identified characteristics, or the perception of a person’s ethnic group identification. “Ethnic Group Identification” includes ancestry, color, national origin, and race.

(r) “Facility” means all or any portion of buildings, structures, sites, complexes, vehicles, equipment,

rolling stock or other conveyances, vessels, roads, walks, passageways, parking lots, or other real or personal property, or interests in such property, such as a life estate, including the site where the building, property, structure or equipment is located, and information systems and electronic technology, including mobile and tablet-based technology and newly developed forms of electronic information systems and technology as they become available.-

(s) “FEHCRC” or “Council” means the Civil Rights Fair Employment and Housing Commission Council, as defined in section 12903 of the Government Code Section 1414 of the California Labor Code.

“Funded directly by the State” means any payment, transfer, or allocation of State funds to any recipient.

(t) “Gender” means sex, and includes a person’s gender identity and gender expression, or a perception of any of the aforementioned.

(u) “Genetic information” means information about an individual’s genetic tests, the genetic tests of an individual’s family members, the manifestation of a disease or disorder in the individual’s family members, or the perception of any of the aforementioned. Genetic information includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual. Genetic information does not include information about the sex or age of any individual.

(v) “Grant” means an agreement to provide, or the bestowal of, State support, including awards, donations, endowments, and gifts.

(w) “Grantee” means a person or local agency recipient that which receives State support under a grant or subgrant, and “Grantee” includes prime grantees and subgrantees at any tier.

(x) “Includes” or “including” has the same meaning as “includes, but not limited to” or “including, but is not limited to.”

(y) “Intersectional discrimination” means discrimination on the basis of a combination of protected classes, i.e., where two or more bases for discrimination are alleged. Thus, an entity that is not unlawfully discriminating solely on the basis of race or gender still may be discriminating against individuals who are perceived as or identified as having a combination of more than one protected basis, such as, Asian males.

(z) “Local agency” means a public district, special district, public corporation, authority, joint power authority, agency, board, commission, county, city, city and county, school district or other public educational entity, redevelopment agency or successor to a redevelopment agency, regional agency, public or publicly administered health entity, or other public entity.

(aa) “Marital status” means an individual’s actual or perceived pending state of marriage, non-marriage, domestic partnership, divorce or dissolution, separation, widowhood, annulment, or other marital state.

(bb) “May” means permissive.

(cc) “Medical Condition” means any actual or perceived health impairment related to or associated with a diagnosis, record, or history of cancer; or genetic characteristics known to be a cause of a disease or disorder or associated with a statistically increased risk of developing a disease or disorder. “Genetic characteristics” means either of the following:

(1) any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or that person's offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder; or

(2) inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or that person's offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(dd) “National origin” includes:

(1) the individual’s or ancestors’ actual or perceived:

(A) physical, cultural, or linguistic characteristics, or name associated with a national origin group;

(B) marriage to or association with persons of a national origin group;

(C) tribal affiliation;

(D) membership in or association with an organization identified with or seeking to promote the interests of a national origin group; and

(E) attendance or participation in schools, churches, temples, mosques, places of worship or other religious institutions generally used by persons of a national origin group; and

(2) “National origin groups” include ethnic groups or people from particular geographic places of origin and countries, whether or not they ~~that~~ are presently in existence.

(3) “National origin” includes possessing a driver’s license or identification card granted under sections 12801.6, 12801.8, or 12801.9 of the Vehicle Code, or a driver’s license or identification card identified with the term “Federal Limits Apply.”

(ee) “Other implementing regulations” means any additional regulations, guidelines, or procedures other than this subchapter, adopted by the state or any state agency. Other implementing regulations, guidelines, or procedures shall not conflict with or provide fewer protections than the regulations in this

subchapter.

(ff) “Perceived membership in a protected class” means being regarded as, perceived as, or treated as a member of a protected class or as having the characteristics associated with being a member of a protected class, regardless of whether the perception is accurate.

(gg) “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, corporation, association, committee, legal representative, trustee, trustee in bankruptcy, receiver, and any other organization, ~~entity, or group, or group~~ of persons acting in concert.

(hh) “Practice” or “Practices” includes any action or failure to act, rule, law, ordinance, regulation, guideline, decision, standard, project, policy, process, or procedure, whether written or unwritten or singular or multiple.

(ii) “Program or activity” includes all of the operations and facilities of, or services, benefits or aid provided by, a covered entity, directly or indirectly means ~~any project, action or procedure undertaken directly by recipients of State support or indirectly by recipients through others by grants, contracts, arrangements or agreements, with respect to the public generally or with respect to any private or public entity.~~ Such programs or activities include, ~~but are not limited to,~~ the provisions of employment or goods; the procurement of goods or services; the provision of education, training, health, welfare, rehabilitation, housing, or other services; the provision of grants, cash, financial aid or other benefits, property, or loan assistance; permitting, site and facility selection decisions; or the provision of facilities for furnishing services, financial aid or other benefits. ~~The services, financial aid or other benefits provided under such programs or activities shall be deemed to include:~~

~~(1) any services, financial aid or other benefits provided with the aid of State support, or with the aid of other funds or resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order for the recipients to receive the State support; or~~

~~(2) any service, financial aid or other benefit provided in or through a facility which is or was provided with the aid of State support or other funds or resources.~~

(1) The program or activity covered by Article 9.5, this subchapter, or other implementing regulations need not receive direct state support to be covered. Such coverage extends to all the operations of the covered entity. This is true even if only one part of the covered entity receives state support.

(2) The program or activity provided by the covered entity include any service, activity, financial aid or benefit provided in, at or through a facility that is or was provided by the state or any state agency or with the aid or benefit of state support or other funds or resources.

(ij) “Protected class” and “protected basis” are used interchangeably. They refer to the bases on which individuals are entitled to protections against discrimination and denial of full and equal access pursuant to Article 9.5 of the Government Code, Part 2.8 (commencing with section 12900) of the Government

Code, section 51, 51.5, 51.7, 54 and 54.2 of the Civil Code, and any regulation adopted by the Council to implement these sections or Article 1 (commencing with section 12960) of the Government Code, as applicable. Protected bases include sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability (including mental and physical disability); medical condition, genetic information, marital status, and sexual orientation. To the extent protected bases are defined in sections 12926 and 12926.1 of the Government Code, those terms shall have the meanings set forth in this subchapter. Protected bases not defined in section 12926 of the Government Code or the Council's implementing regulations are defined in this subchapter. ~~In the event the Legislature in the future recognizes a protected class or protected basis by legislation or regulation, that basis will be considered a protected class or protected basis pursuant to Article 9.5 of the Government Code unless specifically excluded by the Legislature.~~ All protected bases include a perception that a person is a member of a protected class or has any of those characteristics, or that a person is associated with a person who is, or is perceived to be a member of a protected class. Discrimination or the denial of full and equal access on the basis of a protected class includes discrimination or denial of full and equal access on the basis of a stereotype about members of the protected class.

(kk) "Qualified individual with a disability" means:

(1) an individual with a disability who, with or without reasonable accommodations to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity or contractor, or recipient of a public entity.

(2) With respect to employment, a qualified individual with a disability is an applicant or employee who, with or without reasonable accommodations, can perform the essential functions of the job in question.

(ll) "Qualified interpreter" means a person qualified and capable of effective, accurate, and impartial rendition of spoken or signed communication from one language to another between people who speak, sign, read, or write in a different language, both receptively and expressively, using any necessary specialized vocabulary and with appropriate cultural relevance, either simultaneously or consecutively. "Interpretation" is the act of listening to spoken word, visual or tactile transmission of manual language, or reading something written in one language (source language) and expressing it accurately and with appropriate cultural relevance into another language (target language), either simultaneously or consecutively. Whether an interpreter is qualified to provide services requires more than self-identification as bilingual or multilingual. To be qualified an interpreter must: (i) demonstrate proficiency in and ability to communicate information accurately in both the source and target language; (ii) have knowledge in both languages of any specialized term, concepts, or any particularized vocabulary and phraseology peculiar to the program or services; (iii) understand and follow interpreters' and translators' confidentiality, ethics and impartiality rules; and (iv) understand and adhere to their roles as interpreters or translators. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. Also, to be qualified an interpreter must have received adequate education and training in interpreter ethics, conduct, practice, and confidentiality. In some

circumstances, effective communication may require that an individual be provided more than one interpreter.

(mm) “Race” refers to the identification of a group of people as distinct from other groups based on supposed or presumed physical, cultural, or genetic characteristics, or the perception of an individual’s race, without regard to whether those characteristics are immutable. “Race” is construed broadly to include classifications that might otherwise appear to be covered only by other protected bases such as national origin or religion. Race includes hair texture and protective hairstyles, including braids, locks, and twists.

(nn) “Real property” means land, whether improved or unimproved; structures on land; fixtures attached to structures; interests in such property; and space on, over or under such property.

(oo) “Reasonable Accommodations” or “Reasonable Modifications” for individuals with disabilities are used interchangeably under this subchapter to mean the full range of adjustments necessary to afford an individual with a disability a full and equal opportunity to use or enjoy benefits, privileges, or services of a programs or activity. They include, for example, changes, modifications, or adjustments in facilities, fixtures, furniture, equipment, devices, rules, policies, practices, procedures, licensing, ordinances, regulations, programs, the provision of auxiliary aids and services, and other such needed accommodations.

(~~oopp~~) “Recipient” means any covered entity or person, other than the state or a state agency, whether operating directly or indirectly through another recipient, including any local agency, contractor, subcontractor, agent, or person, who regularly employs five or more persons and who receives State support, as defined in this Section, in an amount in excess of \$10,000 in the aggregate per State fiscal year or in an amount in excess of \$1000 per transaction, by grant, contract or otherwise, directly or through another recipient, including any successor, assignee, or transferee of a recipient who receives state support. The term “recipient” excludes but excluding the ultimate beneficiary of the State support. “Recipient” does not include State agencies. However, State agencies may look to this Division for guidance in the administration of their programs and activities.

