34
Parts 300 to 399
Revised as of July 1, 2001

Education

Containing a codification of documents of general applicability and future effect

As of July 1, 2001

With Ancillaries

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- Title 1 through Title 16 .............................................................. as of January 1
- Title 17 through Title 27 ................................................................. as of April 1
- Title 28 through Title 41 ................................................................. as of July 1
- Title 42 through Title 50 ............................................................. as of October 1

The appropriate revision date is printed on the cover of each volume.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

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APPENDIX C TO PART 300—IMPLEMENTATION OF THE 20 PERCENT RULE UNDER §300.233  
AUTHORITY: 20 U.S.C. 1411–1420, unless otherwise noted.  
SOURCE: 64 FR 12418, Mar. 12, 1999, unless otherwise noted.  

Subpart A—General  
PURPOSES, APPLICABILITY, AND REGULATIONS THAT APPLY TO THIS PROGRAM  
§ 300.1 Purposes.  
The purposes of this part are—  
(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their
unique needs and prepare them for employment and independent living;
(b) To ensure that the rights of children with disabilities and their parents are protected;
(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400 note)

§ 300.2 Applicability of this part to State, local, and private agencies.

(a) States. This part applies to each State that receives payments under Part B of the Act.

(b) Public agencies within the State. The provisions of this part—
(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including—
(i) The State educational agency (SEA);
(ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA;
(iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness); and
(iv) State and local juvenile and adult correctional facilities; and
(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B.

(c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities—
(1) Referred to or placed in private schools and facilities by that public agency; or
(2) Placed in private schools by their parents under the provisions of §300.403(c).

(Authority: 20 U.S.C. 1412)

§ 300.3 Regulations that apply.

The following regulations apply to this program:
(a) 34 CFR part 76 (State-Administered Programs) except for §§76.125-76.137 and 76.650-76.662.
(b) 34 CFR part 77 (Definitions).
(c) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(d) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
(e) 34 CFR part 81 (General Education Provisions Act—Enforcement).
(f) 34 CFR part 82 (New Restrictions on Lobbying).
(g) 34 CFR part 85 (Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).
(h) The regulations in this part—34 CFR part 300 (Assistance for Education of Children with Disabilities).

(Authority: 20 U.S.C. 121e-3(a)(1))

DEFINITIONS USED IN THIS PART

§ 300.4 Act.

As used in this part, Act means the Individuals with Disabilities Education Act (IDEA), as amended.

(Authority: 20 U.S.C. 1400(a))

§ 300.5 Assistive technology device.

As used in this part, Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

(Authority: 20 U.S.C. 1401(1))

§ 300.6 Assistive technology service.

As used in this part, Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

The term includes—
(a) The evaluation of the needs of a child with a disability, including a
§ 300.7 Child with a disability.

(a) General. (1) As used in this part, the term child with a disability means a child evaluated in accordance with §§300.530–300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.530–300.536, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with §300.25(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged 3 through 9 experiencing developmental delays. The term child with a disability for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with §300.313, include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition are defined as follows:

(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.

(ii) A child who manifests the characteristics of “autism” after age 3 could be diagnosed as having “autism” if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is
impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance.

(4) Emotional disturbance is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that is not included under the definition of deafness in this section.

(6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.

(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by congenital anomalies (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and

(ii) Adversely affects a child’s educational performance.

(10) Specific learning disability is defined as follows:

(i) General. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such
as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3)(A) and (B); 1401(26))

§ 300.8 Consent.

As used in this part, the term consent has the meaning given that term in §300.500(b)(1).

(Authority: 20 U.S.C. 1415(a))

§ 300.9 Day; business day; school day.

As used in this part, the term—

(a) Day means calendar day unless otherwise indicated as business day or school day;

(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.403(d)(1)(ii)); and

(c)(1) School day means any day, including a partial day, that children are in attendance at school for instructional purposes.

(2) The term school day has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e–3)

§ 300.10 Educational service agency.

As used in this part, the term educational service agency—

(a) Means a regional public multi-service agency—

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs; and

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary or secondary school; and

(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of IDEA as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(4))

§ 300.11 Equipment.

As used in this part, the term equipment means—

(a) Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audiovisual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(6))

§ 300.12 Evaluation.

As used in this part, the term evaluation has the meaning given that term in §300.500(b)(2).

(Authority: 20 U.S.C. 1415(a))

§ 300.13 Free appropriate public education.

As used in this part, the term free appropriate public education or FAPE means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformity with an individualized education program.
(IEP) that meets the requirements of §§300.340–300.350.

(Authority: 20 U.S.C. 1401(d))

§ 300.14 Include.

As used in this part, the term include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1221e–3)

§ 300.15 Individualized education program.

As used in this part, the term individualized education program or IEP has the meaning given the term in §300.340(a).

(Authority: 20 U.S.C. 1401(11))

§ 300.16 Individualized education program team.

As used in this part, the term individualized education program team or IEP team means a group of individuals described in §300.344 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(Authority: 20 U.S.C. 1221e–3)

§ 300.17 Individualized family service plan.

As used in this part, the term individualized family service plan or IFSP has the meaning given the term in 34 CFR 303.340(b).

(Authority: 20 U.S.C. 1401(12))

§ 300.18 Local educational agency.

(a) As used in this part, the term local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(b) The term includes—

(1) An educational service agency, as defined in §300.10;

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under State law; and

(3) An elementary or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under this Act with the smallest student population.

(Authority: 20 U.S.C. 1401(15))

§ 300.19 Native language.

(a) As used in this part, the term native language, if used with reference to an individual of limited English proficiency, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1401(16))

§ 300.20 Parent.

(a) General. As used in this part, the term parent means—

(1) A natural or adoptive parent of a child;

(2) A guardian but not the State if the child is a ward of the State;

(3) A person acting in the place of a parent (such as a grandparent or step-parent with whom the child lives, or a person who is legally responsible for the child’s welfare); or

(4) A surrogate parent who has been appointed in accordance with §300.515.
(b) Foster parent. Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of the Act if—

(1) The natural parents’ authority to make educational decisions on the child’s behalf has been extinguished under State law; and

(2) The foster parent—

(i) Has an ongoing, long-term parental relationship with the child;

(ii) Is willing to make the educational decisions required of parents under the Act; and

(iii) Has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1411(19))

§ 300.21 Personally identifiable

As used in this part, the term personally identifiable has the meaning given in § 300.500(b)(3).

(Authority: 20 U.S.C. 1415(a))

§ 300.22 Public agency.

As used in this part, the term public agency includes the SEA, LEAs, ESAs, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(1)(A), (a)(11))

§ 300.23 Qualified personnel.

