

February 27, 2014

John McNeal
ADA Title II/Section 504 and Title VI Coordinator
Delaware Department of Transportation
P O Box 778
Dover, DE 19903

**RE: DelDOT Proposed External Equal Opportunity Complaint Regulation [17 DE Reg. 833
(February 1, 2014)]**

Dear Mr. McNeal:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Department of Transportation proposal to amend its existing regulations regarding procedures for addressing, investigating and responding to complaints of discrimination with respect to its External Equal Employment Opportunity (EEO) Programs. Such discrimination may be on the grounds of race, color, religion, sex, age, national origin or disability.

In general, the new standards conform to the Federal Highway Administration Office for Civil Rights guidance entitled "Procedures Manual for Processing External Complaints of Discrimination" [hereinafter "OCR Procedures Manual"]. The GACEC would like to share the following observations and suggested changes.

First, in §2.1.1.2, Council suggests substituting "individual with a disability" for "handicapped person" and substituting "her or his disability" for "his handicap". See updated version of federal law. See also Title 29 Del.C. §608.

Second, the word "Handicap" also appears in §2.1.2.9. However, the federal regulation apparently still uses the term so its use may still be acceptable.

Third, in §2.1.3, use of the word "refine" is somewhat unusual. Consider the following substitute: "...Orders further define, interpret, and implement Civil Rights...".

Fourth, §2.1.3 contains references to two of the three executive orders contained in the OCR Procedures Manual at page 4. The reference to Executive Order 12250 is omitted. DelDOT may

wish to review whether this omission is unintentional or the Executive Order is no longer in force.

Fifth, in §3.0, definition of “Discrimination”, DelDOT should consider substituting “means” for “involves”. See Register of Regulations Style Manual, §3.1.2, available at <http://regulations.delaware.gov/>. Also, the language in the last three lines lacks a predicate (verb); therefore, it is not a sentence.

Sixth, in §3.0, definition of “Investigative report”, the second sentence is not a definition but a substantive standard. The Register recommends that such regulatory standards not be included in definitions. See Register of Regulations Style Manual, §3.1.1.

Seventh, in §4.4.3.7, substitute “its” for “their” since the pronoun refers to a singular “agency”.

Eighth, §5.9.3.8 does not appear in the list of bases justifying dismissal in the OCR Procedures Manual (p. 9). DelDOT may wish to reassess whether this subsection conforms to federal guidance.

Ninth, §§5.11.2.2 and 5.11.2.3 contain three references to “State”. This may be “under inclusive”. A complaint could be filed against a local government entity or a private entity such as a contractor, not just the State.

Thank you for your time and consideration in reviewing our observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

Terri A. Hancharick

TAH:kpc