~~(pp) “Reasonable Accommodations” or “Reasonable Modifications” for individuals with disabilities are used interchangeably under this subchapter to means the full range of adjustments necessary to afford an individual with a disability a full and equal opportunity to use or enjoy benefits, privileges, or services of a programs or activity. They include, for example, changes, modifications, or adjustments in facilities, fixtures, furniture, equipment, devices, rules, policies, practices, procedures, licensing, ordinances, regulations, programs, the provision of auxiliary aids and services, and other such needed accommodations.~~

(qq) “Religion,” “religious creed,” “religious observance,” “religious belief,” and “creed” are used interchangeably under this subchapter to mean any actual or perceived traditionally recognized religion as well as beliefs, observances, or practices, which an individual sincerely holds and which occupy in their life a place of importance parallel to that of traditionally recognized religions. This includes all aspects of religious belief, observance, and practice, such as duties of the clergy or elders, and religious dress and

grooming practices. Religion includes atheism, agnosticism, and an individual’s choice not to adopt a traditional or specific religious belief.

(1) “Religious dress practices” shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts and any other item that is part of an individual’s religious observance.

(2) “Religious grooming practices” shall be construed broadly to include forms of head, facial, and body hair, or body markings, that are part of an individual’s religious observance.

~~“Secretary” means the Secretary of the Health and Welfare Agency, as defined in Part 2.5 of Division 3 of Title 2 of the Government Code, or the Secretary’s designee.~~

~~“Services to be provided to the public” means the aid or benefits provided directly to the public by a recipient of State support.~~

(rr) “Sex” includes pregnancy, childbirth, and breastfeeding; medical conditions related to pregnancy, childbirth, or breast feeding; recovery from childbirth or termination of pregnancy, or other conditions related to the capacity to bear children; gender; transgender; intersex; transitioning; sex stereotype; gender identity; gender expression; and perception by a third party of any of the aforementioned.

(1) “Gender identity” means each person’s internal understanding of their gender, or perception of a person’s gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person’s sex assigned at birth, or transgender.

(2) “Gender expression” means a person’s gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person’s sex assigned at birth.

(3) “Transgender” is a general term that refers to a person whose gender identity differs from the person’s sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as “transsexual.”

(ss) “Sexual Orientation” includes actual or perceived heterosexuality, homosexuality, bisexuality, and asexuality. This refers to a person’s emotional, romantic, or sexual attraction toward other people, and may be described by terms including gay, lesbian, bisexual, straight, asexual, or queer.

(tt) “Shall” means mandatory.

(uu) “State” means the State of California or any entity of the State of California other than a state agency.

~~“Should” means advisory.~~

(vv) "State agency" means an administrative subdivision or instrumentality of State government, including, but not limited to, agencies, special purpose district, departments, offices, officers, commissions, councils, authorities, boards, bureaus and divisions, and includes the California State University, which has the statutory or constitutional authority to provide State support to any person.

~~"State financial assistance" means any grant, entitlement, loan, cooperative agreement, contract or any other arrangement by which a State agency provides or otherwise makes available aid to recipients in the form of:~~

~~(1) funds;~~

~~(2) services of State personnel; or~~

~~(3) real or personal property or any interest in or use of such property, including:~~

~~(A) transfers or leases of property for less than fair market value or for reduced consideration; or~~

~~(B) proceeds from a subsequent transfer or lease of property if the State share of its fair market value is not returned to the State.~~

(ww) "State support" includes any funds, financial assistance, grant, entitlement, loan, note, donation, cooperative agreement, subsidy, contract, transfer or allocation of state funds or property, benefit or any other arrangement by which the state or any state agency provides or otherwise makes available aid, services or benefits for the use of or to recipients, including aid, services, or benefits in the form of:

(1) any payment, transfer, or allocation of funds;

(2) provision or use of services of state personnel;

(3) provision or use of state materials or equipment;

(4) provision or use of real or personal property or any interest in or use of such property, including:

(A) transfers or leases of property for less than fair market value or for reduced consideration; or

(B) proceeds from a subsequent transfer or lease of property if the state share of its fair market value is not returned to the state; or

(5) aids, services or benefits that the state or any state agency administers or allocates, including any competitive or discretionary tax credits, and any payments, subsidies, or other assistance extended to any person, agency or entity providing insurance, including health-related insurance coverage for payments to or on behalf of a person obtaining health-related insurance coverage from that entity, or extended directly to such individual for payment to any entity providing health-related insurance coverage.

~~means the funds or financial assistance provided by the State to a recipient which:~~

~~(1) is “Funded directly by the State” as defined in this Section; or~~

~~(2) receives “State financial assistance” as defined in this Section.~~

~~(xx) “State-supported program” means any program or activity which that receives State support, in whole or in part.~~

~~(yy) “Stereotype” means a belief about a person’s appearance or behavior, gender roles, gender expression, or gender identity, or other roles, expressions or identities, or about an individual’s ability or inability to perform certain kinds of work or to participate in or benefit from programs or activities, or receive health or other services, based on a myth, bias or prejudice, assumption, social expectation, convention, statistical probabilities, or generalization about the individual or about other persons in a protected class.~~

~~(zz) “Transitioning” is a process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, changes in name and pronoun usage, facility usage, participation in a covered entity’s sponsored activities (e.g., sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.~~

~~(aaa) “Ultimate beneficiary” means a person identified in Government Code Section 11135 in a protected class who receives, applies for, participates in, or benefits from, or is unlawfully deterred or excluded from benefiting from, full and equal access to the benefits of, or employment with, or is subjected to discrimination under a program activity or service that is conducted, operated or administered by any covered entity. receiving or applying for, the benefits of, or employment under a program of activity which receives State support.~~

~~(bbb) “Video remote interpreting” (“VRI”) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139.5, Government Code, 11136, 11137, 11139, 11139.8, 12901, 12903, 12926, 12926.1, 12940, and 12960, Government Code.~~

~~[§§ 14021-14024. Reserved.]~~

~~§ 11151. Applicability of This Division.~~

~~(a) The provisions of this Division are applicable as of the effective date of this Division and shall not be interpreted to be retroactive.~~

~~(b) Except as set forth in this Subsection, the provisions of this Division do not apply to recipients who~~

~~do not provide services to the public as defined in Section 98010. Such recipients shall comply with the regulations of the FEHC and shall be deemed to be “employers” for purposes of such regulations. For purposes of such recipients, the regulations of the FEHC with respect to “employees” or “applicants” shall be deemed to refer to “ultimate beneficiaries” as defined in Section 98010.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11139 and 11139.5, Government Code.~~

~~§ 11152. [Reserved]~~

Article 3. Prohibited Practices Relating to All Groups Protected by Article 9.5

~~§ 11153.14025. General Prohibitions.~~

~~No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability (including mental disability and/or a physical or mental disability), medical condition, genetic information, marital status, or sexual orientation, by action or inaction, be unlawfully denied ~~the full and equal access to the benefits of any program or activity~~, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated or administered by a covered entity ~~funded directly by the State or receiving any financial assistance from the State.~~~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11139.8, 12926, 12926.1, and 12940, Government Code.~~

~~§ 11154. § 14026. Discriminatory Practices and Unlawful Denial of Full and Equal Access Applicable to All Persons.~~

~~(a) It is a discriminatory prohibited practice for a recipient any covered entity, in carrying out or failing to carry out any program or activity or providing, denying, or delaying any services or benefits directly or indirectly, ~~or~~ through contractual, licensing or other arrangements, to treat in purpose or effect any person unfavorably without legal justification on the basis of the protected class of the person, including by: on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability:~~

~~(1) denying a person the opportunity or right to apply for, receive the benefits of, or participate in a program or activity;~~

~~(2) affording a person the opportunity or right to apply for, receive the benefits of, or participate in a program or activity that is not full and equal to the program or activity afforded others;~~

~~(3) providing a program or activity to a person that is not as effective in affording a full and equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. In some situations, identical treatment may be discriminatory;~~

(4) providing different or separate programs or activities to a person, or to any class of persons, than is provided to others, or providing programs or activities at a different time, unless such action is clearly necessary to provide such persons with full and equal access to as truly effective a program or activity as that provided to others;

(5) aiding or perpetuating discrimination against a person by providing or transferring state support to a covered entity that discriminates in conduct, operation, or administration of any program or activity;

(6) excluding a person from participation as a member of a planning or advisory board. Under this requirement, it is a discriminatory practice for a covered entity to fail to make reasonable efforts to achieve a representative board. However, such requirement is not deemed to impose adherence to a quota system;

(7) limiting a person in the exercise or enjoyment of any right, privilege, advantage or opportunity enjoyed by others participating in or receiving any aid, benefit, or service resulting from a program or activity;

(8) denying a person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities;

(9) utilizing criteria or methods of administration that:

(A) subject a person to discrimination on the basis of membership in, perception of membership in, or association with someone in a protected class;

(B) defeat or substantially impair the accomplishment of the objectives of the covered entity's program or activity with respect to membership in a protected class. The objectives of a program or activity shall include its overall mission or purpose as reflected in sources, such as, relevant statutes, legislative intent and history, and regulations;

(C) create, increase, reinforce, or perpetuate discrimination or segregation by another covered entity based on membership in a protected class; or

(D) create, increase, reinforce, or perpetuate discrimination or segregation based on membership in a protected class.

(10) making or allowing selections or closures of sites or locations of facilities, or making, issuing, or denying permits for programs, services, activities or facilities that:

(A) exclude from, denies the benefits of, or otherwise subject persons to discrimination under any program or activity;

(B) defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to membership in a protected class.

(11) interfering with admittance to or enjoyment of public facilities or the rights of an individual with a disability under any program or activity.