As used in this part, the term qualified personnel means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

(Authority: 20 U.S.C. 1221e–3)

§ 300.24 Related services.

(a) General. As used in this part, the term related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) Individual terms defined. The terms used in this definition are defined as follows:

(1) Audiology includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children’s needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child’s life.

(4) Medical services means services provided by a licensed physician to determine a child’s medically related disability that results in the child’s need for special education and related services.

(5) Occupational therapy—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—
(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
(C) Preventing, through early intervention, initial or further impairment or loss of function.

(6) Orientation and mobility services—
(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
(ii) Includes teaching students the following, as appropriate:
(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
(C) To understand and use remaining vision and distance low vision aids; and
(D) Other concepts, techniques, and tools.

(7) Parent counseling and training means—
(i) Assisting parents in understanding the special needs of their child;
(ii) Providing parents with information about child development; and
(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child’s IEP or IFSP.

(8) Physical therapy means services provided by a qualified physical therapist.

(9) Psychological services includes—
(i) Administering psychological and educational tests, and other assessment procedures;
(ii) Interpreting assessment results;
(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
(vi) Assisting in developing positive behavioral intervention strategies.

(10) Recreation includes—
(i) Assessment of leisure function;
(ii) Therapeutic recreation services;
(iii) Recreation programs in schools and community agencies; and
(iv) Leisure education.

(11) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(12) School health services means services provided by a qualified school nurse or other qualified person.

(13) Social work services in schools includes—
(i) Preparing a social or developmental history on a child with a disability;
(ii) Group and individual counseling with the child and family;
(iii) Working in partnership with parents and others on those problems in a child’s living situation (home, school, and community) that affect the child’s adjustment in school;
(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
(v) Assisting in developing positive behavioral intervention strategies.

(14) Speech-language pathology services includes—
(i) Identification of children with speech or language impairments;
(ii) Diagnosis and appraisal of specific speech or language impairments;
(iii) Referral for medical or other professional attention necessary for
§ 300.25

the habilitation of speech or language impairments;
   (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
   (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(15) **Transportation** includes—
   (i) Travel to and from school and between schools;
   (ii) Travel in and around school buildings; and
   (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(22))

§ 300.25 Secondary school.

As used in this part, the term **secondary school** means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(Authority: 20 U.S.C. 1401(23))

§ 300.26 Special education.

(a) General. (1) As used in this part, the term **special education** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—
   (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
   (ii) Instruction in physical education.

(2) The term includes each of the following, if it meets the requirements of paragraph (a)(1) of this section:
   (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
   (ii) Travel training; and
   (iii) Vocational education.

(b) **Individual terms defined.** The terms in this definition are defined as follows:
   (1) **At no cost** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
   (2) **Physical education**—
       (i) Means the development of—
           (A) Physical and motor fitness;
           (B) Fundamental motor skills and patterns; and
           (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
       (ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially-designed **instruction** means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
   (i) To address the unique needs of the child that result from the child’s disability; and
   (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) **Travel training** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—
   (i) Develop an awareness of the environment in which they live; and
   (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) **Vocational education** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(25))

§ 300.27 State.

As used in this part, the term **State** means each of the 50 States, the District of Columbia, the Commonwealth
§ 300.28 Supplementary aids and services.

As used in this part, the term supplementary aids and services means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.550–300.556.

Authority: 20 U.S.C. 1401(29))

§ 300.29 Transition services.

(a) As used in this part, transition services means a coordinated set of activities for a student with a disability that—

(1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual student’s needs, taking into account the student’s preferences and interests; and

(3) Includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(b) Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

Authority: 20 U.S.C. 1412(30))

§ 300.30 Definitions in EDGAR.

The following terms used in this part are defined in 34 CFR 77.1:

Award

Contract

Department

EDGAR

Elementary school

Fiscal year

Grant

Nonprofit

Project

Secretary

Subgrant

State educational agency

(Authority: 20 U.S.C. 1221e-3(a)(1))

Subpart B—State and Local Eligibility

STATE ELIGIBILITY—GENERAL

§ 300.110 Condition of assistance.

(a) A State is eligible for assistance under Part B of the Act for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the conditions in §§ 300.121–300.156.

(b) To meet the requirement of paragraph (a) of this section, the State must have on file with the Secretary—

(1) The information specified in §§ 300.121–300.156 that the State uses to implement the requirements of this part; and

(2) Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information.

(Authority: 20 U.S.C. 1412(a))

§ 300.111 Exception for prior State policies and procedures on file with the Secretary.

If a State has on file with the Secretary policies and procedures approved by the Secretary that demonstrate that the State meets any requirement of § 300.110, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act.

(Authority: 20 U.S.C. 1412(c)(1))
§ 300.112 Amendments to State policies and procedures.

(a) Modifications made by a State. (1) Subject to paragraph (b) of this section, policies and procedures submitted by a State in accordance with this subpart remain in effect until the State submits to the Secretary the modifications that the State decides are necessary.

(2) The provisions of this subpart apply to a modification to a State’s policies and procedures in the same manner and to the same extent that they apply to the State’s original policies and procedures.

(b) Modifications required by the Secretary. The Secretary may require a State to modify its policies and procedures, but only to the extent necessary to ensure the State’s compliance with this part, if—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of this Act or regulations by a Federal court or a State’s highest court; or

(3) There is an official finding of noncompliance with Federal law or regulations.

(Authority: 20 U.S.C. 1412(c)(2) and (3))

§ 300.113 Approval by the Secretary.

(a) General. If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.

(b) Notice and hearing before determining a State is not eligible. The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until after providing the State reasonable notice and an opportunity for a hearing in accordance with the procedures in §§300.581–300.586.

(Authority: 20 U.S.C. 1412(d))

§§ 300.114–300.120 [Reserved]

STATE ELIGIBILITY—SPECIFIC CONDITIONS

§ 300.121 Free appropriate public education (FAPE).

(a) General. Each State must have on file with the Secretary information that shows that, subject to §300.122, the State has in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school.

(b) Required information. The information described in paragraph (a) of this section must—

(1) Include a copy of each State statute, court order, State Attorney General opinion, and other State documents that show the source of the State’s policy relating to FAPE, and

(2) Show that the policy—

(i)(A) Applies to all public agencies in the State; and

(B) Is consistent with the requirements of §§300.300–300.313; and

(ii) Applies to all children with disabilities, including children who have been suspended or expelled from school.

(c) FAPE for children beginning at age 3. (1) Each State shall ensure that—

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child’s third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.342(c).

