THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE, BOSTON 02133

COMMONWEALTH OF MASSACHUSETTS

By His Excellency

MICHAEL S. DUKAKIS
GOVERNOR

EXECUTIVE ORDER 246

REVOKING AND SUPERSEDING EXECUTIVE ORDER NUMBERS 143 AND 150

Preamble

The Commonwealth of Massachusetts has led the nation, since its birth, in protecting the rights and privileges of individuals. The Massachusetts Constitution of 1780, which has been a model for other states, is based on a belief in freedom and equality for all individuals and in the duty of the government to safeguard and foster, for its people, the enjoyment of these rights.

This commitment to the rights and liberties of all its citizens, which has distinguished the Commonwealth from its inception, was reaffirmed by the adoption of Article 114 to the State Constitution in 1980 which protects the Commonwealth's handicapped populace from discrimination on the basis of their handicap. In recognition of safeguarding these individual's ability to participate fully within society, the Commonwealth has also enacted statutes prohibiting discrimination because of an individual's handicap in the areas of employment, education, and in places of public accommodation.

In spite of these many endeavors and accomplishments, much remains to be done. Handicapped individuals presently suffer from the lowest income levels of any segment of society, they are still incapable of finding adequate and accessible housing, and inferior education as well as societal misconceptions and discriminatory attitudes bar them from better jobs, dwellings and schools. We recognize that any such effects of any illegal past or present discriminatory practices by state agencies and appointing authorities must be affirmatively remedied, and that the ratio of handicapped individuals in the makeup of the state work force should, at all levels reflect the ratio of the handicapped population within the Commonwealth where the jobs exist.

In order to meet this obligation, I, Michael S. Dukakis, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution and by the statutes of the Commonwealth, do hereby adopt the following Governor's code of Fair Practices, and do hereby order and direct that the said Code be the governing and guiding policy of the Executive Branch of the Government of the Commonwealth of
DEFINITIONS

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

b. For purposes of affirmative action, certain disabilities shall be targeted for special attention in accordance with the methodology established in the Equal Employment Opportunity Commission's Standard Form 256.

c. "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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

e. "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.

f. "Is regarded, as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer or potential employer as constituting such a limitation; (ii) 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 (iii) has none of the impairments defined in paragraph (b) of this section but is treated by an employer or potential employer as having such an impairment.

g. "Qualified handicapped person" means a handicapped person who, with reasonable accommodation:

   (i) can perform the essential functions of the job in question with respect to employment, or

   (ii) can meet the essential eligibility requirements for the receipt of services, benefits or other opportunity.

h. "Reasonable accommodation" means any accommodation which has not been shown to impose an undue hardship upon the program or activity making the accommodation. In determining whether an accommodation would impose a hardship, the nature and cost of the accommodation shall be considered in light of the overall size of the State agency, or other...
program or activity making the accommodation, including the number of employees, number and type of facilities and size of budget. The determination of what is a reasonable accommodation shall be made initially by the employing agency. If the handicapped individual is aggrieved by the agency's determination then he/she shall have a right to appeal to the State Office of Affirmative Action or the Massachusetts Commission Against Discrimination, whichever is appropriate.

i. A person who identifies themselves as a handicapped individual for purposes of affirmative action under this Executive Order must, upon request, provide appropriate verifications or documentation to SOAA to substantiate they fall within the defined class of handicapped individuals covered by this Order.

If a person disagrees with an agency's determination that he/she is not handicapped for affirmative action purposes under this Order, then that person shall have a right to appeal the agency's determination to the State Office of Affirmative Action in accordance with Section 2.3(4)

Article I Declaration of Policy

1.1 Nondiscrimination and equal opportunity are the policy of the Executive Department of the Commonwealth of Massachusetts in all of its decisions, programs and activities. To that end, each executive officer serving under the Governor, and all state employees shall rigorously take affirmative steps to ensure equality of opportunity for handicapped individuals in the internal affairs of state government, as well as in their relations with the public, including those persons and organizations doing business with the Commonwealth. Each agency, in discharging its decisions, shall consider the likely effects which its decisions, programs and activities shall have in meeting the goal of equality of opportunity for handicapped individuals.