~~(a) to deny a person the opportunity to participate in, or benefit from an aid, benefit or service;~~

~~(b) to afford a person the opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded others;~~

~~(c) to provide a person with an aid, benefit or service that is not as effective in affording an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. In some situations, identical treatment may be discriminatory;~~

~~(d) to provide different or separate aid, benefits or services to a person, or to any class of persons, than is provided to others, or to provide aid, benefits or services at a different time, unless such action is clearly necessary to provide such persons with an equal opportunity to receive as truly effective aid, benefits or services as those provided to others;~~

~~(e) to aid or perpetuate discrimination by transferring State support to another recipient that discriminates in providing any aid, benefit or service;~~

~~(f) to exclude a person from participation as a member of a planning or advisory board. Under this requirement, it is a discriminatory practice for a recipient to fail to make reasonable efforts to achieve a representative board. However, such requirement is not deemed to impose adherence to a quota system;~~

~~(g) to otherwise limit a person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving any aid, benefit or service resulting from the program or activity;~~

~~(h) to deny a person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities;~~

~~(i) to utilize criteria or methods of administration that:~~

~~(1) have the purpose or effect of subjecting a person to discrimination on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability;~~

~~(2) have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program with respect to a person of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability; or~~

~~(3) perpetuate discrimination by another recipient on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability.~~

~~(j) to make or permit selections of sites or locations of facilities:~~

~~(1) that have the purpose or effect of excluding persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity;~~

~~(2) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to a person of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability.~~

(b) This subsection applies to any covered entity engaging in permitting activity, or site or facility selection, notwithstanding that other covered entities have issued, allowed or made permits or selections relating to the same program, activity, site or facility.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139, 12926, 12926.1, and 12940 ~~and 11139.5~~, Government Code.

~~§ 11155. Interpretation of Section 98101.~~

~~The provisions of Section 98101 are not intended:~~

~~(a) to limit, by the enumeration of specific forms of prohibited discrimination, the general prohibition against discrimination set forth in Section 98100;~~

~~(b) to adversely affect lawful programs which benefit persons of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability to overcome the effects of conditions that result or have resulted in limited participation in, or receipt of benefits from, any State supported program or activity; or~~

~~(c) to prohibit or require actions or practices otherwise allowed or not required under Chapter 3 of this Division.~~

Note: Authority cited: Section ~~12935(a)~~, Government Code. Reference: Sections ~~11135, 11139 and 11139.5~~, Government Code.

§ 14027. Standards for Determining Discrimination and Unlawful Denial of Full and Equal Access.

(a) In order to determine whether a practice is discriminatory or unlawfully denies full and equal access, all sources of information may be used, including the sources of information and methods used by state and federal courts and agencies in determining whether a practice is discriminatory or denies full and equal access. The sources of information and methods used by federal courts and agencies shall be considered a floor and not a ceiling, consistent with the objective of Article 9.5 and this subchapter to provide the broadest protections for civil rights.

(b) Practices prohibited by Article 9.5 and this subchapter include facial discrimination, intentional

discrimination, disparate impact discrimination, and denial of full and equal access.

(1) Facial discrimination, sometimes referred to as express discrimination, is unlawful *per se* under Article 9.5, this subchapter, and other implementing regulations. Such discrimination includes and practices that classify individuals and provide them aid, benefits, or services on the basis of their inclusion or exclusion from a protected class, except to the extent they lawfully benefit members of a protected class, such as by being part of a lawful affirmative action plan.

(2) Practices that intentionally discriminate against individuals on the basis of membership in a protected class are prohibited under Article 9.5, this subchapter, and other implementing regulations. Intentional discrimination is established when a protected basis is a motivating factor in taking an adverse action even though other factors may have also motivated the practice. Intentional discrimination may be proved by direct or circumstantial evidence. "Intentional" discrimination includes "purposeful" discrimination.

(3) Disparate impact discrimination is prohibited under Article 9.5, this subchapter, and other implementing regulations. "Disparate impact," "discriminatory effect," and "adverse impact" are used interchangeably. Disparate impact occurs when a facially neutral act or practice, regardless of intent, a) has an adverse or disproportionate impact, or predictably results in an adverse or disproportionate impact, on members of a protected class; (b) creates, increases, reinforces, or perpetuates discrimination or segregation of members of a protected class; or (c) has the effect of violating any of the other prohibitions in Article 9.5, this subchapter, or other implementing regulations. A practice with a disparate impact may nevertheless still be lawful if supported by a legally sufficient justification, as set out in section 14029.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 12926, 12926.1, 12940, 12955, and 12955.8, Government Code.

§ 14028. Types of Evidence and Proof in Intentional Discrimination Cases.

(a) Admissions, expressions of bias, or other direct evidence of discrimination often are probative of purpose or intent, but are not necessary to demonstrate that a practice is intentional discrimination.

(b) Circumstantial evidence may be relied upon to demonstrate intentional discrimination.

(1) Probative sources of information or methods for determining whether discrimination has occurred include: information concerning the disproportionate or adverse effect of a practice on a protected class or decisions on comparable matters; the historical background of the challenged practice; specific antecedent events leading to the challenged practice; departures from normal procedures or substantive conclusions; contemporary statements of decision-makers and other legislative or administrative history; a pattern of harm to the protected classes; information showing discrimination against members of a protected class based on statistical data that the practice has a disproportionate or adverse effect on members of the protected class and supporting anecdotal evidence; and the use of presumptions, burden shifting, and

comparisons between a protected class and other individuals.

(2) Statistical data is one form of circumstantial evidence, but statistical evidence is not necessary to demonstrate that a program or activity constitutes intentional discrimination.

(3) Evidence of disparate impact discrimination, such as that set forth below in section 14029(a), may also be circumstantial evidence of intentional discrimination.

(4) Proof regarding different treatment of similarly situated persons is one way of raising an inference of intentional discrimination, but such proof is not the only way ~~required~~ to make a showing of intentional discrimination.

(c) Burdens of Proof in Intentional Discrimination Cases Based on Circumstantial Evidence

(1) A complainant, plaintiff, or petitioner first has the burden of establishing a prima facie case of discrimination by showing that the aggrieved individual or individuals: (A) belong to a protected class; (B) were subject to adverse action; and (C) a causal connection or link exists between the individual's or individuals' protected class and the adverse action. A prima facie case establishes a rebuttable presumption of discrimination.

(2) If the complainant, plaintiff, or petitioner satisfies the burden of proof set forth in paragraph (c)(1) of this subsection, the respondent or defendant must then demonstrate a legitimate, non-discriminatory reason for the adverse action.

(3) If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this subsection, the burden shifts back to the complainant, plaintiff, or petitioner to demonstrate that the non-discriminatory reason(s) asserted by the respondent are pretextual or are false.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 12926, 12926.1, 12940, 12955, and 12955.8, Government Code.

§ 14029. Types of Evidence and Proof in Disparate Impact Discrimination Cases.

(a) Evidence of disparate impact may include statistical or other evidence that:

(1) a group of individuals, other than members of a protected class, receive better or more effective benefits of the program or activity than members of a protected class, or that the same benefits are more burdensome to obtain for members of a protected class;

(2) the benefits of the program were reduced, less effective, or more burdensome to obtain when members of a protected class were eligible for, or participated in, a program or activity to a greater extent than in the past;

(3) the program or activity creates, increases, reinforces, or perpetuates segregation on the basis

of membership in a protected class;

(4) a particular condition to receiving benefits of the program disproportionately excludes individuals on the basis of membership in a protected class from participation in or receipt of the benefits of the program; or

(5) the objectives of the program or activity were defeated or substantially impaired for members of a protected class.

(b) Burdens of Proof in Disparate Impact Discrimination Cases.

(1) The complainant, plaintiff, or petitioner must show that the practice they are challenging has a disparate impact. This means that, in a legal proceeding, the complainant, plaintiff, or petitioner has the burden of proving that an action, practice or practices caused or predictably will cause a disparate impact.

(2) If the complainant, plaintiff, or petitioner shows that the challenged practice has a disparate impact, the respondent can avoid liability by showing that the practice is justified despite the disparate impact. In a legal proceeding, this means that once the complainant, plaintiff, or petitioner satisfies the burden of proof set forth in paragraph (1) of this subsection, the burden shifts to the respondent to prove that the challenged practice meets the elements of a legally sufficient justification under subsection (c) in this section.

(3) If the respondent satisfies the burden of proof set forth in paragraph (2) of this subsection, the complainant, plaintiff, or petitioner may still prevail by proving that the purpose for the challenged action or practice can be equally served by an action or practice that has a less discriminatory effect.

(c) Legally Sufficient Justification.

(1) A legally sufficient justification exists when the respondent proves that the action or practice is necessary to achieve a substantial, legitimate, and nondiscriminatory purpose sufficiently compelling to override the disparate impact, and that the action or practice effectively carries out the purpose it is alleged to serve.

(2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 12926, 12926.1, 12940, 12955, and 12955.8, Government Code.

§ 14030. Other Proof Provisions.

(a) A legally sufficient justification, as described in subsection 14029(c), is not a defense against a claim

of intentional discrimination.

(b) The same information may be probative of more than one form of discrimination.

(c) The evidence and methods of proof described in this Article shall be construed as illustrative and not as limitations on the enforcement of Article 9.5, this subchapter, or other implementing regulations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 12926, 12926.1, 12940, 12955, and 12955.8, Government Code.

[§§ 14031-14049. Reserved.]

Article 4. Remedial Actions

§ 14050. Administrative Complaints and Judicial Private Right of Action.

(a) Any aggrieved person or state agency may file an administrative complaint with the Department regarding any alleged violation of Article 9.5, this subchapter or other implementing regulations.

(b) Article 9.5 and this subchapter may be enforced by a civil action in federal or state court for equitable or declaratory relief, including actions for declaratory relief, injunctive relief, writ of mandamus, mandatory relief, and cessation or suspension of state support, which shall be independent of any other rights and remedies, including any action taken by a covered entity under sections 11136 and 11137 of the Government Code.

(c) A prevailing plaintiff or petitioner in a civil action shall be entitled to costs, expenses, reasonable attorneys' fees, and expert witness fees. A prevailing defendant or respondent in a civil action may recover costs and reasonable attorneys' fees only under legal standards governing recovery of fees and costs in actions that are frivolous or objectively without foundation.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137 and 11139, Government Code.

§ 14051. Exhaustion of Administrative Remedies.