(2) If a child’s third birthday occurs during the summer, the child’s IEP team shall determine the date when services under the IEP or IFSP will begin.

(d) FAPE for children suspended or expelled from school. (1) A public agency need not provide services during periods of removal under §300.520(a)(1) to a child with a disability who has been removed from his or her current placement for 10 school days or less in that
school year, if services are not provided to a child without disabilities who has been similarly removed.

(2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must—

(i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child’s IEP. If the removal is—

(A) Under the school personnel’s authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §300.519(b) (§300.520(a)(1)); or

(B) For behavior that is not a manifestation of the child’s disability, consistent with §300.524; and

(ii) Provide services consistent with §300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is—

(A) For drug or weapons offenses under §300.520(a)(2); or

(B) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with §300.521.

(3)(i) School personnel, in consultation with the child’s special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child’s IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §300.519 (§300.520(a)(1)).

(ii) The child’s IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child’s IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child’s disability, consistent with §300.524.

(e) Children advancing from grade to grade. (1) Each State shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade.

(2) The determination that a child described in paragraph (a)(1) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child’s LEA for making those determinations.

(Authority: 20 U.S.C. 1412(a)(1))

§ 300.122 Exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in one or more of those age groups.

(2)(i) Students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

(A) Were not actually identified as being a child with a disability under §300.7; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to students with disabilities, aged 18 through 21, who—

(A) Had been identified as a child with disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a “child with a disability” under §300.7.
(3)(i) Students with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

(b) Documents relating to exceptions. The State must have on file with the Secretary—

(1)(i) Information that describes in detail the extent to which the exception in paragraph (a)(1) of this section applies to the State; and

(ii) A copy of each State law, court order, and other documents that provide a basis for the exception; and

(2) With respect to paragraph (a)(2) of this section, a copy of the State law that excludes from services under Part B of the Act certain students who are incarcerated in an adult correctional facility.

(Authority: 20 U.S.C. 1412(a)(1)(B))

§300.123 Full educational opportunity goal (FEOG). The State must have on file with the Secretary detailed policies and procedures through which the State has established a goal of providing full educational opportunity to all children with disabilities aged birth through 21.

(Authority: 20 U.S.C. 1412(a)(2))

§300.124 FEOG—timetable. The State must have on file with the Secretary a detailed timetable for accomplishing the goal of providing full educational opportunity for all children with disabilities.

(Authority: 20 U.S.C. 1412(a)(2))

§300.125 Child find.

(a) General requirement. (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(2) The requirements of paragraph (a)(1) of this section apply to—

(i) Highly mobile children with disabilities (such as migrant and homeless children); and

(ii) Children who are suspected of being a child with a disability under §300.7 and in need of special education, even though they are advancing from grade to grade.

(b) Documents relating to child find. The State must have on file with the Secretary the policies and procedures described in paragraph (a) of this section, including—

(1) The name of the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section; and

(2) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;

(3) A description of how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains—

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(4) A description of the method the State uses to determine which children are currently receiving special education and related services.

(c) Child find for children from birth through age 2 when the SEA and lead agency for the Part C program are different. (1) In States where the SEA and the State’s lead agency for the Part C program are different and the Part C lead agency will be participating in the child find activities described in paragraph (a) of this section, a description of the nature and extent of the Part C
lead agency’s participation must be included under paragraph (b)(2) of this section.

(2) With the SEA’s agreement, the Part C lead agency’s participation may include the actual implementation of child find activities for infants and toddlers with disabilities.

(3) The use of an interagency agreement or other mechanism for providing for the Part C lead agency’s participation does not alter or diminish the responsibility of the SEA to ensure compliance with the requirements of this section.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability listed in §300.7 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(e) Confidentiality of child find data. The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements of §§300.560–300.577.

(Authority: 20 U.S.C. 1412 (a)(3)(A) and (B))

§ 300.126 Procedures for evaluation and determination of eligibility.

The State must have on file with the Secretary policies and procedures that ensure that the requirements of §§300.530–300.536 are met.

(Authority: 20 U.S.C. 1412(a)(6)(B), (7))

§ 300.127 Confidentiality of personally identifiable information.

(a) The State must have on file in detail the policies and procedures that the State has undertaken to ensure protection of the confidentiality of any personally identifiable information, collected, used, or maintained under Part B of the Act.

(b) The Secretary uses the criteria in §§300.560–300.576 to evaluate the policies and procedures of the State under paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(6))

§ 300.128 Individualized education programs.

(a) General. The State must have on file with the Secretary information that shows that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with §§300.340–300.350.

(b) Required information. The information described in paragraph (a) of this section must include—

(1) A copy of each State statute, policy, and standard that regulates the manner in which IEPs are developed, implemented, reviewed, and revised; and

(2) The procedures that the SEA follows in monitoring and evaluating those IEPs or IFSPs.

(Authority: 20 U.S.C. 1412(a)(4))

§ 300.129 Procedural safeguards.

(a) The State must have on file with the Secretary procedural safeguards that ensure that the requirements of §§300.500–300.529 are met.

(b) Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(6)(A))

§ 300.130 Least restrictive environment.

(a) General. The State must have on file with the Secretary procedures that ensure that the requirements of §§300.550–300.556 are met, including the provision in §300.551 requiring a continuum of alternative placements to meet the unique needs of each child with a disability.

(b) Additional requirement. (1) If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting where a child is served, the funding mechanism may not result in placements that violate the requirements of paragraph (a) of this section.

(2) If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(Authority: 20 U.S.C. 1412(a)(5))
§ 300.131 [Reserved]

§ 300.132 Transition of children from Part C to preschool programs.

The State must have on file with the Secretary policies and procedures to ensure that—

(a) Children participating in early-intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with §300.342(c) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.121(c); and

(c) Each LEA will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8) of the Act.

(Authority: 20 U.S.C. 1412(a)(9))

§ 300.133 Children in private schools.

The State must have on file with the Secretary policies and procedures that ensure that the requirements of §§300.400–300.403 and §§300.450–300.462 are met.

(Authority: 20 U.S.C. 1413(a)(4))

§ 300.134 [Reserved]

§ 300.135 Comprehensive system of personnel development.

(a) General. The State must have in effect, consistent with the purposes of this part and with section 635(a)(8) of the Act, a comprehensive system of personnel development that—

(1) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; and

(2) Meets the requirements for a State improvement plan relating to personnel development in section 635(b)(2)(B) and (c)(3)(D) of the Act.

(b) Information. The State must have on file with the Secretary information that shows that the requirements of paragraph (a) of this section are met.