1.2 Affirmative action requires more than vigilance in the elimination of discriminatory barriers in employment, housing, education, public accommodations, and state or state assisted services on the basis of handicap. It requires positive and aggressive measures to ensure equal opportunity through affirmative remedy in the areas of employment, including hiring, promotion, demotion or transfer, recruitment, layoff or termination, rate of compensation, in-service or apprenticeship training programs, and assuring equal access to housing, educational programs, services and places of public accommodation. Affirmative action shall include all efforts required to remedy the effects of present and past discriminatory patterns and practices, and any action necessary to affirmatively guarantee equal opportunity for all persons.

1.3 All agencies and appointing authorities of the Commonwealth shall initiate affirmative action programs designed to conform with this policy. All such affirmative action programs shall be subject to review pursuant to the authority granted in this Executive Order, by the Executive Office for Administration and Finance ("Secretary"), the Massachusetts Commission Against Discrimination ("MCAD") and the State
Office of Affirmative Action ("SOAA"). SOAA shall upon request provide the Office of Handicapped Affairs (OHA) with information relating to the affirmative action programs initiated pursuant to this Executive Order.

1.4 All powers, functions, and duties granted to the Governor, the Secretary of Administration and Finance, the Massachusetts Commission Against Discrimination, the State Office of Affirmative Action and the State Office of Handicapped Affairs, under any provision of law, shall apply also to this Order.

1.5 The Office of Handicapped Affairs has the responsibility, pursuant to M.G.L. c.6 s.187 and 188, for promoting the advancement of the legal rights of handicapped individuals as well as for promoting and securing the maximum possible opportunities, supportive services, accommodations and accessibility toward the end of full and equal participation of the Commonwealth's handicapped citizenry in all aspects of life within the Commonwealth. In accordance with this mandate, the Office of Handicapped Affairs shall cooperate with the State Office of Affirmative Action in fulfilling the objectives of this Order. Furthermore, OHA shall have responsibility for overseeing state compliance with Section 504 of the Rehabilitation Act of 1973. OHA shall provide the coordination of technical assistance by and for state agencies and their appointing authorities for compliance with the nondiscrimination aspects of this Order and for state compliance with Section 504.

1.6 The State Office of Affirmative Action shall have the overall responsibility to monitor, in a systematic manner, all affirmative action plans for internal employment for the Commonwealth to ensure said plans comply with this Order. SOAA shall also provide the coordination of technical assistance by and for state agencies and their appointing authorities for the affirmative state employment obligations under this Order.

Article II Employment Policies of State Agencies

2.1 State officials and supervisory employees appoint, assign, train, evaluate, compensate, and promote state personnel without discrimination on the basis of an individual's handicap. A qualified handicapped individual shall be entitled to reasonable accommodation, which may include job restructuring, modified work schedules, provision of readers or interpreters or making the workplace accessible to or usable by handicapped individuals.

2.2 The Secretary of Administration and Finance shall have overall responsibility for ensuring equal opportunity and affirmative action for handicapped individuals in the Commonwealth, and shall be assisted by the Director of the State Office of Affirmative Action who he/she shall appoint.

2.3 The Director of the State Office of Affirmative Action ("SOAA") as the chief Affirmative Action Officer for internal employment for the Commonwealth, shall carry out the Commonwealth's policy on affirmative action and equal opportunity.
The Director of SOAA shall:

(1) recommend appropriate standards and procedures governing the preparation, submission and review of affirmative action plans by all agencies.

(2) give final approval or disapproval of all affirmative action plans prepared by such agencies and appointing authorities as submitted by the Secretariat.

(3) conduct an ongoing review of affirmative action plans and the intent of this Executive Order.

(4) establish a uniform grievance procedure which shall be available to any person subject to this Executive Order, including applicants, as well as employees, to determine any and all issues arising from this Executive Order and related to affirmative action plans. However, such procedures need not conform to Massachusetts General Law Chapter 3OA.

(5) monitor the approval of all personnel requisitions and appointment forms submitted to the Personnel Administrator by appointing authorities within state government after approval by the Secretariat Affirmative Action Officer. If the Director of SOAA determines that an agency has not been in compliance with its hiring or promotion goals, he/she may impose, after written notice, a hiring freeze on any or all positions of the agency until such time as a determination has been made by the Equal Employment Panel, as described in Section 2.12 below, that the agency is in compliance.