(a) Exhaustion of administrative remedies available for employment claims under the Fair Employment and Housing Act, Government Code section 12900 et seq. shall not be a prerequisite to the bringing of actions for judicial enforcement of Article 9.5, this subchapter or other implementing regulations, nor shall any person first be required to exhaust administrative remedies of any other state or federal agency or the internal grievance procedures of any recipient, or comply with the Government Claims Act, Gov. Code sections 900 et seq, before filing an intake form or a complaint with the Department or a civil action for enforcement of Article 9.5.

(b) Where an underlying administrative proceeding has occurred, the civil action or Department

investigation of violations of Article 9.5, this subchapter, and implementing regulations shall not be limited to a review of the administrative record even if the civil suit includes several causes of action, some of which may be subject to a review of an administrative record requirement. A civil action shall proceed by trial de novo.

(c) In a civil action, to the extent an aggrieved person alleges employment discrimination in violation of the Fair Employment and Housing Act, Government Code sections 12900 et seq. as a separate claim in addition to a violation of Article 9.5, the person must exhaust administrative remedies for those separate claims as required by Government Code section 12960 and implementing regulations.

(d) If an aggrieved person chooses to seek resolution of a claim under Article 9.5, this subchapter, or other implementing regulations through a state or state agency administrative procedure or internal agency grievance procedure other than through the Department, or if a complaint is referred to an agency for investigation pursuant to section 14052(b), the one-year deadline for filing a complaint with the Department under Government Code section 12960 shall be tolled for the pendency of the investigation.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137, 11139 and 11139.8.

§ 11157. [Reserved]

§ ~~14052~~11157. Mandatory Remedial Action.

~~(a) If the responsible State agency finds a recipient has violated this Division or other implementing regulations the recipient shall take such remedial action as the responsible State agency deems necessary to overcome the effects of such violation.~~

(a) Whenever a state agency has reasonable cause to believe that a covered entity or entities have violated the Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code section 51, 51.5, 51.7, 54, 54.1 or 54.2, Article 9.5, this subchapter, or other implementing regulations, the head of the state agency, or their designee, shall notify the covered entity or entities of such violation and shall submit a complaint detailing the alleged violations to the Department for investigation and determination according to Government Code section 11136.

(b) The Department retains discretion to refer complaints concerning violations to, or back to, the state agency responsible for the program or activity for investigation and possible resolution. Nothing in this subsection shall preclude an aggrieved person from proceeding under section 14050 (Private Right of Action).

(c) If a recipient or recipients are found to have violated the Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code section 51, 51.5, 51.7, 54, 54.1 or 54.2, the Act, this subchapter or other implementing regulations, the state or responsible state agency that administers the program or activity involved, in addition to remedies provided by other laws and actions directed by a Court, shall take one or more of the following actions:

(1) termination of all or part of the recipient's state support;

(2) suspension of all or part of the recipient's state support;

(3) debarment from, or otherwise making the recipient ineligible for, future state support for a specified period of time or until specified remedial actions are taken by the recipient;

(4) probationary eligibility for future state support, or making future state support conditional upon compliance with specified conditions; or

(5) placing conditions upon the continuation of present state support.

~~(b)~~ Where a recipient is found to have violated ~~this Division~~ the Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code section 51, 51.5, 51.7, 54, 54.1 or 54.2, Article 9.5, this subchapter, or other implementing regulations, and where another recipient exercises control over such recipient, either or both recipients shall be required to take such remedial action as deemed appropriate by the state or responsible state agency or a court.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137 and 11139, Government Code.

~~§ 11158.~~ § 14053. Permissive Remedial Action.

(a) A State agency may, where necessary to overcome the effects of discrimination in violation of Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code section 51, 51.5, 51.7, 54, 54.1 or 54.2, or discrimination or denial of full and equal access under Article 9.5, ~~this Division~~ subchapter or other implementing regulations:

(1) require a recipient to take remedial action with respect to persons who are no longer participants in the recipient's program or activity, but who were participants in the program when such discrimination occurred; and

(2) require a recipient to take remedial action with respect to persons who would have been participants in the program or activity, had the discrimination not occurred.

(b) If a recipient or recipients are found to have violated Fair Employment and Housing Act, Government Code section 12900 et seq., Civil Code section 51, 51.5, 51.7, 54, 54.1 or 54.2, the Act, this subchapter, or other implementing regulations, the state or responsible state agency may also take such remedial actions as the state or responsible state agency deems appropriate to address such violation and the effect of such violation, including requiring provision of benefits, prohibiting discriminatory conduct, or referral of the case to the Attorney General's Office or other appropriate law enforcement entities for any judicial relief at law or equity, including specific performance of agreements between the state or state agency and the recipient or recipients, enforcement of the requirements of the Act, this subchapter, and implementing regulations, and enforcement of other applicable nondiscrimination laws.

(c) Nothing in this section precludes the state or responsible state agency from taking such remedial actions during the pendency of the investigation or complaint as the state or responsible state agency deems appropriate to address an alleged violation and the effect of any such alleged violation.

(d) Even in the absence of a finding of discrimination or denial of full and equal access, a recipient may be permitted by the state or a state agency to take voluntary steps in addition to any action that is required by Article 9.5, this Division subchapter or other implementing regulations to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by persons of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability individuals in a protected class.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137 and 11139, Government Code.

[§§ 14054-14069. Reserved.]

Article 5. Harassment, Coercion, Intimidation, and Retaliation

§ 14070. Harassment Prohibited

(a) Harassment by a covered entity, related to any program or activity, on any protected basis is an unlawful practice under Article 9.5.

(b) Harassment includes quid pro quo harassment and hostile environment harassment. The same conduct may constitute both quid pro quo and hostile environment harassment.

(1) Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to the attainment of any benefit, as defined in section 14020 of this subchapter. An unwelcome request or demand may constitute quid pro quo harassment even if an individual acquiesces in the unwelcome request or demand.

(2) Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that interferes with or prevents the attainment of any benefit, as defined in section 14020 of this subchapter, constitutes any kind of adverse action, or creates a hostile, offensive, oppressive, or intimidating environment. Hostile environment harassment does not require a change in the terms, conditions, or privileges afforded by Article 9.5.

(A) Whether hostile environment harassment existed or exists depends on the totality of the circumstances.

(i) Factors to be considered in determining whether hostile environment harassment existed or exist include: the nature of the conduct; the context in which the incident(s) occurred; the severity scope, frequency, duration, and location of the conduct; and the relationship of the

persons involved.

(ii) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment existed or exists. However, evidence of psychological or physical harm may be relevant in determining whether a hostile environment exists or existed, and the amount of damages to which an aggrieved person may be entitled.

(iii) Whether unwelcome conduct created a hostile environment is viewed from the perspective of a reasonable person in the aggrieved person's position.

(3) Types of conduct. Quid pro quo and hostile environment harassment may be written, verbal, or communicated in other ways, and do not require physical contact. Such harassment includes:

(A) verbal harassment, including epithets, derogatory comments or slurs;

(B) physical harassment directed at an individual, including assault, impeding or blocking movement, or any physical interference with normal movement;

(C) visual forms of harassment, including derogatory posters, cartoons, drawings, or other documents.

(D) unwelcome sexual conduct, or other unwelcome conduct, which need not be based on sexual desire, linked to an individual's sexual orientation or sex, including: pregnancy or medical conditions related to pregnancy, childbirth or medical conditions related to childbirth, breastfeeding or medical conditions related to breastfeeding; gender identity; and gender expression;

(E) any coercion, intimidation, threats, or interference with a person's exercise or enjoyment of any benefit secured by rights protected under the Act, this subchapter, or implementing regulations.

(F) taking any adverse action against a person in a manner that constitutes quid pro quo or hostile environment harassment, such as, representing to a person that a benefit is not available because of the person's response to a request or demand for a sexual favor;

(G) revealing private information to a third party about a person, without their consent, in a manner that constitutes quid pro quo or hostile environment harassment, unless such disclosure is required by federal or state law; or

(H) subjecting a person to a discriminatory practice under Article 9.5 may, itself, constitute quid pro quo or hostile environment harassment.

(c) A single incident of harassment based on an individual's membership in a protected class may be sufficient to constitute hostile environment harassment or quid pro quo harassment under Article 9.5.

(d) The fact that an alleged perpetrator may be a member of the same protected class as the aggrieved person is not by itself a defense to a claim of harassment.

(e) A covered entity shall be liable for harassment of an ultimate beneficiary by a third party if the covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(f) Persons protected. The prohibition on harassment extends to conduct that is based on an individual's membership in a protected class, being perceived as a member of a protected class, being associated with a member of a protected class or someone who is perceived to be a member of a protected class, or on account of having aided or encouraged any person in the exercise of the rights protected by Article 9.5.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 12926, 12926.1, 12940, 12955, Government Code.

§ 14071. Retaliation Generally.

(a) It shall be unlawful for any covered entity to take adverse action against an aggrieved person because the person has engaged in protected activity.

(1) "Because of" means that the retaliation was a motivating factor in causing harm. Retaliation need not be the sole motivating factor.

(2) The adverse action need not be related directly to the nature of the protected activity.

(3) Retaliation may be established by direct evidence or circumstantial evidence, including the temporal proximity between the protected activity and the adverse action.

(b) Proof in Retaliation Cases

(1) To establish a prima facie case of retaliation, an aggrieved person or the Department must show that:

(A) the aggrieved person engaged in a protected activity;

(B) the respondent subjected the aggrieved person to an adverse action; and

(C) a causal connection or link exists between the protected activity and the adverse action.

(2) If an aggrieved person or the Department establishes a prima facie case, the respondent must then establish a legitimate non-retaliatory reason for the adverse action, whereupon the burden shifts back to the aggrieved person or the Department to demonstrate that the proffered reason

is pretextual or false.

(c) Persons Protected. For purposes of a retaliation claim, an aggrieved person includes any person who has alleged that they have been subjected to adverse action due to engagement in a protected activity.

(1) A person does not have to be a member of a protected class in order to assert a claim for retaliation.

(2) A person does not need to allege or prove discrimination or denial of full and equal access, or prevail on a separate claim under any provision of the Act or these regulations, in order to assert a claim for retaliation.