(Authority: 20 U.S.C. 1412(a)(9))

§ 300.136 Personnel standards.

(a) Definitions. As used in this part—

(1) Appropriate professional requirements in the State means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under Part B of the Act to children with disabilities who are served by State, local, and private agencies (see §300.2);

(2) Highest requirements in the State applicable to a specific profession or discipline means the highest entry-level academic degree needed for any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline;

(3) Profession or discipline means a specific occupational category that—

(i) Provides special education and related services to children with disabilities under Part B of the Act;

(ii) Has been established or designated by the State;

(iii) Has a required scope of responsibility and degree of supervision; and

(iv) Is not limited to traditional occupational categories; and

(4) State-approved or -recognized certification, licensing, registration, or other comparable requirements means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b) Policies and procedures. (1)(i) The State must have on file with the Secretary policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.
(i) The policies and procedures required in paragraph (b)(1)(i) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(2) Each State may—

(i) Determine the specific occupational categories required to provide special education and related services within the State; and

(ii) Revise or expand those categories as needed.

(3) Nothing in this part requires a State to establish a specified training standard (e.g., a masters degree) for personnel who provide special education and related services under Part B of the Act.

(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard as necessary to ensure the provision of FAPE to all children with disabilities in the State without violating the requirements of this section.

(c) Steps for retraining or hiring personnel. To the extent that a State’s standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State must provide the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d) Status of personnel standards in the State. (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the SEA and available to the public.

(e) Applicability of State statutes and agency rules. In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children with disabilities must be considered.

(f) Use of paraprofessionals and assistants. A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under Part B of the Act.

(g) Policy to address shortage of personnel. (1) In implementing this section, a State may adopt a policy that includes a requirement that LEAs in the State make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law and the steps described in paragraph (c) of this section, within three years.

(2) If a State has reached its established date under paragraph (c) of this section, the State may still exercise the option under paragraph (g)(1) of this section for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State.

(3)(i) Each State must have a mechanism for serving children with disabilities if instructional needs exceed available personnel who meet appropriate professional requirements in the
§ 300.137 Performance goals and indicators.

The State must have on file with the Secretary information to demonstrate that the State—

(a) Has established goals for the performance of children with disabilities in the State that—

(1) Will promote the purposes of this part, as stated in §300.1; and

(2) Are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the State;

(b) Has established performance indicators that the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

(c) Every two years, will report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section; and

(d) Based on its assessment of that progress, will revise its State improvement plan under subpart 1 of Part D of the Act as may be needed to improve its performance, if the State receives assistance under that subpart.

(Authority: 20 U.S.C. 1412(a)(16))

§ 300.138 Participation in assessments.

The State must have on file with the Secretary information to demonstrate that—

(a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary;

(b) As appropriate, the State or LEA—

(1) Develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs;

(2) Develops alternate assessments in accordance with paragraph (b)(1) of this section; and

(3) Beginning not later than, July 1, 2000, conducts the alternate assessments described in paragraph (b)(2) of this section.

(Authority: 20 U.S.C. 1412(a)(17)(A))

§ 300.139 Reports relating to assessments.

(a) General. In implementing the requirements of §300.138, the SEA shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:

(1) The number of children with disabilities participating—

(i) In regular assessments; and

(ii) In alternate assessments.

(2) The performance results of the children described in paragraph (a)(1) of this section if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children—

(i) On regular assessments (beginning not later than July 1, 1998); and

(ii) On alternate assessments (not later than July 1, 2000).

(b) Combined reports. Reports to the public under paragraph (a) of this section must include—

(1) Aggregated data that include the performance of children with disabilities together with all other children; and

(2) Disaggregated data on the performance of children with disabilities.

(c) Timeline for disaggregation of data. Data relating to the performance of children described under paragraph (a)(2) of this section must be disaggregated—

(1) For assessments conducted after July 1, 1998; and

(2) For assessments conducted before July 1, 1998, if the State is required to disaggregate the data prior to July 1, 1998.

(Authority: 20 U.S.C. 612(a)(17)(B))
§ 300.140 [Reserved]

§ 300.141 SEA responsibility for general supervision.

(a) The State must have on file with the Secretary information that shows that the requirements of § 300.600 are met.

(b) The information described under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other documents that show compliance with that paragraph.

(Authority: 20 U.S.C. 1412(a)(11))

§ 300.142 Methods of ensuring services.

(a) Establishing responsibility for services. The Chief Executive Officer or designee of that officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:

(1) **Agency financial responsibility.** An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child’s IEP).

(2) **Conditions and terms of reimbursement.** The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) Interagency disputes. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) **Coordination of services procedures.** Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) Obligation of noneducational public agencies. (1) General. (i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.24 relating to related services, § 300.28 relating to supplementary aids and services, and § 300.29 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) **Reimbursement for services by noneducational public agency.** If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child’s IEP) shall provide or pay for these services to the child in a timely manner. The LEA or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or State agency in accordance with the terms of the interagency agreement.
agreement or other mechanism described in paragraph (a)(1) of this section, and the agreement described in paragraph (a)(2) of this section.

(c) Special rule. The requirements of paragraph (a) of this section may be met through—

(1) State statute or regulation;
(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer.

(d) Information. The State must have on file with the Secretary information to demonstrate that the requirements of paragraphs (a) through (c) of this section are met.

(e) Children with disabilities who are covered by public insurance. (1) A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraph (e)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—

(i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;
(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay; and
(iii) May not use a child’s benefits under a public insurance program if that use would—
(A) Decrease available lifetime coverage or any other insured benefit;
(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
(C) Increase premiums or lead to the discontinuation of insurance; or
(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(f) Children with disabilities who are covered by private insurance. (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access a parent’s private insurance proceeds only if the parent provides informed consent consistent with §300.500(b)(1).

(2) Each time the public agency proposes to access the parent’s private insurance proceeds, it must—

(i) Obtain parent consent in accordance with paragraph (f)(1) of this section; and
(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(g) Use of Part B funds. (1) If a public agency is unable to obtain parental consent to use the parent’s private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent’s insurance (e.g., the deductible or co-pay amounts).

(h) Proceeds from public or private insurance. (1) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered “State or local” funds for purposes of the maintenance of effort provisions in §§300.154 and 300.231.
§ 300.148 Public participation.

(a) General; exception. (1) Subject to paragraph (a)(2) of this section, each State must ensure that, prior to the adoption of any policies and procedures needed to comply with this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities consistent with §§ 300.280–300.284.

(2) A State will be considered to have met paragraph (a)(1) of this section with regard to a policy or procedure needed to comply with this part if it
§ 300.149

(a) The State must have on file with the Secretary an assurance satisfactory to the Secretary that the funds under Part B of the Act are not commingled with State funds.