(6) report, from time to time, but at least every three months, to the Governor and the Secretary of Administration and Finance on the progress being made by secretaries and all other appointing authorities in administering their affirmative action plans.

(7) ensure that the state personnel system is operated in ways which provide assistance to appointing authorities in meeting the affirmative action goals.

(8) require Affirmative Action Officers to submit information on the status of their affirmative action plans on at least a quarterly basis, and whenever deemed necessary by the Director of SOAA.

(9) have any additional powers that are necessary to carry out the Commonwealth's policy of affirmative action and equal employment.
2.4 (1) Within a specified time frame, as agreed to by SOAA and OHA, a methodology will be developed to determine statistics specific to the Commonwealth's population of handicapped individuals for affirmative action purposes.

(2) Upon agreement to the methodology by SOAA and OHA, the appropriate authority as signified by the methodology, shall immediately begin to identify the population of handicapped individuals within the Commonwealth for affirmative action purposes. Once these statistics are developed then SOAA in consultation with OHA shall set the parity goal.

(3) Within 60 days of the issuance of this Order, SOAA shall promulgate guidelines for determining the current employee mix of handicapped individuals within each agency and appointing authority.

2.5 Effective immediately, the Secretary of each Executive Office shall:

(1) cause each agency or appointing authority to employ all reasonable measures to eliminate the effects of any past or present discriminatory employment practice. The timetable for achieving the goals set forth in affirmative action plans shall be closely reviewed by the Director of SOAA to ensure that they are reasonable.

(2) instruct the Secretariat Affirmative Action Officer to supervise enforcement and development of affirmative action plans for handicapped individuals by agencies and appointing authorities within each Secretariat, including the Executive Office in accordance with this Order. Each Secretariat Affirmative Action Officer shall be knowledgeable in disability rights and issues. Training and technical assistance to this end shall be provided by SOAA to the Affirmative Action Officers.

(3) Within 150 days of the issuance of the guidelines by SOAA for determining the employee mix of handicapped individuals, each Secretariat shall have completed its utilization review in accordance with the guidelines promulgated under section 2.4(3).

(4) after completing its utilization review the Secretariat should consider its existing staffing patterns when preparing its affirmative action plan, and when such patterns indicate a pattern that is not fairly reflective of the percentage of handicapped persons as established by 2.4(2), shall state in the affirmative action plan the remedial measures the Secretary of the Executive Office intends to employ to correct the disparity.

2.6 Each Secretariat Affirmative Action Officer shall:
(1) review affirmative action plans within his/her Secretariat and Executive Office to ensure that they meet the requirements of this Order and any guidelines established by the State Office of Affirmative Action.

(2) submit Secretariat Affirmative Action plans to the Director of SOAA for review and approval.

(3) recommend approval or disapproval and sign-off on all appointment forms and personnel requisitions.

(4) report all disapprovals to the Director of SOAA.

(5) report to the Director of SOAA any problems experienced in enforcing and administering the affirmative action plan or plans with their Secretariat, as defined in 2.3(2).

(6) require agency Affirmative Action Officers to submit to the Secretariat information on the status of their plans on a quarterly basis and whenever necessary as determined by the Director of SOAA.

2.7 Effective immediately, the chief executive of each agency or appointing authority shall:

(1) instruct its Affirmative Action Officer to administer and enforce the affirmative action plan of such agency or appointing authority in accordance with this Order. Each Affirmative Action Officer shall be knowledgeable in disability rights and issues. Training and technical assistance to this end shall be provided by SOAA to the Affirmative Action Officers.

(2) issue clear, written directives for each agency, commission, department or other subdivision within his/her authority, and to each person in a decision-making position with respect to employment, layoffs, terminations, promotions, or job responsibilities, to carry out the approved affirmative action plan.

2.8 Each agency Affirmative Action Officer shall:

(1) write and design affirmative action plans within his/her office which are to be sent to the Secretariat Affirmative Action Office for further review.