(3) An aggrieved person may prevail on a retaliation claim even if:

(A) the aggrieved person was engaged in a protected activity challenging practices which the aggrieved person reasonably believed to be unlawful, whether or not those practices are determined to be unlawful, or

(B) the aggrieved person was participating in an activity which was perceived by the respondent as protected activity, whether or not it was so intended by the aggrieved person.

(d) "Protected activity" includes:

(1) making a complaint, testifying, assisting or participating in any manner in a proceeding, including any proceeding under Article 9.5, the California Fair Employment and Housing Act, California Civil Code section 51, 51.5, 51.7, 54 54.1, or 54.2, the federal Fair Housing Act, the Americans with Disabilities Act, the federal Civil Rights Act, section 504 of the Rehabilitation Act, or any other state or federal civil right statutes;

(2) opposing practices prohibited by the Act, this subchapter, other implementing regulations, the California Fair Employment and Housing Act, California Civil Code section 51, 51.5, 51.7, 54 54.1, or 54.2, the federal Fair Housing Act, the Americans with Disabilities Act, the federal Civil Rights Act, or section 504 of the Rehabilitation Act, including seeking the advice of the state, any state or local agency, the Department or Council, or a person employed or retained by a recipient who has authority to receive, transmit, investigate, or discover a complaint, or correct an alleged violation, whether or not a complaint is filed, and if a complaint is filed, whether or not the complaint is found to have merit;

(3) assisting or advising any person in seeking the advice of the state, any state or local agency, the Department or Council, or a person employed or retained by a recipient who has authority to receive, transmit, investigate, or discover a complaint, or correct an alleged violation, whether or not a complaint is filed, and if a complaint is filed, whether or not the complaint is found to have merit;

(4) participating in an activity that is perceived by the state, any state or local agency, or a recipient as opposition to discrimination or denial of full and equal access, whether or not so intended by the individual participating in the activity;

(5) contacting, communicating with or participating in a proceeding of a human rights or civil rights agency regarding discrimination or denial of full and equal access on a basis enumerated in Article 9.5, this Division or other implementing regulations;

(6) assisting with or participating in the proceedings of the state, any state agency, or a recipient including involvement as a potential witness, which the state, any state or local agency, or a recipient perceives as participation in a proceeding alleging a violation of Article 9.5, this Division or implementing regulations;

(7) seeking information, formally under a Public Records Act request, or informally, regarding programs or activities of a state, any state agency, or a recipient; or

(8) requesting a reasonable accommodation or reasonable modification for an individual with a disability, or requesting an interactive process meeting, whether or not the request was granted.

(e) Violations of this section are considered a discriminatory practice as set forth in Article 9.5, this subchapter, and other implementing regulations, and subject to remedial actions described in Article 4, supra.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137, 11139, 12926, 12926.1, and 12940, Government Code.

§ 14072. Coercion, Intimidation, Threats, or Interference with Rights Prohibited

It shall be unlawful to coerce, intimidate, threaten, or discriminate against or deny full and equal access to any person for the purpose of interfering with any right or privilege secured by the Act.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 12926, 12926.1, 12940, Government Code.

[§§ 14073-14079. Reserved.]

Article 6. Specific Practices Prohibited – Age

~~§ 11159. Specific Discriminatory Practices.~~

~~The purpose of this Chapter is to identify discriminatory practices applicable to particular groups of persons protected by Article 9.5.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and~~

~~11139.5, Government Code.~~

~~§ 11160. [Reserved]~~

~~§ 11161. Definitions.~~

~~(a) "Alternative communication services" means the method used or available for purposes of communicating with a person unable to read or speak or write in the English language. "Alternative communication services" include, but are not limited to, the provision of the services of a multilingual employee or an interpreter for the benefit of an ultimate beneficiary and the provision of written materials in a language other than English.~~

~~(b) "Color or ethnic group identification" means the possession of the racial, cultural or linguistic characteristics common to a racial, cultural or ethnic group or the country or ethnic group from which a person or his or her forebears originated.~~

~~(c) "Interpreter" means a qualified person capable of translating a language, orally or in writing, between people who speak, read or write a different language.~~

~~(d) "Multilingual employee" means an employee of a recipient who, in addition to his or her other duties, is also proficient in the oral communication skills and such minimal reading and writing skills, where applicable, as are necessary to accurately and readily interpret in a second language. A multilingual employee need not be proficient in reading or writing skills in a second language except where such skills are a job-related necessity.~~

~~(e) "Non-English speaking persons" means persons who either do not speak English or are unable to effectively communicate in English because English is not their native language.~~

~~(f) "Primary language" means the language used most frequently by a person to communicate, including sign language.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11162. Discrimination Prohibited.~~

~~It is a discriminatory practice for a recipient:~~

~~(a) to discriminate against a person because of such person's association with persons of a particular color or ethnic group identification;~~

~~(b) to discriminate against a person because of such person's membership in an organization identified with, or seeking to promote the interests of persons of a specific color or ethnic group identification or because a person's name, or that of his or her spouse, is believed to reflect a given color or ethnic group identification;~~

~~(c) to fail to take appropriate steps to ensure that alternative communication services are available to ultimate beneficiaries, except where the State agency determines that such a requirement would place an undue hardship on the recipient.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11163. [Reserved]~~

~~§ 11164. [Reserved]~~

~~§ 11165. Religion Defined.~~

~~The term "religion" includes all aspects of religious observance, practice and belief, including duties of the clergy or elders. A belief is religious if sincerely held and, in the scheme of the believer, holds a place analogous to that filled by the deity of those people whose religion may be more orthodox or more widely accepted.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11166. Reasonable Accommodation.~~

~~It is a discriminatory practice where a recipient of State support fails to make reasonable accommodation to the religious belief of an ultimate beneficiary where such accommodation can be made without undue hardship on the recipient or other ultimate beneficiaries.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11167. Exemption of Religious Organizations.~~

~~Neither this Division nor implementing regulations apply to the religious activities of a religious corporation or association not organized for profit.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11168. Discrimination Prohibited.~~

~~It is a discriminatory practice for a recipient of State support to discriminate against an ultimate beneficiary based on the nature of the ultimate beneficiary's religious beliefs.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11169. [Reserved]~~

~~§ 11170. Definitions.~~

~~(a) "Action" means any activity, policy, rule, standard, or method of administration undertaken by a recipient; or the use of any policy, rule, standard, or method of administration by a recipient.~~

~~(b) "Age" means how old a person is, or the number of elapsed years from the date of a person's birth.~~

~~(c) "Age distinction" means any action using age or an age-related term.~~

~~(d) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example: "children," "adult," "older persons," but not "student").~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

§ 14080. Definitions

The terms "age," "age distinction," and "age-related term" shall have the meanings set out in section 14020.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14081. Practices Prohibited on the Basis of Age.

Among other prohibited practices, it is prohibited for a covered entity to:

(a) discriminate against or deny full and equal access to a person on the basis of the person's actual or perceived age;

(b) discriminate against or deny full and equal access to a person on the basis of such person's association with persons of a particular age; or

(c) discriminate against or deny full and equal access to a person on the basis of such person's membership in an organization identified with or seeking to promote the interests of persons of a specific age.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

~~§ 11171.~~ § 14082. Statutory Exceptions to the Rules Against Age Discrimination.

It is not a discriminatory practice for a ~~recipient~~ covered entity to take any action otherwise prohibited by ~~Sections 98100-98101~~ Article 9.5, this subchapter, or other implementing regulations if such action is based on a Federal statute or regulation, State statute or regulation, or local ordinance consistent with this ~~Division~~ Subchapter adopted by an elected, general purpose legislative body and which:

- (a) provides any benefits or assistance to persons based on age;
- (b) establishes criteria for participation in age-related terms; or
- (c) describes intended beneficiaries or target groups in age-related terms.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11172.~~ § 14083. Definition of “Normal Operation” and “Statutory Objective.”

For purposes of ~~Sections 98233 and 98234~~ Article 6, the terms “normal operation” and “statutory objective” have the following meanings:

- (a) “Normal operation” means the operation of a program or activity without significant changes that would impair the ~~recipient’s~~ covered entity’s ability to meet the objectives of such program or activity.
- (b) “Statutory objective” means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance consistent with this ~~Division~~ Subchapter adopted by an elected general purpose legislative body.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections ~~§§~~ 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11173.~~ § 14084. Exceptions to the Rules Against Age Discrimination: Normal Operation or Statutory Objective of Any Program or Activity.

It is not a discriminatory practice for a ~~recipient~~ covered entity to take an action, otherwise prohibited by ~~Sections 98100-98101~~ Article 6, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if:

- (a) age is used as a measure or approximation of one or more other characteristics;
- (b) the other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) the other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) the other characteristic(s) are impractical to measure directly on an individual basis.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 and ~~11139.5~~, Government Code.

~~§ 11174. Exceptions to the Rules Against Discrimination: Reasonable Factors Other Than Age.~~

~~It is not a discriminatory practice for a recipient to take an action otherwise prohibited by Sections 98100-98101 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages, provided that such other factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11175~~ § 14085. Burden of Proof.

The burden of proving that an age distinction falls within the exceptions of ~~§sections 98231, 98233 or 98234~~ 14081, 14082, 14083, or 14084 is on the recipient of State support covered entity.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 and ~~11139.5~~, Government Code.

§ 14086~~11176~~. State Agency Review of Policies and Procedures.

(a) Each ~~§~~state agency shall conduct a review of the age distinctions it imposes on its recipients by regulation, policy, or administrative practice. The purpose of this review is to identify how age distinctions are used by each ~~§~~state agency and whether such age distinctions are permissible under this ~~Division~~ Subchapter.

(b) No later than 12 months from the date a ~~§~~state agency adopts implementing regulations, such agency shall submit a report to the ~~Secretary~~ Department containing:

(1) the results of the review conducted under subsection (a) of this section;

(2) a list of the age distinctions which are to be continued; and

(3) the justification under ~~§~~section 14081, 14082, 14083, or 14084 ~~98231, 98233 or 98234~~ for each age distinction to be continued.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136~~11139~~ and

11139~~11139.5~~, Government Code.

§ 14087~~11177~~. Recipient Review of Age Distinctions.