(b) The assurance in paragraph (a) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the Part B funds. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)

(Authority: 20 U.S.C. 1412(a)(18)(B))

§ 300.152 Prohibition against commingling.

(a) The State must have on file with the Secretary an assurance satisfactory to the Secretary that the funds under Part B of the Act are not commingled with State funds.

(b) The assurance in paragraph (a) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the Part B funds. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)

(Authority: 20 U.S.C. 1412(a)(18)(B))

§ 300.153 State-level nonsupplanting.

(a) General. (1) Except as provided in § 300.230, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant these Federal, State, and local funds.

(2) The State must have on file with the Secretary information to demonstrate to the satisfaction of the Secretary that the requirements of paragraph (a)(1) of this section are met.

(b) Waiver. If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (a) of this section if the Secretary concurs with the evidence provided by the State under § 300.589.

(Authority: 20 U.S.C. 1412(a)(18)(c))

§ 300.154 Maintenance of State financial support.

(a) General. The State must have on file with the Secretary information to demonstrate, on either a total or per-capita basis, that the State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that—

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in § 300.589 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section,
including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section must be the amount that would have been required in the absence of that failure and not the reduced level of the State’s support.

(Authority: 20 U.S.C. 1412(a)(19))

§ 300.155 Policies and procedures for use of Part B funds.

The State must have on file with the Secretary policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B.

(Authority: 20 U.S.C. 1412(a)(18)(A))

§ 300.156 Annual description of use of Part B funds.

(a) In order to receive a grant in any fiscal year a State must annually describe—

(1) How amounts retained for State-level activities under §300.602 will be used to meet the requirements of this part;

(2) How those amounts will be allocated among the activities described in §§300.621 and 300.370 to meet State priorities based on input from LEAs; and

(3) The percentage of those amounts, if any, that will be distributed to LEAs by formula.

(b) If a State’s plans for use of its funds under §§300.370 and 300.620 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(f)(5))

LEA AND STATE AGENCY ELIGIBILITY—GENERAL

§ 300.180 Condition of assistance.

An LEA or State agency is eligible for assistance under Part B of the Act for a fiscal year if the agency demonstrates to the satisfaction of the SEA that it meets the conditions in §§300.220–300.250.

(Authority: 20 U.S.C. 1413(a))

§ 300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA.

If an LEA or a State agency described in §300.194 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of §300.180, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the SEA shall consider the LEA or State agency to have met the requirement for purposes of receiving assistance under Part B of the Act.

(Authority: 20 U.S.C. 1413(b)(1))

§ 300.182 Amendments to LEA policies and procedures.

(a) Modification made by an LEA or a State agency. (1) Subject to paragraph (b) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until it submits to the SEA the modifications that the LEA or State agency decides are necessary.

(2) The provisions of this subpart apply to a modification to an LEA’s or State agency’s policies and procedures in the same manner and to the same extent that they apply to the LEA’s or State agency’s original policies and procedures.

(b) Modifications required by the SEA. The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA’s or State agency’s compliance with this part, if—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of the Act by Federal or State courts; or

(3) There is an official finding of non-compliance with Federal or State law or regulations.

(Authority: 20 U.S.C. 1413(b))

§ 300.183 [Reserved]

§ 300.184 Excess cost requirement.

(a) General. Amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities.
§ 300.185 Meeting the excess cost requirement.

(a)(1) General. An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in paragraph (a)(1) of this section is determined using the formula in §300.184(b). This amount may not include capital outlay or debt service.

(b) Joint establishment of eligibility. If two or more LEAs jointly establish eligibility in accordance with §300.190, the minimum average amount is the average of the combined minimum average amounts determined under §300.184 in those agencies for elementary or secondary school students, as the case may be.


§§ 300.186–300.189 [Reserved]

§ 300.189 Joint establishment of eligibility.

(a) General. An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) Charter school exception. An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless it is explicitly permitted to do so under the State’s charter school statute.

(c) Amount of payments. If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §§300.711–300.714 if the agencies were eligible for these payments.

(Authority: 20 U.S.C. 1413(e)(1), and (2))

§ 300.191 [Reserved]

§ 300.192 Requirements for establishing eligibility.

(a) Requirements for LEAs in general. LEAs that establish joint eligibility under this section must—

(1) Adopt policies and procedures that are consistent with the State’s policies and procedures under §§300.121–300.156; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) Requirements for educational service agencies in general. If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—

(1) Do not apply to the administration and disbursement of any payments
received by that educational service agency; and
(2) Must be carried out only by that educational service agency.

(c) Additional requirement. Notwithstanding any other provision of §§300.190–300.192, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by §300.130.

(Authority: 20 U.S.C. 1413(e)(3), and (4))

§ 300.193 [Reserved]

§ 300.194 State agency eligibility.

Any State agency that desires to receive a subgrant for any fiscal year under §§300.711–300.714 must demonstrate to the satisfaction of the SEA that—

(a) All children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(b) The agency meets the other conditions of this subpart that apply to LEAs.

(Authority: 20 U.S.C. 1413(d))

§ 300.195 [Reserved]

§ 300.196 Notification of LEA or State agency in case of ineligibility.

If the SEA determines that an LEA or State agency is not eligible under Part B of the Act, the SEA shall—

(a) Notify the LEA or State agency of that determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§ 300.197 LEA and State agency compliance.

(a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in §§300.220–300.250, the SEA shall reduce or may not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.

(b) Notice requirement. Any State agency or LEA in receipt of a notice described in paragraph (a) of this section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§300.507–300.528 that is adverse to the LEA or State agency involved in the decision.

(Authority: 20 U.S.C. 1413(c))

§ 300.198 LEA and State agency eligibility—specific conditions

§ 300.220 Consistency with State policies.

(a) General. The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§300.121–300.156.

(b) Policies on file with SEA. The LEA must have on file with the SEA the policies and procedures described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.221 Implementation of CSPD.

The LEA must have on file with the SEA information to demonstrate that—

(a) All personnel necessary to carry out Part B of the Act within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of §§300.380–300.382; and

(b) To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the State established under §300.135.

(Authority: 20 U.S.C. 1413(a)(3))
§§ 300.222–300.229  [Reserved]

§ 300.230 Use of amounts.

The LEA must have on file with the SEA information to demonstrate that amounts provided to the LEA under Part B of the Act—

(a) Will be expended in accordance with the applicable provisions of this part;

(b) Will be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with §§300.184–300.185; and

(c) Will be used to supplement State, local, and other Federal funds and not to supplant those funds.