(2) in preparing an affirmative action plan, conduct a utilization analysis in accordance with the guidelines established pursuant to Section 2.4(3), and complete said analysis within 150 days of the promulgation of the guidelines. When such analysis indicates a pattern of staffing of handicapped individuals that is not fairly reflective of the percentage established by Section 2.4 (2) take appropriate remedial action.
(3) recommend approval or disapproval and sign-off on all appointment forms and personnel requisitions which are to be reported to the Secretariat Affirmative Action Officers for their Secretaries.

2.9 Each agency and authority shall be required to file with the State Office of Affirmative Action, an annual report through the appropriate secretary, by July 30th of each year for the period ending June 30th, on actions taken during the preceding fiscal year to implement its affirmative action plan.

Notwithstanding the foregoing, the Chairman of the Massachusetts Commission Against Discrimination and the Director of the State Office of Affirmative Action may, at any time, request, and shall receive, such information they deem appropriate for purposes of monitoring compliance pursuant to the authority referenced in this Executive Order.

2.10 The Civil Service Commission and the Department of Personnel Administration, in conjunction with the Director of SOAA, shall employ systematic efforts to ensure that the procedure for appointing persons to state service, including the development and administration of written and oral examinations, job specifications and employment qualifications, and all examinations and employment standards, are free from either deliberate or inadvertent bias, and have been examined to eliminate any discriminatory effect on handicapped individuals. All examinations for entry or promotional appointments shall be designed clearly and demonstrably to test an applicant's actual ability to discharge the duties of the position for which the person seeks appointment with reasonable accommodation to the individual's handicap.

2.11 The Director of SOAA shall investigate instances of noncompliance with an approved affirmative action plan. Whenever he/she determines, after investigation, that any party, either partly or wholly responsible for the implementation of an affirmative action plan, is in noncompliance, he/she shall, where appropriate, assume sign-off powers over all personnel actions and requisitions until there is satisfactory compliance.

The Director of SOAA shall refer to the Massachusetts Commission Against Discrimination any information which he/she believes may constitute a violation of the laws. The Commission shall initiate complaints against those agencies or persons who it has reason to believe are in violation of the laws. The Director of SOAA shall notify the OHA Director of any instance of non-compliance with this Article or violation of the laws where the non-compliance or violation relates to handicapped individuals.

2.12 Any secretary who objects to the determination of the Director of SOAA may appeal to a panel consisting of the Secretary of Administration and Finance or his/her designee who shall be the Chairperson, and the Chairman of MCAD or his/her designee, and the Director of the Office of Handicapped Affairs or his/her designee. In the event that the Office of Handicapped Affairs had previous advocacy involvement in the case pending before the panel, then a third member of
the panel shall be selected jointly by the other panel members in lieu of the OHA Director. The selected panel member shall have a background in and be knowledgeable about disability rights and issues. This panel shall be called the Equal Employment Panel, and shall have authority to take whatever action it deems appropriate and consistent with the policy of this Executive Order.

2.13 Nothing in this Article shall be deemed to diminish the powers, duties, or jurisdiction of the Massachusetts Commission Against Discrimination including, but not limited to, its powers to act with respect to complaints against any agency or person.

2.14 The Director of SOAA shall refer all instances of possible violation of MGL 151B to the MCAD for appropriate action.

2.15 Every appointing authority shall post in a conspicuous place a notice to be prepared or approved by the Secretary of Administration and Finance or the Director of the State Office of Affirmative Action which shall set forth excerpts of this Order, and such other information which the Secretary of Administration and Finance or the Director of the State Office of Affirmative Action deems necessary to explain this Executive Order.

Article III State Service and Facilities

3.1 All services of every state agency shall be performed without discrimination based on handicap and consistent with all applicable state and federal law. Said services shall be provided in a manner which does not discriminate, adversely impact upon or create an undue hardship on handicapped persons in the use of such services.

3.2 Any agreement, arrangement, or plan to which the state agency is a party shall be consistent with the requirements of Section 3.1.

3.3 All state facilities shall be accessible to and usable by handicapped persons. However, to the extent any state facility is not presently fully accessible to and usable by handicapped persons, then the state agencies shall be required to affirmatively act to assure equal access to the facilities and services provided therein.