No later than 18 months following the effective date of implementing regulations, each recipient should be required by the responsible Sstate agency to submit a report to such Sstate agency analyzing the results of a review equivalent to that referred to in subsection ~~98236~~-14086(a). Such report should list by program or activity the age distinctions to be continued, together with an explanation of why such distinctions satisfy the terms of Ssections 14082 and 14084 ~~98231, 98233, or 98234~~, and the age distinctions to be eliminated.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, ~~and 11139.5~~, Government Code.

§ ~~11178~~14088. State Agency Review of Recipient Age Distinctions.

No later than 24 months following the effective date of implementing regulations, each Sstate agency will be requested to submit a report to the ~~Secretary~~-Department analyzing the results of the review referred to in Ssection ~~98237~~-14086.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, ~~and 11139.5~~, Government Code.

§ ~~11179~~. [Reserved]

[§§ 14089-14099. Reserved.]

Article 7. Specific Practices Prohibited - Ancestry, Ethnic Group Identification, and National Origin

§ 14100. Definitions.

(a) The terms “ancestry,” “ethnic group identification,” and “national origin” shall have the meanings set out in sections 14020 (e), (q), and (dd), respectively.

(b) “Alternative communication services” means the method used for purposes of communicating effectively with a person with limited English proficiency who is unable to read or speak or write in the English language. “Alternative communication services” include, but are not limited to, the provision of the services of a multilingual employee or a qualified interpreter for the benefit of an ultimate beneficiary; the provision of written materials in a language other than English; the provision of written materials in a format other than standard font written print, such as Braille, large font print, sign language visual formats and electronic formats; auxiliary aids and services; and notice to the limited English proficient person of the availability of free alternative communication services, including interpreter and translation services and where to file complaints if appropriate services are not provided.

(c) “Multilingual employee” means a qualified employee of a covered entity who, in addition to their duties, is also proficient in oral communication skills in English and the target languages, as are necessary to accurately and readily interpret in a second language. A multilingual employee need not be proficient in reading or writing skills in a second language except where such skills are a job-related necessity or necessary for orally interpreting a written document.

(d) “Limited English proficient persons” (“LEP”) includes persons who are non-English speaking or who do not speak English as their primary language or have limited ability to read, write, speak, or understand English.

(e) “Primary language” means the language used most frequently by a person to communicate, including sign language, or tactile sign language.

~~(f) “Translator” means a person qualified and capable of translating a language in writing or sign. A qualified translator has received education and training in translator best practices, including ethics, conduct, practice, and confidentiality. “Translation” is the replacement of a written text or sign, or recorded image, from one language (source language) into an equivalent written text or sign, or recorded image in another language (target language), accurately and with appropriate cultural relevance, and at the appropriate grade level. Although many of the same requirements apply to translators as for interpreters, the skill of translators is very different from that of interpreting. Competency of translations can often be ensured by: (i) having a second independent translator to check the work of the primary translator, including using a community review process to ensure the correct reading and literacy level and understandability of the document, and (ii) using “back translation” by having one translator translate the documents and a second one translate it back to English or the source language to check the appropriate meaning.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14101. Prohibited Practices on the Bases of Ancestry, Ethnic Group Identification, and National Origin.

Among other prohibited practices, it is prohibited for a covered entity to:

(a) discriminate against or deny full and equal access to a person on the basis of the person’s actual or perceived ancestry, ethnic group identification, or national origin, including a person’s primary language or accent;

(b) discriminate against or deny full and equal access to a person on the basis of such person’s association with persons of a particular ancestry, ethnic group identification, or national origin.

(c) discriminate against a person on the basis of such person’s membership in an organization identified with, or seeking to promote the interests of persons of a particular ancestry, ethnic group identification, or national origin, or because a person’s name, or that of their spouse, is believed to reflect a particular

ancestry, ethnic group identification or national origin; or

(d) fail to take reasonable steps to ensure meaningful access to its programs and activities by LEP persons, including through the use of alternative communication services. The determination of whether a covered entity has failed to take reasonable steps to ensure meaningful access to its programs and activities by LEP persons is a case-specific, fact-based inquiry that must balance at least the following five factors:

(1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the covered entity;

(2) The frequency with which LEP individuals come in contact with the program or activity;

(3) The nature and importance to people’s lives of the program or activity provided by the covered entity;

(4) The significance of the communication to an individual’s ability to access or be served by the program or activity; and

(5) The resources available to the covered entity.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

[§§ 14102-14124. Reserved.]

Article 8. Specific Practices Prohibited - Color and Race

§ 14125. Definitions.

The terms “color,” and “race” shall have the meanings set out in sections 14020 (j) and (mm), respectively.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14126. Prohibited Practices on the Basis of Color and Race.

Among other prohibited practices, it is prohibited for a covered entity to:

(a) discriminate against or deny full and equal access to a person on the basis of the person’s actual or perceived color or race;

(b) discriminate against or deny full and equal access to a person on the basis of such person's association

with persons of a particular color or race;

(c) discriminate against or deny full and equal access to a person on the basis of such person's membership in an organization identified with, or seeking to promote the interests of persons of a specific color or race, or because a person's name, or that of their spouse, is believed to reflect a given color or race.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

[§§ 14127-14152. Reserved.]

Article 9. Specific Practices Prohibited - Marital Status

§ 14153. Prohibited Practices.

Among other prohibited practices, it is prohibited for a covered entity to:

(a) discriminate against or deny full and equal access to a person on the basis of a person's actual or perceived marital status;

(b) discriminate against or deny full and equal access to a person on the basis of such person's association with persons of a particular marital status;

(c) discriminate against or deny full and equal access to a person on the basis of such person's membership in an organization identified with or seeking to promote the interests of persons with a particular marital status; or

(d) inquire about a person's family or marital status. However, such person may be required to provide information relevant and necessary for determining whether such person satisfies validly imposed criteria for the aid or benefit, or participation in the program or activity in question, including any other former names by which such person has been known.

§ 11180. Parental, Family or Marital Status.

~~Any rule, policy or practice of a recipient concerning the actual or potential parental, family or marital status of an ultimate beneficiary which has the purpose or effect of differentiating on the basis of sex is a discriminatory practice.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

[§§ 14154-14179 Reserved.]

Article 10. Specific Practices Prohibited - Religion

§ 14180. Definitions.

The term “Religion” shall have the meaning set out in section 14020(qq).

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14181. Prohibited Practices on the Basis of Religion.

Among other prohibited practices, it is prohibited for a covered entity to:

(a) discriminate against or deny full and equal access to a person on the basis of the person’s actual or perceived religion.

(b) discriminate against or deny full and equal access to a person on the basis of such person's association with persons of a particular religion;

(c) discriminate against or deny full and equal access to a person on the basis of such person's membership in an organization identified with, or seeking to promote the interests of persons with a particular religion.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14182. Reasonable Accommodation of Religious Practices.

It is unlawful for a covered entity to fail to make reasonable accommodation to the religious belief of an ultimate beneficiary where such accommodation can be made without undue hardship on the covered entity.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14183. Exemption of Religious Organizations.

Neither Article 9.5, this subchapter nor other implementing regulations apply to the religious activities of a religious corporation or religious association not organized for profit, including employment relationships subject to the “ministerial exception” under the U.S. Constitution.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code; *Our Lady of Guadalupe School v. Morrissey-Berru* (2020) 140 S.Ct. 2049, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012) 565 U.S. 171.

[§§ 14184-14299. Reserved.]

Article 11. Specific Practices Prohibited - Sex and Sexual Orientation

§ 14300. Prohibited Practices on the Basis of Sex or Sexual Orientation.

Among other prohibited practices, it is prohibited for a covered entity to:

(a) discriminate against or deny full and equal access to a person on the basis of the person's sex or sexual orientation, as defined in sections 14020 (rr) and (ss);

(b) discriminate against or deny full and equal access to a person on the basis of such person's association with persons of a particular sex or sexual orientation, sections 14020 (rr) and (ss);

(c) discriminate against or deny full and equal access to a person on the basis of such person's membership in an organization identified with, or seeking to promote the interests of persons with a particular sex or sexual orientation, as defined in sections 14020 (rr) and (ss).

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

~~§ 11181. Personal Information.~~

~~In determining whether a person satisfies any criteria for receipt of an aid or benefit or participation in a program or activity, it is a discriminatory practice for a recipient to differentiate on the basis of sex in inquiring about the family or marital status of such person. However, such person may be required to provide information relevant and necessary for determining whether such person satisfies validly imposed criteria for the aid or benefit, or participation in the program or activity in question, including any other former names by which such person has been known.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11182. § 14301. Pregnancy, Childbirth, or Termination of Pregnancy.~~

~~Any rule, policy or practice of a recipient covered entity concerning disability due to pregnancy, childbirth, recovery from childbirth or termination of pregnancy, or other physiological conditions related to the capacity to bear children not applied under the same terms and conditions, and in the same manner, as any other rule, policy or practice relating to any other temporary disability is a prohibited discriminatory practice; except as otherwise provided by the Fair Employment and Housing Practice Act.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 and 11139.5, Government Code.~~

§ 14302. Parental, Family, or Marital Status.

Any practice of a covered entity concerning the actual or potential parental, family or marital status of an ultimate beneficiary which has the purpose or effect of differentiating on the basis of sex is a prohibited practice.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

~~§ 11183. Statistical Stereotypes.~~

~~Any rule, policy or practice which treats men and women differently for purposes of any program or activity on the basis of It is an unlawful practice for any covered entity to use aggregate statistical information, based on sex, characteristics of men or women, whether founded in fact, belief or statistical probability is a discriminatory practice.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 and 11139.5, Government Code.~~

~~§ 11184. Sex Pressure Prohibited.~~

~~Any rule, policy, practice or incident by a recipient is a discriminatory practice where a supervisor, superior, or other person subject to the control of a recipient of State support, conditions the receipt of benefits of a program or activity upon entering into, or maintaining, a sexual relationship or participation in sexual activity or subjects an ultimate beneficiary to sexual harassment or intimidation such as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

§ 14303. Inquiries Regarding and Recording of Gender and Name.