§ 300.231 Maintenance of effort.

(a) General. Except as provided in §§300.232 and 300.233, funds provided to an LEA under Part B of the Act may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) Information. The LEA must have on file with the SEA information to demonstrate that the requirements of paragraph (a) of this section are met.

(c) Standard. (1) Except as provided in paragraph (c)(2) of this section, the SEA determines that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA’s eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (c)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in—

(i) The most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997; or

(ii) If later, the most recent fiscal year for which information is available and the standard in paragraph (c)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA’s compliance with the requirement in paragraph (a) of this section.


§ 300.232 Exception to maintenance of effort.

An LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to the following:

(a)(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—
(1) Has left the jurisdiction of the agency;
(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
(3) No longer needs the program of special education.
(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

Authority: 20 U.S.C. 1413(a)(2)(B)

§ 300.233 Treatment of Federal funds in certain fiscal years.
(a)(1) Subject to paragraphs (a)(2), (a)(3), and (b) of this section, for any fiscal year for which amounts appropriated to carry out section 611 of the Act exceed $4.1 billion, an LEA may treat as local funds up to 20 percent of the amount of funds it is eligible to receive under § 300.712 from that appropriation that exceeds the amount from funds appropriated for the previous fiscal year that the LEA was eligible to receive under §300.712.

(2) The requirements of §§ 300.230(c) and 300.231 do not apply with respect to the amount that may be treated as local funds under paragraph (a)(1) of this section.

(3) For purposes of this section:
(i)(A) An LEA is not eligible to receive funds during any period in which those funds under this part are withheld from the LEA because of a finding of noncompliance under §300.197 or §300.587.
(B) An LEA is eligible to receive funds that have been withheld under §300.197 or §300.587 but are subsequently released to the LEA within the period of the funds availability.

(2) An LEA is not eligible to receive funds that have been reallocated to other LEAs under §300.714.

(b) If an SEA determines that an LEA is not meeting the requirements of this part, the SEA may prohibit the LEA from treating funds received under Part B of the Act as local funds under paragraph (a)(1) of this section for any fiscal year, but only if it is authorized to do so by the State constitution or a State statute.

Authority: 20 U.S.C. 1413(a)(2)(D)

§ 300.234 Schoolwide programs under title I of the ESEA.
(a) General; limitation on amount of Part B funds used. An LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any schoolwide program may not exceed—

(1)(i) The amount received by the LEA under Part B for that fiscal year; divided by
(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by
(2) The number of children with disabilities participating in the schoolwide program.

(b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:

(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §§300.230(b) and (c).

(2) The funds may be used without regard to the requirements of §300.230(a).

(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools—

(1) Receive services in accordance with a properly developed IEP; and

(2) Are afforded all of the rights and services guaranteed to children with disabilities under the IDEA.

Authority: 20 U.S.C. 1413(a)(2)(D)

§ 300.235 Permissive use of funds.
(a) General. Subject to paragraph (b) of this section, funds provided to an LEA under Part B of the Act may be used for the following activities:
§§ 300.236–300.239

(1) Services and aids that also benefit nondisabled children. For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.

(2) Integrated and coordinated services system. To develop and implement a fully integrated and coordinated services system in accordance with §300.244.

(b) Non-applicability of certain provisions. An LEA does not violate §§300.152, 300.230, and 300.231 based on its use of funds provided under Part B of the Act in accordance with paragraphs (a)(1) and (a)(2) of this section.

(Authority: 20 U.S.C. 1413(a)(4))

§§ 300.236–300.239 [Reserved]

§ 300.240 Information for SEA.

(a) The LEA shall provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§300.137 and 300.138, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(b) The LEA must have on file with the SEA an assurance satisfactory to the SEA that the LEA will comply with the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1413(a)(6))

§ 300.241 Treatment of charter schools and their students.

The LEA must have on file with the SEA information to demonstrate that in carrying out this part with respect to charter schools that are public schools of the LEA, the LEA will—

(a) Serve children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

(b) Provide funds under Part B of the Act to those schools in the same manner as it provides those funds to its other schools.

(Authority: 20 U.S.C. 1413(a)(5))

§ 300.242 Public information.

The LEA must have on file with the SEA information to demonstrate to the satisfaction of the SEA that it will make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

(Authority: 20 U.S.C. 1413(a)(7))

§ 300.243 [Reserved]

§ 300.244 Coordinated services system.

(a) General. An LEA may not use more than 5 percent of the amount the agency receives under Part B of the Act for any fiscal year, in combination with other amounts (which must include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families.

(b) Activities. In implementing a coordinated services system under this section, an LEA may carry out activities that include—

(1) Improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

(2) Service coordination and case management that facilitate the linkage of IEPs under Part B of the Act and IFSPs under Part C of the Act with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);

(3) Developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under the Act; and

(4) Interagency personnel development for individuals working on coordinated services.

(c) Coordination with certain projects under Elementary and Secondary Education Act of 1965. If an LEA is carrying out a coordinated services project...
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§ 300.246 Plan requirements.

A school-based improvement plan described in §300.245 must—

(a) Be designed to be consistent with the purposes described in section 651(b) of the Act and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with §300.235(a) and (b), who attend the school for which the plan is designed and implemented;

(b) Be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with §300.247(b);

(c) Include goals and measurable indicators to assess the progress of the public school in meeting these goals; and

(d) Ensure that all children with disabilities receive the services described in their IEPs.

(Authority: 20 U.S.C. 1413(g)(3))

§ 300.247 Responsibilities of the LEA.

An LEA that is granted authority under §300.245(b) to permit a public school to design, implement, and evaluate a school-based improvement plan shall—

(a) Select each school under the jurisdiction of the agency that is eligible to design, implement, and evaluate the plan;

(b) Require each school selected under paragraph (a) of this section, in accordance with criteria established by the LEA under paragraph (c) of this section, to establish a school-based standing panel to carry out the duties described in §300.246(b);

(c) Establish—

(1) Criteria that must be used by the LEA in the selection of an eligible school under paragraph (a) of this section;

(2) Criteria that must be used by a public school selected under paragraph (a) of this section in the establishment of a school-based standing panel to carry out the duties described in §300.246(b) and that ensure that the membership of the panel reflects the diversity of the community in which the public school is located and includes, at a minimum—

(i) Parents of children with disabilities who attend a public school, including parents of children with disabilities from unserved and underserved populations, as appropriate;

(ii) Special education and general education teachers of public schools;
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(iii) Special education and general education administrators, or the designee of those administrators, of those public schools; and

(iv) Related services providers who are responsible for providing services to the children with disabilities who attend those public schools; and

(3) Criteria that must be used by the LEA with respect to the distribution of funds under Part B of the Act to carry out this section;

(d) Disseminate the criteria established under paragraph (c) of this section to local school district personnel and local parent organizations within the jurisdiction of the LEA;

(e) Require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at the time, in the manner, and accompanied by the information, that the LEA shall reasonably require; and

(f) Establish procedures for approval by the LEA of a school-based improvement plan designed under Part B of the Act.