3.4 Each state agency shall, at the request of OHA critically analyze all its operations to ascertain possible instances of noncompliance with this policy, and shall as soon as possible, implement sustained, comprehensive programs based on OHA's recommendations to remedy any defects found to exist.

OHA may require an appointing authority to prepare a written plan for self-evaluation and correction pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulations for purposes of complying with this Article. The OHA Director shall monitor compliance with said plan of self-evaluation and shall take such steps as he/she deems appropriate to correct any non-compliance with said plan. Such steps shall include, but not be limited to, notifying the SOAA Director or the Chairman of MCAD of instances of non-compliance and
requesting that the SOAA Director or the Chairman of MCAD take appropriate steps under this Order to correct said non-compliance.

Article IV - Contracts

4.1 Every state or state-assisted contract for public buildings and public works, or goods or services shall contain an article prohibiting discriminatory employment practices by contractors, subcontractors, and suppliers of goods or services based on handicap. The nondiscrimination article shall:

   (1) Include provisions requiring contractors and suppliers of goods and services to give written notice of their commitments under this article to any labor union, association or brotherhood with which they have a collective bargaining or other agreement.

   (2) Give such notice to handicap contractors, and to handicapped contractor associations.

4.2 It is the policy of the Commonwealth of Massachusetts to require that every state contract or state-assisted contract for public buildings and public works, and for goods and services which total $50,000 or more shall contain an article requiring the contractor, and his/her subcontractors, to undertake, through every possible measure, such affirmative action programs as may be required by the Secretary of the Executive Office within which the contracting or assisting agency is located (or, if such agency is not located within an executive office, then such secretary as shall be designated by the Commissioner of Administration and Finance).

4.3 The Secretary of each Executive Office shall require that the contracting or assisting agency include, as part of state or state-assisted contracts for public buildings and public works, a version of the Commonwealth's Supplemental Equal Employment Opportunity, Anti-discrimination and Affirmative Action Program appropriately adapted by the MCAD.

4.4 The objective of such affirmative action shall be:

   (1) to eliminate all past and present effects of discrimination in employment because of handicap,

   (2) to promote the full realization of equal employment opportunity for handicapped individuals, and

   (3) to promote business opportunities in the Commonwealth for handicap contractors through positive and continuing programs.

4.5 Such contractual provisions shall be fully and effectively enforced, and any breach of them shall be regarded as a material breach of the contract subject to appropriate sanctions. The Massachusetts Commission Against Discrimination shall be responsible for determining
compliance with nondiscrimination and affirmative action sections of state contracts. In the event of a finding of noncompliance with these provisions, the contracting agency shall impose such contract sanctions, consistent with the law and contractual agreements, as it may deem appropriate to attain full and effective enforcement.

4.6 In implementing this policy of nondiscrimination and affirmative action, all contracting and assisting agencies shall cooperate with, and utilize, the expertise of the Massachusetts Commission Against Discrimination and the Office of Handicapped Affairs. As part of its annual report, each state agency and appointing authority shall submit to the MCAD documentation of its actions and programs to ensure compliance with these provisions by all contractors.

Article V State Employment Services

5.1 All state agencies, including educational institutions, which provide employment shall accept job orders, refer for employment, test, classify, counsel, and train only on a non-discriminatory basis. Said agencies shall refuse to fill any job order which has the effect of excluding any class of persons because of their handicap unless said individual is unable to perform the essential functions of the position with reasonable accommodation as described in the Definitional Section and Section 2.1.

5.2 All state agencies shall advise the MCAD and/or OHA promptly of any employers, employment agencies, or unions which said agencies have reason to believe are practicing unlawful discrimination.

5.3 State agencies shall assist public and private employers, unions, or other persons who, pursuant to a remedial affirmative action program, seek to broaden their recruitment programs by requesting the referral of qualified handicapped applicants. Each executive office, including, but not limited to, the Executive Office of Economic Affairs, shall direct agencies under their jurisdiction to fully utilize their expertise to the end that the agencies shall cause all persons (as defined in Chapter 151B of the Massachusetts General Laws) within their jurisdiction to initiate action to eliminate any practice or program which has an illegal discriminatory effect on handicapped individuals due to their handicap.