(a) Inquiries by a covered entity that directly or indirectly identify a person on the basis of sex, including gender, gender identity, or gender expression, or sexual orientation, are unlawful unless the covered entity establishes a permissible defense, including whether such a practice is required by state or federal law or an order of a state or federal court. For recordkeeping purposes, including data collection, a covered entity may request a person to provide this information solely on a voluntary basis.

(b) If an ultimate beneficiary requests to be identified with a preferred gender, name, and/or pronoun, including gender-neutral pronouns, a covered entity who fails to abide by the person's stated preference may be liable under Article 9.5, except as noted in subsection (c) below.

(c) A covered entity is permitted to use a person's gender or legal name as indicated in a government-issued identification document only if it is necessary to meet a legally-mandated obligation, but otherwise must identify the person in accordance with their gender identity and preferred name.

(d) It is unlawful for a covered entity to discriminate against or deny full and equal access to an individual who is transitioning, has transitioned, or is perceived to be transitioning.

(e) It is unlawful for a covered entity to refuse any individual access to facilities that correspond to that individual's gender identity or gender expression, regardless of the individual's sex assigned at birth, unless the covered entity establishes a permissible defense. Covered entities may not require individuals to undergo, provide proof or any medical treatment or procedure, provide any identity document, or to use facilities designated for use by a particular gender.

(f) Nothing in this section shall preclude a covered entity from making a reasonable and confidential inquiry of an ultimate beneficiary for the sole purpose of ensuring access to comparable, safe, and adequate multi-user facilities.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

[§§ 14304-14324. Reserved.]

§ 11185. [Reserved]

§ 11186. [Reserved]

Article 12. Specific Practices Prohibited - Disability, Medical Condition, and Genetic Information.

~~§ 11187.~~ § 14325. Definitions.

The terms "disability," "genetic information," and "medical condition" shall have the meanings set out in sections 14020 (p), (u), and (cc).

~~(a) "Disabled person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.~~

~~(b) As used in subsection (a) of this section, the phrase "physical or mental impairment" means:~~

~~(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or~~

~~(2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.~~

~~(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.~~

~~(4) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.~~

~~(5) "Is regarded as having an impairment" means:~~

~~(A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;~~

~~(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or~~

~~(C) has none of the impairments defined in subsection (b) (1) of this section but is treated by a recipient as having such an impairment.~~

~~(c) "Disability" means any condition or characteristic that renders a person a disabled person as defined in subsection (a) of this section.~~

~~(d) "Qualified disabled person" means:~~

~~(1) with respect to employment, a disabled person who, with reasonable accommodation, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such person from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and~~

~~(2) with respect to other programs or activities, a disabled person who meets the essential eligibility requirements of such programs or activities.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

§ 14326. Prohibited Practices on the Basis of Disability.

Among other prohibited practices, it is prohibited for a covered entity to:

(a) discriminate against or deny full and equal access to a person on the basis of the person's actual or perceived disability;

(b) discriminate against or deny full and equal access to a person on the basis of such person's association with persons with disabilities; or

(c) discriminate against or deny full and equal access to a person on the basis of such person's membership in an organization identified with, or seeking to promote the interests of persons with disabilities.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14327. Reasonable Accommodations.

It unlawful for a covered entity to fail or refuse to provide a reasonable accommodation as needed to afford an individual with a disability a full and equal opportunity to use or enjoy programs, or activities or services. Upon receiving a request for a reasonable accommodation, covered entities shall engage in a good faith interactive process to determine an effective reasonable accommodation.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14328. Medical Condition

It is a prohibited practice for a covered entity to discriminate against or deny full and equal access to a person on the basis of the person's actual or perceived medical condition, as defined in section 14020(cc).

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14329. Genetic Information.

It is a prohibited practice for a covered entity to discriminate against a person on the basis of the person's genetic information, as defined in section 14020(u).

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 14330. Confidentiality

(a) Information concerning a request for a reasonable accommodation for a disability, or other information concerning disability, medical condition, or genetic information, shall be kept confidential by covered entities in accordance with the privacy protections afforded to medical information under state and federal law, including the Confidentiality of Medical Information Act, California Civil Code sections 56-56.37, unless confidentiality is waived by the individual with a disability or disclosure is required by law.

(b) To the extent necessary to review a request for an accommodation, or to implement an accommodation, confidential information may be disclosed only to the covered entity's staff who are directly involved in the accommodation process or who are necessary to implement the accommodation.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

§ 11188. Self Evaluation.

~~(a) With regard to disabled persons, a recipient with 15 or more employees should be required by the responsible State agency, within one year of the effective date of implementing regulations to:~~

~~(1) evaluate, with the assistance of interested persons, including disabled persons or organizations representing disabled persons, its current policies and practices and the effects thereof that do not or may not meet the provisions of such regulations and this Division;~~

~~(2) modify, after consultation with interested persons, including disabled persons or organizations representing disabled persons, any policies and practices that do not meet the provisions of such regulations and this Division;~~

~~(3) take, after consultation with interested persons, including disabled persons or organizations representing disabled persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to such policies and practices; and~~

~~(4) for at least three years following completion of the evaluation referred to in subsection (a) (1) of this section, maintain on file, make available for public inspection, and provide to the responsible State agency upon request:~~

~~(A) a list of the interested persons consulted;~~

~~(B) a description of the areas examined and any problems identified; and~~

~~(C) a description of any modifications made and of any remedial steps taken.~~

~~(b) A self evaluation performed by a recipient as required by a federal agency under the provisions of Section 504 of the Rehabilitation Act of 1973 should be permitted to satisfy the provisions of subsection (a) (1) of this section.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

§ 14331. Assistance Animals.

(a) Assistance animals include guide dogs, signal dogs, service dogs, service animals, and support animals as defined in section 14020(f).

(b) Individuals with disabilities are permitted to have service animals as defined in section 14020(f)(1) in all locations and facilities operated or controlled by covered entities. The only permissible questions that can be asked of an individual to determine if the animal is a service animal are: 1) “Are you an individual with a disability?” and 2) “What is the disability-related task the animal has been trained to perform?” It is not permitted to ask the individual with a disability to demonstrate the task.

(c) Individuals with disabilities who have a support animal as defined in section 14020(f)(2) may request a reasonable accommodation pursuant to section 14327 related to the individual’s need for the support animal in all locations and facilities operated or controlled by covered entities. Requests may be denied if the animal creates an undue burden on the covered entity or constitutes a direct threat to others, as defined in section 14020(o) (definition of direct threat).

(d) Provisions applicable to all assistance animals as defined in section 14020(f) include:

(1) An individual with an assistance animal may also be covered by other legal obligations relating to assistance animals, such as the American with Disabilities Act, section 504 of the Rehabilitation Act, Civil Code sections 51, 54.1, 54.2. and 54.7, and the Fair Employment and Housing Act, which include additional requirements or prohibitions relating to assistance animals, and may further restrict the nature and type of inquiry that may be made concerning assistance animals;

(2) An individual with an assistance animal shall not be required to pay any pet fee or other additional fee, including additional security deposit or liability insurance, in connection with the assistance animal;

(3) An individual with an assistance animal may be required to cover the costs of repairs for damage the animal causes to the premises, excluding ordinary wear and tear;

(4) An individual may have more than one assistance animal. Each animal must be individually determined to meet the requirements in this article. When an individual already has a support animal as a reasonable accommodation and requests an additional support animal as a reasonable accommodation, the person considering the subsequent request may consider whether the cumulative impact of multiple animals constitutes an undue burden or fundamental alteration;

(5) No breed, size, and weight limitations may be applied to an assistance animal (other than specific restrictions relating to miniature horses as service animals under the Americans with Disabilities Act);

(6) Reasonable conditions may be imposed on the use of an assistance animal to ensure it is under the control of the individual with a disability or an individual who may be assisting the individual with a disability, such as restrictions on waste disposal and animal behavior that may constitute a nuisance, so long as the conditions do not interfere with the normal performance of the animal’s duties. For example, a leash requirement may interfere with the ability of a

guide dog, signal dog, or service dog to assist an individual, in which case the animal may be under voice control or otherwise responsive. Similarly, a “no noise” requirement may interfere with a dog’s job of barking to alert a blind individual to a danger or, but incessant barking may violate reasonable restrictions relating to nuisance. Any such conditions may not be more restrictive than those imposed upon other animals on the property;

(7) Animal vests, identification cards, or certificates are not in and of themselves documentation of either disability or the need for a reasonable accommodation;

~~(8) If an individual with a disability is denied permission to have an assistance animal, the individual is still entitled to all the rights and privileges that otherwise would have been accorded the individual, so long as the individual no longer has the animal; and~~

(9) An assistance animal need not be allowed if the animal constitutes a direct threat to the health or safety of others (i.e. a significant risk of bodily harm), as defined in section 14020(o) (definition of direct threat), or would cause substantial physical damage to the property of others, and that harm cannot be sufficiently mitigated or eliminated by a reasonable accommodation, pursuant to section 14327, including under the following provisions:

(A) A determination that an assistance animal as defined in section 14020(f) poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence that is sufficiently recent as to be credible, about the specific animal’s actual conduct, not on mere speculation or fear about the types of harm or damage an animal may cause or on evidence about harm or damage that other animals have caused.

(B) The assessment of whether the assistance animal as defined in section 14020(f) poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must consider:

(i) the nature, duration, and severity of the risk of a direct threat to the health or safety of others or of substantial physical damage to the property of others;

(ii) The probability that a direct threat to the health or safety of others or substantial physical damage to the property of others will actually occur; and

(iii) Whether there are any reasonable accommodations, pursuant to section 14327, that will eliminate the direct threat to the health or safety of others or substantial physical damage to the property of others, or sufficiently mitigate or eliminate the problems creating the direct threat.

(C) Relevant evidence in determining whether an assistance animal as defined in section 14020(f) imposes a direct threat includes whether there is evidence that the animal in question is currently engaging in dangerous conduct or has a recent history of overt dangerous acts, as

described under Food & Agric. Code section 31601 et seq. A dog that has been finally determined by a court of law to be “potentially dangerous dog” or “vicious dog” pursuant to Food & Agric. Code section 31601 et seq. shall presumptively be considered to pose a direct threat to the health or safety of others.