(Authority: 1413(g)(4))

§ 300.249 Additional requirements.

(a) Parental involvement. In carrying out the requirements of §§ 300.245–300.250, an LEA shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, if appropriate, implementation of school-based improvement plans in accordance with this section.

(b) Plan approval. An LEA may approve a school-based improvement plan of a public school within the jurisdiction of the agency for a period of 3 years, if—

(1) The approval is consistent with

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established by the LEA and in accordance with §§ 300.245–300.250; and

(2) A majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel that designed the plan, agree in writing to the plan.

(Authority: 20 U.S.C. 1413(g)(6))

§ 300.250 Extension of plan.

If a public school within the jurisdiction of an LEA meets the applicable requirements and criteria described in §§ 300.246 and 300.247 at the expiration of the 3-year approval period described § 300.249(b), the agency may approve a school-based improvement plan of the school for an additional 3-year period.

(Authority: 20 U.S.C. 1413(g)(7))

SECRETARY OF THE INTERIOR—ELIGIBILITY

§ 300.260 Submission of information.

The Secretary may provide the Secretary of the Interior amounts under § 300.715(b) and (c) for a fiscal year only if the Secretary of the Interior submits to the Secretary information that—

(a) Meets the requirements of section 612(a)(1), (3)—(9), (10)(B), (C), (11)—(12), (14)—(17), (20), (21) and (22) of the Act (including monitoring and evaluation activities);

(b) Meets the requirements of section 612(b) and (e) of the Act;

(c) Meets the requirements of section 613(a)(1), (2)(A)(1), (6), and (7) of the Act;

(d) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a)–(c) of this section;

(e) Includes a description of how the Secretary of the Interior will coordinate the provision of services under Part B of the Act with LEAs, tribes and tribal organizations, and other private and Federal service providers;

(f) Includes an assurance that there are public hearings, adequate notice of the hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and
procedures described in paragraph (a) of this section;
(g) Includes an assurance that the Secretary of the Interior will provide the information that the Secretary may require to comply with section 618 of the Act, including data on the number of children with disabilities served and the types and amounts of services provided and needed;
(h)(1) Includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with the SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations.
(2) The agreement must provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (if appropriate) equipment and medical or personal supplies, as needed for a child with a disability to remain in a school or program; and
(i) Includes an assurance that the Department of the Interior will cooperate with the Department in its exercise of monitoring and oversight of the requirements in this section and §§300.261–300.267, and any agreements entered into between the Secretary of the Interior and other entities under Part B of the Act, and will fulfill its duties under Part B of the Act. Section 618(a) of the Act applies to the information described in this section.

Authority: 20 U.S.C. 1411(i)(4)

§ 300.264 Definitions.
(a) Indian. As used in this part, the term Indian means an individual who is a member of an Indian tribe.
(b) Indian tribe. As used in this part, the term Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

Authority: 20 U.S.C. 1401(9) and (10)

§ 300.265 Establishment of advisory board.
(a) To meet the requirements of section 612(a)(21) of the Act, the Secretary
of the Interior shall establish, not later than December 4, 1997 under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, and children with disabilities, including Indians with disabilities, Indian parents of the children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 of the Act in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson must be selected by the Secretary of the Interior.

(b) The advisory board shall—
(1) Assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;
(2) Advise and assist the Secretary of the Interior in the performance of the Secretary’s responsibilities described in section 611(i) of the Act;
(3) Develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;
(4) Provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and
(5) Provide assistance in the preparation of information required under §300.260(g).

Authority: 20 U.S.C. 1411(i)(5)

§ 300.267 Applicable regulations.

The Secretary of the Interior shall comply with the requirements of §§300.301–300.303, 300.305–300.309, 300.340–300.348, 300.351, 300.360–300.362, 300.400–300.402, 300.500–300.586, 300.600–300.621, and 300.660–300.662.

Authority: 20 U.S.C. 1411(i)(2)(A)

PUBLIC PARTICIPATION

§ 300.280 Public hearings before adopting State policies and procedures.

Prior to its adoption of State policies and procedures related to this part, the SEA shall—
(a) Make the policies and procedures available to the general public;
(b) Hold public hearings; and
(c) Provide an opportunity for comment by the general public on the policies and procedures.

Authority: 20 U.S.C. 1412(a)(20)

§ 300.281 Notice.

(a) The SEA shall provide adequate notice to the general public of the public hearings.
(b) The notice must be in sufficient detail to inform the general public about—
(1) The purpose and scope of the State policies and procedures and their relation to Part B of the Act;
(2) The availability of the State policies and procedures;
(3) The date, time, and location of each public hearing;
(4) The procedures for submitting written comments about the policies and procedures; and
(5) The timetable for submitting the policies and procedures to the Secretary for approval.
(c) The notice must be published or announced—
(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and
§ 300.300 Provision of FAPE.

(a) General. (1) Subject to paragraphs (b) and (c) of this section and § 300.311, each State receiving assistance under this part shall ensure that FAPE is available to all children with disabilities, aged 3 through 21, residing in the State, including children with disabilities who have been suspended or expelled from school.

(2) As a part of its obligation under paragraph (a)(1) of this section, each State must ensure that the requirements of § 300.125 (to identify, locate, and evaluate all children with disabilities) are implemented by public agencies throughout the State.

300.282 Opportunity to participate; comment period.

(a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The policies and procedures must be available for comment for a period of at least 30 days following the date of the notice under § 300.281.

300.283 Review of public comments before adopting policies and procedures.

Before adopting the policies and procedures, the SEA shall—

(a) Review and consider all public comments; and

(b) Make any necessary modifications in those policies and procedures.

300.284 Publication and availability of approved policies and procedures.

After the Secretary approves a State’s policies and procedures, the SEA shall give notice in newspapers or other media, or both, that the policies and procedures are approved. The notice must name places throughout the State where the policies and procedures are available for access by any interested person.

Subpart C—Services

FREE APPROPRIATE PUBLIC EDUCATION

§ 300.300 Provision of FAPE.