Article VI Massachusetts Commission Against Discrimination

6.1 In the performance of its responsibilities under this Executive Order, the Massachusetts Commission Against Discrimination shall have the full cooperation of all state agencies and appointing authorities. Said agencies and appointing authorities shall comply with the MCAD's requests for information concerning practices inconsistent with the state policy of nondiscrimination and affirmative action, and said agencies shall follow its lawful directives for giving effect to that policy.

6.2 Where appropriate, the MCAD shall promulgate guidelines, rules, and regulations aiding the implementation and enforcement of this
Executive Order.

Article VII State Education, Counseling and Training Programs

7.1 All educational, counseling and vocational guidance programs, and all apprenticeship and on-the-job training programs of state agencies, or in which state agencies participate, shall not discriminate and shall provide equal opportunity to handicapped individuals. Such programs shall be conducted to encourage the fullest development of interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of physically and/or educationally handicapped.

7.2 Those state agencies responsible for educational counseling and training programs shall take positive steps to ensure that all such programs are free from unlawful bias.

7.3 Expansion of the training opportunities under these programs shall also be encouraged with a view toward involving larger numbers of participants from those segments of the labor force where the needs for upgrading levels of skill is greatest.

Article VIII Health Care

All private health care facilities, licensed or chartered by the state, including hospitals, nursing homes, convalescent homes, rest homes and clinics, shall be required to comply with the state policy of nondiscrimination in their patient admissions and in health care service as a condition of continued participation in any state program, or in any educational program licensed or accredited by the state, or to be eligible to receive any form of assistance.

Article IX Private Educational Institutions

All private educational institutions, licensed or chartered by the state, including professional, business and vocational training schools, shall, at the request of the MCAD or the OHA Director be required to show compliance with the state policy of nondiscrimination in their student admissions and other practices as a condition of continued participation in any state program or eligibility to receive any form of state assistance. However, these institutions may pursue their own otherwise lawful practices to promote diversity in their student admissions.

Article X State Licensing and Regulatory Agencies

10.1 State Agencies shall not discriminate on the basis of handicap in granting, denying, or revoking a license or charter, nor shall any person, corporation, or business firm which is licensed or chartered by the state unlawfully discriminate against, or segregate, any person on such grounds. All businesses licensed or chartered by the state shall operate on a nondiscriminatory basis, according equal treatment and access to their services to all persons.

10.2 Any licensee or a charter holder who fails to comply with this
policy shall be subject to such disciplinary action as is consistent with law, and the legal authority and rules and regulations of the regulatory agency. State agencies which have the authority to grant, deny or revoke licenses or charters must actively utilize their authority to prevent any person, corporation or business firm from discriminating because of an individual's handicap, or from participating in any practice which may have an illegal, discriminatory effect on handicapped individuals within the population. The Massachusetts Commission Against Discrimination shall review and approve all procedures, rules and regulations used to implement this policy.

Article XI Housing Accomodation

11.1 No person, corporation or firm which is licensed or chartered by the state to engage in the business of selling, leasing, renting, financing, building or developing housing accommodations shall unlawfully discriminate against any prospective buyer, lessee, or tenant because of an individual's handicap, nor shall any licensee or charter holder seek to promote the sale or lease of any residential property on the grounds that a person with a handicapping condition has established, or will establish, residence in the neighborhood.

11.2 Any real estate broker or salesman, corporate owner, lending institution, homebuilder, or developer who fails to comply with this policy shall be subject to such disciplinary action as is consistent with the legal authority, and rules and regulations of the appropriate licensing or regulatory agency, and of state statute.

11.3 There shall be no segregation or discrimination in any publicly assisted housing based upon an individual's handicap. The prevention and elimination of segregation on the basis of handicap shall be an objective in all decisions involving the selection of new, publicly assisted housing sites, the development and execution of urban renewal plans, and the management and placement of tenants in public housing. The Executive Office of Communities and Development, Massachusetts Housing Finance Agency, the Massachusetts Commission Against Discrimination and the Office of Handicapped Affairs shall assist local authorities in promoting integrated housing in state supported or state supervised projects.