(9) If an individual with a disability is denied permission to have an assistance animal, the individual is still entitled to all the rights and privileges that otherwise would have been accorded the individual, so long as the individual no longer has the animal.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11130, 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code; Section 54.1 and 54.2, Civil Code.

§ 11189-§ 14332. Integrated Setting.

It is a ~~discriminatory prohibited~~ practice for a ~~recipient of State support~~ covered entity to fail to administer programs and activities in the most integrated setting appropriate to the needs of qualified disabled persons.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 and 11139.5, Government Code.

§ 11190-§ 14333. Communications.

(a) It is a prohibited practice for a covered entity to fail to take appropriate steps to ensure that communications with individuals with disabilities and their companions, including applicants to or participants in programs and activities, members of the public, and ultimate beneficiaries are as effective as communications with others. Covered entities shall give priority to the expressed preference for the method of communication requested by an individual with a disability.

(b) For purposes of this article, individuals with disabilities include persons with developmental, mental health, or intellectual disabilities who have limited ability to understand English; and persons with manual or sensory disabilities, such as manual dexterity impairments, hearing or vision impairments, who have limited functional ability to read, write, or speak English presented in standard visual or oral formats.

(c) For purposes of this article, “companion” means a family member, friend, caregiver, aide, or associate of an individual with a disability who, along with the individual with a disability, is an appropriate person with whom the covered entity should communicate.

~~It is a discriminatory practice where a recipient of State support fails to take appropriate steps to ensure that communications with their applicants and beneficiaries are available to persons with impaired vision or hearing.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

§ 14334. Self-Evaluation.

(a) With regard to persons with disabilities, a recipient with 15 or more employees should be required by the responsible state agency, within one year of the effective date of implementing regulations to:

(1) evaluate, with the assistance of interested persons, including persons with disabilities or organizations representing persons with disabilities, its current policies and practices and the effects thereof that do not or may not meet the provisions of such regulations, Article 9.5, this subchapter, and other implementing regulations;

(2) modify, after consultation with interested persons, including persons with disabilities or organizations representing persons with disabilities, any policies and practices that do not meet the provisions of such regulations, Article 9.5, this subchapter, and other implementing regulations;

(3) take, after consultation with interested persons, including persons with disabilities or organizations representing persons with disabilities, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to such policies and practices; and

(4) for at least three years following completion of the evaluation referred to in subsection (a)(1) of this section, maintain on file, make available for public inspection, and provide to the responsible state agency upon request:

(A) a list of the interested persons consulted;

(B) a description of the areas examined and any problems identified; and

(C) a description of any modifications made and of any remedial steps taken.

(b) A self-evaluation performed by a recipient as required by a federal agency under the provisions of section 504 of the Rehabilitation Act of 1973 should be permitted to satisfy the provisions of subsection (a) (1) of this section.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

~~§ 11191.~~ § 14335. Program Accessibility.

(a) Except as set forth in subsection (b) below, it is a ~~discriminatory prohibited~~ practice where a ~~qualified disabled person, because a recipient's~~ covered entity's facilities, as defined in section 14020(r), are inaccessible to or unusable by ~~such person~~ a qualified individual with a disability, and on the basis such

inaccessibility or inability to use, a qualified individual with a disability, is denied the benefits of, or is excluded from participation in, or is otherwise subjected to discrimination or denial of full and equal access under any in a covered entity's program or activity, to which this Division applies.

(b) It is a discriminatory prohibited practice for a recipient covered entity to fail to operate each program or activity or service to which this Division applies in such a manner that the program or activity, when viewed in its entirety, is readily accessible to disabled persons with disabilities. This section does not necessarily require a recipient covered entity to make each of its existing facilities or every part of a facility accessible to and usable by disabled persons with disabilities.

(c) Disparate impact or adverse effect may be demonstrated by showing that a selection criterion limits the opportunities of people with disabilities by screening out or tending to screen out persons with disabilities, without recourse to statistical data. It is a discriminatory practice for recipients covered entities operating fixed route bus systems or paratransit systems to fail to adhere to the program accessibility requirements set forth in Title 49, Part 27 of the Code of Federal Regulations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

§ 11192-§ 14336. Methods of Ensuring Program Accessibility.

A recipient covered entity may comply with the provisions of § section 9825414335 through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignments of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities, or other methods that result in making its program or activities accessible to ~~disabled persons~~ people with disabilities. A recipient covered entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with § section 9825414335. In choosing among available methods for meeting the provisions of § section 9825414335, it is a discriminatory prohibited practice for a recipient covered entity to fail to give priority to those methods that offer programs and activities to ~~disabled persons~~ people with disabilities in the most integrated setting appropriate.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

§ 11193. Methods for Small Recipients.

~~If a recipient with fewer than fifteen employees finds, after consultation with a disabled person seeking its services, that there is no method of complying with Section 98254 other than by making a significant alteration to its existing facilities, the recipient may, as an alternative, be permitted by the responsible State agency to refer the disabled person to other providers whose services are accessible.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.~~

~~§ 11194.~~ § 14337. Time Period for Compliance.

It is a discriminatory practice for a recipient to fail to comply with the requirement of ~~§~~section ~~98254~~14335 within sixty days of the effective date of implementing regulations, except that where structural changes in facilities are necessary, such changes may be made within three years of such effective date, but in any event, as expeditiously as possible.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11195.~~ § 14338. Transition Plan.

In the event that structural changes to facilities are necessary to meet the provisions of ~~§~~section ~~98254~~14335, a recipient should be required by the responsible State agency to develop, within six months of the effective date of implementing regulations, a transition plan setting forth the steps necessary to complete such changes. The plan should be developed with the assistance of interested persons, including disabled persons or organizations representing disabled persons. A copy of the transition plan should be made available for public inspection. The plan should, at a minimum:

- (a) identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to disabled persons;
- (b) describe in detail the methods that will be used to make the facilities accessible;
- (c) specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (d) indicate the person responsible for implementation of the plan.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11196.~~ § 14339. Notice of the Availability of Accessible Facilities.

Each recipient which is unable to comply with the provisions of ~~§~~section ~~98254~~14149 within the sixty day period set forth in ~~§~~section ~~98257~~14335 should be required by the responsible State agency to adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by ~~disabled persons~~ people with disabilities.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11197.~~ § 14340 New Construction.

~~(a) Except as set forth in subsection (b) below, it~~ It is a ~~discriminatory prohibited~~ practice where a facility or part of a facility constructed by, on behalf of, or for the use of a recipient covered entity is designed or constructed in such manner that the facility or part of the facility is not readily accessible to and usable by ~~disabled persons~~ people with disabilities if the construction was commenced after the effective date of implementing regulations.

~~(b) It is a discriminatory practice for recipients operating fixed route bus systems or paratransit systems to fail to adhere to the accessibility requirements for new vehicles set forth in Title 49, Part 27 of the Code of Federal Regulations.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11198.~~ § 14341 Alteration.

~~(a) Except as set forth in subsection (b) below, it~~ It is a ~~discriminatory prohibited~~ practice where each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient covered entity after the effective date of implementing regulations in a manner that affects or could affect the usability of the facility or part of the facility is not to the maximum extent feasible, altered in such manner that the altered portion of the facility is readily accessible to and usable by ~~disabled persons~~ people with disabilities.

~~(b) It is a discriminatory practice for recipients operating fixed route bus systems or paratransit systems to fail to adhere to the accessibility requirements for alterations of vehicles set forth in Title 49, Part 27 of the Code of Federal Regulations.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139 ~~and 11139.5~~, Government Code.

~~§ 11199.~~ § 14342. Accessibility Standards.

Design, construction, or alteration of facilities in conformity with the current ~~“American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped,” published by the American National Standards Institute, Inc., “Americans with Disabilities Act (ADA) Standards for Accessible Design” adopted by the U.S. Department of Justice in 2010 (ADA 2010 Standards), any other federal standard applicable to the facility such as the Uniform Federal Accessibility Standards (UFAS), or~~ and the regulations promulgated by the ~~Office~~ Division of the State Architect pursuant to Chapter 7 (commencing with ~~§~~ section 4450), Division 5 of Title I of the Government Code (“California Building Code Chapters 11A and 11B,”), constitutes compliance with ~~§~~ sections ~~14340, 98260 and 98261.~~ 14341. ~~Departures from particular requirements of these two standards by the use of other methods by a recipient are permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, and 11139, Government Code.

~~§ 11200.~~ § 14343. Consideration of Accessible Public Transportation.

(a) It is a discriminatory prohibited practice for a recipient covered entity, in carrying out any program or activity directly, or through contractual, licensing or other arrangements, to make or permit selections of sites or locations of facilities that fail to consider and allow for the availability, or lack thereof, of accessible public transportation for persons with a physical or mental disability people with disabilities.

(b) It is a prohibited practice for covered entities providing public or private transportation subject to section 504 of the Rehabilitation Act of 1973, as amended, and/or the Americans with Disabilities Act of 1990, as amended, to fail to adhere to the nondiscrimination and accessibility requirements of those Acts; those set forth in the U.S. Department of Justice (DOJ) implementing regulations at 28 CFR Parts 35 and 36, and those set forth in the U.S. Department of Transportation (DOT) implementing regulations at 49 CFR Parts 27, 37, 38, and 39, as those Parts existed in the 10/1/2018 revision, which are hereby incorporated by reference. This includes compliance with DOT requirements governing rail, bus, fixed-route, demand-responsive and paratransit services, including requirements relating to program access, new construction, alterations and vehicles. If California laws prescribe stronger protections for the benefit of people with disabilities, the stronger protections shall apply.

(c) It is a prohibited practice for covered entities operating fixed route bus systems or paratransit systems to fail to adhere to the accessibility requirements for new vehicles or alterations of existing vehicles as set forth in section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, and 49 CFR Part 27, as that Part existed in the 10/1/2018 revision, which is hereby incorporated by reference. If California laws prescribe stronger protections for the benefit of people with disabilities, the stronger protections shall apply.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11139 and 11139.5, Government Code.