

THE ADMINISTRATION'S CAMPAIGN TO ERASE DISABILITY RIGHTS, PROTECTIONS AND PROTECTORS

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June, 2025

The Core Components of the Campaign

- Undermine key legal principles
- Challenge key statutory protections
- Rescind key regulatory provisions
- Defund key service programs
- Dismantle key agencies and advocacy projects

Undermine Legal Principles

- Erase disparate impact discrimination
 - Disparate impact focuses on the *effect* of an action – whether it produces a disproportionate result or an unjustified disadvantage -- to a protected group (race, gender, disability)
 - Executive Order 14281 (April 28, 2025) unilaterally decrees that disparate impact claims are unconstitutional, illegal, and now void
 - The only form of actionable discrimination prohibited by the Constitution and federal law would be intentional discrimination for most minorities
 - In a recent Supreme Court argument, the US conceded that the ADA and Sec. 504 may require some forms of reasonable accommodations and modifications
 - Could undermine challenges to the methods used by public and private entities to administer their programs

Undermine Legal Principles (2)

- Eliminate the integration mandate of 504 and ADA
 - Despite the history of these regulations and the Supreme Court's decision in *Olmstead*
- Delete all access requirements (DEIA) – both programmatic and architectural – for all programs and services
 - End the use of preferences, some accommodations, or modifications needed to allow a person with a disability to equally participate in a program, benefit, or service
- Devalue independence, choice, and self-determination
 - Expand government control, guardianship, involuntary treatment, and institutionalization in the provision of public services
- Threaten independence and the authority of judiciary
 - Rein in judges and federal court oversight of state services

Challenge Statutory Protections

- Texas v. Kennedy
 - Seventeen states bring suit in federal court to challenge to Section 504 of the Rehabilitation Act
- Section 504
 - Short statute first enacted in 1973 to prohibit discrimination on the basis of disability
 - Applies to any entity that receives “federal financial assistance”
 - Detailed description of what constitutes disability discrimination is set forth in the 504 regulations
 - First adopted in 1977
 - Finally updated in 2024

The 504 Regulations

- Disability community pushed to update the Section 504 regulations
- Disability advocates identified the major areas where updated regulations were needed
- Notice of Proposed Rulemaking (NPRM) issued in September 2023
 - Described evidence and reasons for updating rule
- Feedback
 - More than 5,000 comments from disabled people, advocacy organizations and other stakeholders
- Final Section 504 rule issued in May 2024
 - Responded to all public comments
 - Described the changes made (and not made) in response to comments and why

504 Regulations (2)

- Prohibits discrimination in:
 - Medical treatment and consent, particularly for life-saving care during an emergency (COVID-19)
 - Medical equipment
 - Child welfare programs and services
 - Web-based communications, apps, kiosks, and internet access
- Defines integration & segregation
 - Explicit application to residential, day and educational services
 - Covers people in or at risk of institutionalization & segregation
- Requires reasonable accommodations to disability conditions, and reasonable modifications to programs, so people with disabilities can fully participate and have an equal opportunity to benefit from the service, benefit, or activities

Challenge Statutory Protections (2)

- Lawsuit challenged both the statute and the regulations
 - Statute exceeds Congress' authority under the Spending Clause
 - Regulations exceed HHS' authority under the statute
- Challenge to regulations focused on 5 claims:
 - Gender dysphoria is not a disability and does not deserve any legal protection
 - Unnecessary segregation is not a form of discrimination and thus the integration mandate has no basis in law
 - Child welfare requirements undermine the State's responsibility to protect families
 - The cost of compliance, particularly as applied to Medicaid and Medicare funded services, far exceeds both the federal funding provided or any reasonable limitation on cost
 - The regulations interfere with the State's power and prerogatives to organize and implement their public services

Challenge Statutory Protections (3)

Status of the Litigation

- Case originally filed in September 2024
- Initially US/DOJ indicated they would defend the statute and regulations, and established tight timelines for the case
- After the election, US/DOJ asked for a 30 day stay (pause) to allow it re-consider its position
- Two-month stays have been repeatedly requested and allowed, with the current one to expire on July 21, 2025
- As a result of publicity, public opposition, and pressure on many state Attorneys General, the states have effectively dropped the claim that the statute itself is unconstitutional
- And HHS has issued a statement that the preamble provision on gender dysphoria is unenforceable and will be ignored

Rescind Regulatory Provisions

- Executive Order on De-regulation 14219 (Feb 9, 2025)
- Presidential Memorandum (April 9, 2025) on legal standards and timeline for recission of regulations
 - 10 Supreme Court cases that limit agency authority
 - Agency list due to OMB on 5/19/25
- Agency invitation for public to propose recission targets
 - Most due in July 2025
- Agency actions to date
 - Department of Energy
 - Eliminates disparate impact (Title VI of CRA) as form of discrimination
 - Eliminates protections for gender identity and sexual orientation
 - Eliminates requirements for accessible facilities and new construction

Health Care Regulations At High Risk of Recission

- Updated Sec. 504 regulations
 - Would eliminate new protections for child welfare, medical treatment, medical equipment, consent, communication, and health care
 - Would delete integration mandate and expanded definition of integrated setting, protection for persons at risk of institutionalization
 - Could vacate new provisions on kiosks, internet communications
- HCBS Settings rule
- ACA Market place and non-discrimination sections (1557)
- Medicaid access rule
- Nursing facility staffing ratio rule (stayed for 10 years in Reconciliation Budget Bill)

Defund Disability and Older Adult Services

- Wholesale destruction of Medicaid and ACA
- Limitations on 1115 waiver authority (calculation of cost neutrality)
- Significant reduction in HCBS programs and protections
- Major cuts to most community disability and older adult services
 - Aging access points
 - Home care programs
 - SAMSHA block grants, 988 help line, peer services
 - IDD and older adult waivers
 - Medically fragile supports

Dismantle Key Agencies and Advocates

- HHS
 - ACL dissolved and disaggregated
 - SAMHSA transferred
 - OCR eliminated
- Dept of Education eliminated
- DOJ
 - Missions revised
 - Police, correctional, and voting sections effectively dissolved
 - All lawyers left
 - Disability sections revised and decimated
 - 80% of lawyers left
- Protection and Advocacy programs
 - CAP, PAIR and voting programs ended
 - MH drastically reduced
 - DD may be eliminated

Dismantle Disability Provisions

- DOJ abandoned pending consent decrees, repudiated its underlying investigations, and dismissed pending cases concerning police practices in Louisville and Minneapolis
- DOJ refused to approve a court monitor in a Maine consent decree requiring home-based behavioral health services for children, thereby frustrating most of the decree
- DOJ has reduced its oversight and engagement in a Florida court order requiring in-home nursing services for children with complex medical conditions, and may seek to end the case in July

Imminent Threats

- End array of fundamental legal protections
 - Right to counsel
 - Habeas corpus
 - Systemic injunctions
- Further cuts to disability and older adult services and programs
- Eliminate all federally-funded rights protection entities
 - Legal services
 - Elder and disability advocates, P&As
 - OCR
- Challenge tax exempt status of private foundations and non-profit organizations
 - Target foundations supporting civil rights, voting, and democracy
 - Target public interest advocacy programs