11.4 In dispersing financial assistance, including, but not limited to, loans and grants, the Executive Office of Communities and Development shall require grant recipients to undertake affirmative action designed to eliminate patterns and practices of discrimination in employment and housing, due to an individual's handicap. At the request of the MCAD, the Executive Office of Communities and Development, prior to approving such grants, shall develop, subject to the review and revision by MCAD, rules, regulations and procedures necessary to implement and attain the goal of nondiscrimination and affirmative action by grant recipients.

Article XII Public Schools

12.1 By law, it is the policy of the Commonwealth of Massachusetts
to require all school committees to adopt, as educational objectives, the promotion of equal and integrated education objectives and the correction of segregating handicapped individuals in the public schools. The mainstreaming of handicapped individuals in the public schools shall be an objective in all decisions. The Department of Education shall also pursue a program of promoting fair employment practices for certified teachers.

12.2 In accordance with Chapter 766 of the Acts of 1972 (Massachusetts General Laws C.71B et seq.) the Executive Branch is hereby committed to working cooperatively with the Board of Education to ensure architectural and program accessibility to handicapped individuals consistent with all applicable state and federal laws.

12.3 The Massachusetts Commission Against Discrimination may intervene and act to develop affirmative action programs in order to remedy existing patterns or practices of discrimination which may have a disparate effect on the education of handicapped individuals.

Article XIII State Financial Assistance

State agencies disbursing financial assistance, including, but not limited to, loans and grants, shall require recipient organizations and agencies to undertake affirmative action programs designed to eliminate patterns and practices of discrimination due to an individual's handicap subject to the approval of the Massachusetts Commission Against Discrimination, for nonstate agency recipients, and the State Office of Affirmative Action for state agency recipients. At the request of the Massachusetts Commission Against Discrimination, state agencies disbursing such assistance shall develop, subject to review and revision by the MCAD, rules, regulations and procedures necessary to implement the goals of nondiscrimination and affirmative action.

Article XIV Boards and Divisions and Commissions

Each board, division, or commission of the Commonwealth within the Executive Branch shall ensure that all sums appropriated by the State legislature are expended in a manner reflecting and encouraging a policy of non-discrimination and equal opportunity for handicapped individuals. All officials and employees of any board, division or commission within the Executive Branch of the Commonwealth receiving monies appropriated by the State Legislature shall take affirmative steps to ensure equality of opportunity in the internal affairs of state government, as well as in their relations with the public.

Each board, division, or commission within the Executive Branch of the Commonwealth in spending sums appropriated by the state legislature and discharging its statutory responsibilities, shall adopt measures to ensure equal opportunity in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or termination, rates of compensation, inservice or apprenticeship training programs, and all terms and conditions of employment. Such affirmative action programs shall include efforts required to remedy the effects of present and past discriminatory patterns and practices and any action necessary to
guarantee equal opportunity and, affirmative action for handicapped individuals.

The Secretary of Administration and Finance through the SOAA, shall conduct an ongoing review of affirmative action steps taken by the various boards, divisions, or commissions to determine whether such entities are complying with the intent of this article. Whenever such noncompliance is determined the board, division or commission may appeal said determination to the Equal Employment Panel in accordance with Section 2.12.

Article XV State Forms

All state agencies shall exclude from forms of request for information any item or inquiry expressing any limitation or specification as to a handicapping condition unless the item is deemed by the Massachusetts Commission Against Discrimination to be a bona fide occupational qualification. However, if such an item or inquiry is required in good faith for a proper purpose, and prior written permission for its use has been given to the agency or appointing authority by MCAD, then such practice may be allowed.

Notwithstanding anything to the contrary, an employer may not make a preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or severity of the handicap, except that an employer may condition an offer of employment on the results of a medical examination conducted solely for the purpose of determining whether the employee, with reasonable accommodation, is capable of performing the essential functions of the job, and an employer may invite applicants to voluntarily disclose their handicap for the purposes of assisting the employer in its affirmative action efforts.

Article XVI Severability Clause

If any section, sub-section, sentence, clause, phrase or portion of this order is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision. and such holding shall not affect the validity of the remaining Order.

Given at the Executive Chamber in Boston this 2nd day of November in the year of our Lord one thousand nine hundred and eighty-four, and of the Independence of the United States of America two hundred and nine.

Michael S. Dukakis
Governor
Commonwealth of Massachusetts

Michael Joseph Connolly
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS