

ATTACHMENT K

Fair Employment & Housing Council Working Draft of Government Code Section 11135 et seq. Regulations

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 6. Nondiscrimination in State-Supported Programs and Activities

TEXT

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Article 1. ~~Purpose, General Definitions and General Provisions~~ General Matters

~~Subarticle 1. Purpose and General Provisions~~

~~§ 1114012000. 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 11139.8, inclusive, which (hereinafter "Section 11135."). Section 11135 provides, inter alia, that:

(1) "No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, religion, age, sex, color, or physical or mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the State or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, Section 11135 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.~~

~~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,~~

(b) Section 11135's prohibition against discrimination includes intersectional discrimination, discrimination on more than one basis, harassment, and retaliation for exercising a protected right or refusing to engage in an act prohibited by Section 11135.

(c) These rules, regulations, and standards are established in order to advance the objective of Section 11135 and this Subchapter, to robustly protect against discrimination; to ensure that consistent policies, practices, and procedures are utilized by such agencies with respect to the enforcement of Article 9.5. This Division establishes guidelines regarding such policies, practices and procedures in order to; 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 9.5Section 11135 have a clear understanding of their rights and the means by which to enforce them.

Note: Authority cited: Section 12935(a)(1), Government Code. Reference: ~~and Section 11135, Government Code.~~

§ 11141§ 12001. Authority.

Section 12935 of the California Government Code authorizes the Fair Employment and Housing Council (hereinafter referred to as the "FEHC" or the "Council") to adopt, promulgate, amend, and rescind suitable rules regulations, and standards that either: (1) interpret, implement, and apply all provisions of Part 2.8 of the California Government Code, Section 11135 (commencing with Section 11135) of Chapter 1 of Part 1 of Subchapter 3 of Title 2 of the California Government Code, and Sections 51, 51.5, 51.7, 52.5, 54, 54.1, and 54.2 of the Civil Code; or (2) carry out all other functions and duties of the Council.

Note: Authority cited: Section 12935(a)(1), Government Code. Reference: Section 11135, Government Code.

§ 12002. 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: ~~Reference:~~

(a) The protections, prohibitions, rights, duties, sanctions, and remedies imposed by Section 11135, this Subchapter, and these 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 Section 11135, this Subchapter or these regulations, nor does compliance with Section 11135, this Subchapter or these regulations necessarily constitute compliance with other laws where those other laws impose more stringent requirements. Compliance with such other laws does not in itself exempt the State, a State agency, or a recipient from complying with Section 11135 or these regulations.

(b) Section 11135 shall not be interpreted in a manner that would frustrate its purposes.

(c) Section 11135 shall not be interpreted in a manner that would undermine lawful programs that benefit the protected classes.

Note: Authority cited: Section 12935(a)(1), Government Code. Reference: Section 11135, Government Code.

§ 12003. Private Right of Action.

§ 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.

(a) Section 11135, this Subchapter, or other implementing regulations may be enforced by a civil action in federal or state court for equitable and declaratory relief, including actions for declaratory relief, injunctive relief, writ of mandamus, mandatory relief, and cessation or suspension of state financial assistance, which shall be independent of any other rights and remedies, including any action taken by a recipient or the State or any State agency under Section 11137 of the California Government Code.

(b) A prevailing complainant shall be entitled to costs, expenses, and reasonable attorneys' fees, including expert witness fees, for an action or administrative complaint.

Note: Authority cited: Section 12935(a)(1), Government Code. Reference: Section 11135, Government Code.

§ 11143 § 12004. Exhaustion of Administrative Remedies.

(a) Exhaustion of administrative remedies available under Section 11135, this Division Subchapter, or other 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, nor shall any person first be required to exhaust administrative procedures of any other State or federal agency or the internal grievance procedures of any recipient before filing a pre-complaint inquiry or a complaint with the Department.

(b) Where an underlying administrative procedure has occurred, the civil action shall not be limited to a review of the administrative record even if the civil suit includes several causes of action, some of which are subject to a review of an administrative record requirement. A civil action shall proceed by trial de novo.

Note: Authority cited: -Section 12935(a)(1), Government Code. Reference: -and -Sections 11135, 11139, Government Code.

§ 11144 § 12005. Applicability of This Division Subchapter by Operation of Law.

The procedures set forth in this Division Subchapter govern all disputes relating to compliance with responsibilities under this Division Subchapter by operation of law.

Note: Authority cited: -Section 12935(a)(1), Government Code. Reference: -and -Section 11135, Government Code.

§ 11145. Preemption of § 12006. Relationship to Local Law Laws.

(a) To the extent that any local law, regulation, ordinance, resolution, policy or practice is in conflict with Article 9.5 Section 11135, this Division Subchapter, or other implementing regulations, insofar as it affords less protection to persons of a particular ethnic group identification, religion, age, sex, color or physical or mental disability than Article 9.5 than Section 11135, this Division, Subchapter or other implementing regulations, on the basis of any protected class, it shall be superseded by Section 11135, this Division Subchapter, and other implementing regulations.

(b) Further, nothing herein shall preclude a local law, regulation, ordinance, resolution, policy or practice from affording greater protection than Section 11135, this Subchapter, and other implementing regulation on any basis of any protected class.

Note: Authority cited: -Section 12935(a)(1), Government Code. Reference: -and -Section 11135, Government Code.

§ 11146 § 12007. Recipient Duration of Obligation: Real Property.

(a) In the case of 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 Section 11135, this Division Subchapter, and other implementing regulations 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.

(b) In the case of 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 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. Third parties may enforce regulatory agreements or covenants, conditions and restrictions imposed pursuant to this Section.

Note: Authority cited: -Section 12935(a)(1), Government Code. Reference: and -Section 11135, Government Code.

§ 12008. Recipient Duration of Obligation: Personal Property.

In the case of State support extended to acquire personal property, or in the form of personal property, including information systems and electronic technologies, the recipient shall be obligated to comply with Section 11135, 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)(1), Government Code. Reference: and -Section 11135, Government Code.

§ 12009. Recipient Duration of Obligation: Other Cases.

In all other cases, the recipient shall be obligated to comply with Section 11135, this Division Subchapter, and other implementing regulations for the period during which State support is received.

Note: Authority cited: -Section 12935(a)(1), Government Code. Reference: and -Section 11135, Government Code.

§ 12010. 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)(1), Government Code. Reference: ~~and~~ Section 11135, Government Code.

§§ 12011-12019. Reserved.

SubarticleArticle 2. General Definitions

§ 11150§ 12020. Definitions.

As used in Section 11135 and this Division~~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:

(a) "Age" means how old a person is, or the number of elapsed years from the date of a person's birth. "Age distinction" means any action using age or an age-related term. "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").

(b) "Ancestry" means an individual's self-identified family or ethnic descent, lineage, national origin group, tribal affiliation, or geographical place of origin or country in which the individual or the individual's parents or ancestors originated, or the perception of the individual's ancestry.

(c) "Assistance animal" means an animal that is necessary as a reasonable accommodation for an individual with a disability. See also, sections 11065 and 12185. Assistance animals include service animals and support animals. 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 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:

(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."

(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. “Services to the public” means the aid or benefit provided directly to any member of the public by the State or any State agency or by a recipient of State support.

(d) “Assistive technology” means technology designed to be utilized in an assistive technology device or assistive technology service.

(1) “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.

(2) “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.

(e) “Associated with” means associated with a person who is or is perceived to be a member of a protected class, or who sympathizes with, encourages, or participates in groups organized for the protection or assertion of rights protected under this Subchapter. “Associated with” includes an individual’s 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; membership in or association with an organization identified with or seeking to promote the interests of a protected class; attendance or participation in schools, churches, temples, or mosques, generally associated with a protected class; or actual or perceived association of an person’s name with a protected class.

(f) “Auxiliary aids and services” include:

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; 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, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of

making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Brailled 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;

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

(4) other similar services and actions.

(g) "Benefit" means anything offered or provided with the intention of or for the purpose of contributing to an improvement in condition, including, but not limited to, the aid or services offered or provided by the State, any State agency, or as a result of State support; or by a local agency, contractor, or recipient of state support.

(h) "Color" means the actual or perceived physical characteristics of an individual's complexion, pigmentation, or skin tone.

(i) "Contract" means any agreement, upon sufficient consideration, to do or not do a particular act.

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

(k) "DFEH" means the Department of Fair Employment and Housing as defined in Section 12901 of the California Government Code.

(l) "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.

(m) "Disability" means a physical or mental impairment that limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment, 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) The definition of disability shall be construed so that individuals are protected from discrimination 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 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.

(3) An individual meets the requirement of “being perceived or regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this subchapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(4) 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.

(5) 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.

(6) Whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the ADA.

(7) “Major life activities” shall be broadly construed and include physical, mental, and social activities; caring for one’s self; performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, 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.

(8) For purposes of subparagraph (6), 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.

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

(10) 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 and noncontagious diseases; orthopedic, visual, speech and hearing impairments; traumatic brain injuries, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disabilities, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic, tuberculosis, drug addiction, and alcoholism.

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

(12) 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. 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 and devices;

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

(D) learned behavioral or adaptive neurological modifications.

(13) 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.

(14) “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.

(15) “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;

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

(16) “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.

(17) “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.

(18) 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.

(n) “Ethnic group identification” means the actual or perceived possession of the physical, cultural or linguistic characteristics associated with a cultural, or ethnic group or country, geographical place of origin, or ethnic group from which an individual or the individual’s parents or ancestors originated.

(o) “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.

(p) ~~“FEHC” means and “Council” mean~~ the Fair Employment and Housing ~~Commission~~Council, as defined in Section 12903 of the California Government Code.

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

(q) “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.

(r) “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.

(s) “Genetic Information” means information about an individual’s genetic tests, the genetic tests of an individual’s family members, or the manifestation of a disease or disorder in the individual’s family members. 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.

(t) ~~“Grant” means an agreement to provide State~~ the bestowal of state support, other than by contract, including awards, donations, endowments, and gifts.

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

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

(w) “Intersectional Discrimination” means discrimination on the basis of a combination of protected classes, i.e., where two or more bases for discrimination cannot be reduced to distinct components. For example, an entity that is not unlawfully discriminating against either older or disabled individuals, still may be discriminating against individuals who are both older and disabled.

(x) “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 educational entity, redevelopment agency or successor to a redevelopment agency, regional agency, or other local public entity.

(y) "Marital status" means an individual's actual or pending state of marriage, non-marriage, domestic partnership, divorce or dissolution, separation, widowhood, annulment, or other marital state.

(z) "May" means permissive.

(aa) "Medical Condition" means (1) any health impairment related to or associated with a diagnosis, record, or history of cancer; or 2) 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.

(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.

(bb) "Mental Disability includes:

(1) 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. For purposes of this section, see also subsection (m) of this section.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2).

(cc) "National origin" includes the individual's or ancestors' actual or perceived: physical, cultural, or linguistic characteristics associated with a national origin group; marriage to or association with persons of a national origin group; tribal affiliation; membership in or association with an organization identified with or seeking to promote the interests of a national origin group; attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of a national origin

group; and name that is associated with a national origin group. (See also section 11027.1).

(dd) “Other regulations” means any additional regulations, guidelines, or procedures other than this Subchapter, adopted by any State agency. Other regulations, guidelines, or procedures cannot conflict with or provide less protections than the regulations in this Subchapter.

(ee) “Other power-driven mobility device” means any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

(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.

(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 of persons acting in concert.

(hh) “Program Physical Disability” includes:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) 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.

(B) Limits a major life activity.

(2) For purposes of this section, see also subsection (m) of this section.

(3) Any other health impairment not described in paragraph (1) that requires special education or related services.

(4) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in subparagraph (1) or (2) of this paragraph.

(5) Being regarded or treated by any person or entity covered by this subchapter as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(6) Being regarded or treated by any person or entity covered by this subchapter 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 paragraph (1) or (2).

(ii) "Program, activity, or services" means any:

(1) All of the operations of:

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

(B) A 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 school system;

(C) An entire corporation, partnership, or other private organization, or an entire sole proprietorship;

(i) if State Support is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

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

(D) The entire facility, plant or other comparable, geographically separate facility to which State support is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or.

(E) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended State support.

(2) Any project, policy, action or procedure undertaken by the State or any State agency, by any local agency, or by any recipient of State support, directly by recipients of State support or indirectly by recipients through others by contracts, arrangements or agreements, with respect to the public generally or with respect to any private person or public entity. Such programs or activities include, but are not limited to, the provision 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 cash or loan

assistance; permitting, site and facility selection decisions; or the provision of goods, services, or facilities for furnishing services, financial aid, or any other benefits. ~~The services, financial aid or other benefits provided under such programs or activities shall be deemed to include:~~benefit.

~~(3)~~(4) anyThe specific program, activity or services alleged to violate Section 11135, this Subchapter, or other regulations need not receive direct state support to be covered. Such coverage extends to the entire program or activity of the State, a State agency, the local agency, or the recipient, i.e., all parts of the State, a State agency, the local agency, or the recipient's operations. This is true even if only one part of the State, State agency, local agency, or the recipient receives state support.

(4) The services, financial aid or other benefits provided under such programs or activities shall be deemed to include:

(A) any service, financial aid or benefit provided by the State or any State agency, or 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 or activity to meet matching requirements or other conditions which that must be met in order for the recipients recipient to receive the State support; or

~~(2)~~(B) any service, financial aid or other benefit provided in or through a facility which 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.

(j) "Protected class" and "protected basis" are used interchangeably. They refer to the bases on which individuals are entitled to protections against discrimination pursuant to Section 11135 of the California Government Code, Part 2.8 (commencing with section 12900) of the California Government Code, section 51, 51.5, 51.7, 54 and 54.2 of the California Civil Code, and any regulation adopted by the Council to implement these sections or Article 1 (commencing with section 12960) of the California Government Code, as applicable. Protected bases include sex, race, color, religion, ancestry, nat'l origin, ethnic group ID, age, disability (including: mental and physical disability); medical condition, genetic info, marital status, and sexual orientation. To the extent protected bases are defined in Sections 12926 and 12926.1 of the California Government Code, those terms shall have the meanings set forth in this Subchapter. Protected bases not defined in Section 12926 of the California Government Code or the Council's implementing regulations are defined in this Subchapter. 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.

(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 an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

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

(nn) "Race" refers to the identification of a group of people as distinct from other groups based on supposed or presumed physical or genetic characteristics. "Race" is construed broadly to include protections that might otherwise appear to be covered only by other protected basis such as national origin or religion.

(oo) "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.

(pp) "Recipient" means any contractor, grantee, local agency, or person, who regularly employs five or more persons and who that 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 subcontractor, agent, successor, assignee, or transferee of a recipient, but excluding. The term "recipient" excludes the ultimate beneficiary of the State support. "Recipient" does not include State agencies. However, State agencies

(qq) "Reasonable Accommodations" or "Reasonable Modifications" for individuals with disabilities are used interchangeably under this Subchapter to mean changes, modifications, or adjustments in facilities, fixtures, furniture, equipment, devices, rules, policies, practices, procedures, licensing, ordinances, regulations, or programs when such accommodations may look to this Division for guidance be necessary to afford an individual with a disability an equal opportunity to use or enjoy benefits, privileges, programs, activity, or services.

(rr) “Religion,” “religious creed,” “religious observance,” “religious belief,” and “creed” are used interchangeably under this Subchapter to mean any traditionally recognized religion as well as beliefs, observances, or practices, which an individual sincerely holds and which occupy in the administration of their programs and activities life a place of importance parallel to that of traditionally recognized religions. They includes all aspects of religious belief, observance, and practice, such as duties of the clergy or elders, and religious dress and grooming practices. “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. “Religious grooming practice” shall be construed broadly to include of forms of head, facial and body hair, or body markings, that are part of an individual’s religious observance. Religion includes atheism, agnosticism, and an individual’s choice not to adopt a traditional or specific religious belief.

~~“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.~~

(ss) “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; sex stereotyping; gender identity; and gender expression; or perception by a third party of any of the aforementioned.

(tt) “Sex stereotype” means an assumption about a person’s appearance or behavior, gender roles, gender expression, or gender identity, or about an individual’s ability or inability to perform certain kinds of work or to participate in programs or activities, based on a myth, belief, social expectation, statistical probabilities, or generalization about the individual’s sex.

(uu) “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.”

(vv) “Sexual Orientation means heterosexuality, homosexuality, and bisexuality

(ww) “Shall” means mandatory.

~~“Should” means advisory.~~

(xx) “State agency” means an administrative subdivision or instrumentality of State government, including, but not limited to, agencies, special purpose districts, departments, offices, commissions, councils, authorities, boards, bureaus and divisions,

~~which has and the statutory or constitutional authority to provide California State support to any person. University.~~

~~(yy) "State support" means any funds, financial assistance" means any, grant, entitlement, loan, note, donation, cooperative agreement, , subsidy, contract, benefit or any other arrangement by which a the State or any State agency provides or otherwise makes available aid, services or benefits for the use of or to local agencies or 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; or~~

~~(3) provision or use of State materials or equipment; or~~

~~(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.~~

~~"State support" 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~~

~~(5)(2) receives funds that the State administers or allocates, including any competitive or discretionary tax credits, and any payments, subsidies, or other funds extended by the State 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 by the State directly to such individual for payment to any entity providing health-related insurance coverage.~~

~~(zz) "State supported program" means any program or activity that receives State support, in whole or in part.~~

~~(aaa) "Ultimate beneficiary" means a person in a protected class who receives, applies for, participates in, or benefits from, or is unlawfully deterred or excluded from receiving or applying for, the participating in, or benefiting from full and equal access to the benefits of, or employment underwith, or is subjected to discrimination under, a program of, or activity which, or service that is conducted, operated or administered by the State or any State agency, or a local agency or recipient that 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.

(ccc) Wheelchair means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion.

Note: Authority cited: -Section 12935(a)(1), Government Code. Reference: Section 11135, 12926, 12926.1, 12940, Government Code.