

SENATE

1st Session

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THE AMERICANS WITH DISABILITIES
ACT OF 1989

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Mr. Kennedy, from the Committee on Labor and Human Resources,
submitted the following

REPORT

Together with

ADDITIONAL VIEWS

[To accompany S. 933]

The Committee on Labor and Human Resources, to which was referred the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

Specific forms of discrimination prohibited [page 28]

Section 102(b)(3) of the legislation specified that "discrimination" includes utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control. Paragraphs (2) and (3) of the legislation are derived from provisions set out in the title I of the ADA, as originally introduced (which has been deleted by the Substitute) and general forms of discrimination set out in regulations implementing section 504 of the Rehabilitation Act of 1973 (see e.g., 45 CFR Part 84). Thus, the Substitute should not be construed as departing in any way from the concepts included in the original "general prohibitions" title of the ADA and these concepts are subsumed within the provision of the subsequent titles of the legislation. Further, this legislation in no way is intended to diminish the continued viability of sheltered workshops and programs implementing the Javits-Wagner O'Day Act.

Section 302(a) of the legislation specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

"Full and equal enjoyment" does not encompass the notion that persons with disabilities must achieve the identical result or level of achievement of nondisabled persons, but does mean that persons with disabilities must be afforded equal opportunity to obtain the same result.

Section 302(b)(1) of the legislation specifies general forms of discrimination prohibited by this title. These provisions are consistent with the general prohibitions which were included in title I of S. 933, as originally introduced. As explained previously in the report, the general prohibitions title has been deleted by the Substitute.

Sections 302(b)(1)(A) (i), (ii), and (iii) of the legislation specify that it shall be discriminatory:

To subject an individual or class of individuals on the basis of disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity;

To afford such an opportunity that is not equal to that afforded other individuals; or

To provide such an opportunity that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with an opportunity that is as effective as that provided to others.

Section 302(b)(1)(B) of the legislation specifies that goods, services, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

Section 302(b)(1)(C) of the legislation specifies that notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, covered entities are required to make decisions based on facts applicable to individuals and not on the basis of presumptions as to what a class of individuals with disabilities can or cannot do.

The Committee wishes to emphasize that these provisions should not be construed to jeopardize in any way the continued viability of separate private schools providing special education for particular categories of children with disabilities, sheltered workshops, special recreational

programs, and other similar programs.

At the same time, the Committee wishes to reaffirm that individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and over-arching principle of the Committee's bill. Separate, special, or different programs are designed to make participation by persons with disabilities possible. Such programs are not intended to restrict the participation of disabled persons in ways that are appropriate to them.

For example, a blind person may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his own pace with the museum's recorded tour. It is not the intent of this title to require the blind person to avail him or herself of the special tour. The Committee intends that modified participation for persons with disabilities be a choice but not a requirement.

In addition, it would not be a violation of this title for an establishment to offer recreational programs specially designed for children with mobility impairments. However, it would be a violation of this title if the entity then excluded such children from other recreational services made available to nondisabled children, or required children with disabilities to attend only designated programs.

Section 302(b)(1)(D) of the legislation specifies that an individual or entity shall not, directly, or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control. This provision is identical to section 102(b)(3) of the bill, which was discussed previously in the report.