(a) General. (1) Subject to paragraphs (b) and (c) of this section and § 300.311, each State receiving assistance under this part shall ensure that FAPE is available to all children with disabilities, aged 3 through 21, residing in the State, including children with disabilities who have been suspended or expelled from school.

(2) As a part of its obligation under paragraph (a)(1) of this section, each State must ensure that the requirements of § 300.125 (to identify, locate, and evaluate all children with disabilities) are implemented by public agencies throughout the State.

(b) Exception for age ranges 3–5 and 18–21. This paragraph provides the rules for applying the requirements in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21 within the State:

(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

(2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.

(3) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

(4) If a public agency provides education to a child with a disability in any of these age groups, it must make FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make FAPE available to a child with a disability in one of these age groups if—
§ 300.301 FAPE—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(c) Consistent with §§300.342(b)(2) and 300.343(b), the State must ensure that there is no delay in implementing a child’s IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.


§ 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.


§ 300.303 Proper functioning of hearing aids.

Each public agency shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(Authority: 20 U.S.C. 1412(a)(1))

§ 300.304 Full educational opportunity goal.

Each SEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency.

(Authority: 20 U.S.C. 1412(a)(2))

§ 300.305 Program options.

(a) Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

§ 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(a)(1))

§ 300.307 Physical education.

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.
(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—
  (1) The child is enrolled full time in a separate facility; or
  (2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.


§ 300.308 Assistive technology.

(a) Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5–300.6, are made available to a child with a disability if required as a part of the child's—
  (1) Special education under §300.26;
  (2) Related services under §300.24; or
  (3) Supplementary aids and services under §§300.28 and 300.550(b)(2).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.


§ 300.309 Extended school year services.

(a) General. (1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.340–300.350, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—
  (i) Limit extended school year services to particular categories of disability; or
  (ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services means special education and related services that—
  (1) Are provided to a child with a disability—
    (i) Beyond the normal school year of the public agency;
    (ii) In accordance with the child's IEP; and
    (iii) At no cost to the parents of the child; and
  (2) Meet the standards of the SEA.

(Authority: 20 U.S.C. 1412(a)(1))

§ 300.310 [Reserved]

§ 300.311 FAPE requirements for students with disabilities in adult prisons.

(a) Exception to FAPE for certain students. Except as provided in §300.122(a)(2)(ii), the obligation to make FAPE available to all children with disabilities does not apply with respect to students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—
  (1) Were not actually identified as being a child with a disability under §300.7; and
  (2) Did not have an IEP under Part B of the Act.

(b) Requirements that do not apply. The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

  (1) §300.138 and §300.347(a)(5)(1) (relating to
§ 300.312 Children with disabilities in public charter schools.

(a) Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) If the public charter school is an LEA, consistent with §300.17, that receives funding under §§300.711–300.714, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

(c) If the public charter school is a school of an LEA that receives funding under §§300.711–300.714 and includes other public schools—

(1) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(2) The LEA must meet the requirements of §300.241.

(d)(1) If the public charter school is not an LEA receiving funding under §§300.711–300.714, or a school that is part of an LEA receiving funding under §§300.711–300.714, the SEA is responsible for ensuring that the requirements of this part are met.

(d)(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity; however, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.600.

(Authority: 20 U.S.C. 1413(a)(5))

§ 300.313 Children experiencing developmental delays.

(a) Use of term developmental delay.

(1) A State that adopts the term developmental delay under §300.7(b) determines whether it applies to children aged 3 through 9, or to a subset of that age range (e.g., ages 3 through 5).

(2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.

(b) Use of individual disability categories.

(1) Any State or LEA that elects to use the term developmental delay for children aged 3 through 9 may also use one or more of the disability categories described in §300.7 for any child within that age range if it is determined, through the evaluation conducted under §§300.530–300.536, that the child has an impairment described in §300.7, and because of that impairment needs special education and related services.

(2) The State or LEA shall ensure that all of the child’s special education and related services needs that have been identified through the evaluation described in paragraph (b)(1) of this section are appropriately addressed.

(c) Common definition of developmental delay. A State may adopt a common definition of developmental delay for use...
in programs under Parts B and C of the Act.

(Authority: 20 U.S.C. 1401(3)(A) and (B))

EVALUATIONS AND REEVALUATIONS

§ 300.320 Initial evaluations.

(a) Each public agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services under Part B of the Act—

(1) To determine if the child is a “child with a disability” under §300.7; and

(2) To determine the educational needs of the child.

(b) In implementing the requirements of paragraph (a) of this section, the public agency shall ensure that—

(1) The evaluation is conducted in accordance with the procedures described in §§300.530–300.535; and

(2) The results of the evaluation are used by the child’s IEP team in meeting the requirements of §§300.340–300.350.

(Authority: 20 U.S.C. 1414(a), (b), and (c))

§ 300.321 Reevaluations.

Each public agency shall ensure that—

(a) A reevaluation of each child with a disability is conducted in accordance with §300.536; and

(b) The results of any reevaluations are addressed by the child’s IEP team under §§300.340–300.349 in reviewing and, as appropriate, revising the child’s IEP.

(Authority: 20 U.S.C. 1414(a)(2))

§§ 300.322–300.324 [Reserved]

INDIVIDUALIZED EDUCATION PROGRAMS

§ 300.340 Definitions related to IEPs.

(a) Individualized education program. As used in this part, the term individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.341–300.350.

(b) Participating agency. As used in §300.348, participating agency means a State or local agency, other than the public agency responsible for a student’s education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.341 Responsibility of SEA and other public agencies for IEPs.

(a) The SEA shall ensure that each public agency—

(1) Except as provided in §§300.450–300.462, develops and implements an IEP for each child with a disability served by that agency; and

(2) Ensures that an IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the public agency.

(b) Paragraph (a) of this section applies to—

(1) The SEA, if it is involved in providing direct services to children with disabilities, in accordance with §300.370(a) and (b)(1); and

(2) Except as provided in §300.600(d), the other public agencies described in §300.2, including LEAs and other State agencies that provide special education and related services either directly, by contract, or through other arrangements.


§ 300.342 When IEPs must be in effect.

(a) General. At the beginning of each school year, each public agency shall have an IEP in effect for each child with a disability within its jurisdiction.

(b) Implementation of IEPs. Each public agency shall ensure that—

(i) Is in effect before special education and related services are provided to an eligible child under this part; and

(ii) Is implemented as soon as possible following the meetings described under §300.343;

(2) The child’s IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

(3) Each teacher and provider described in paragraph (b)(2) of this section is informed of—
§ 300.343  IEP meetings.

(a) General. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with §300.342(c), an IFSP).

(b) Initial IEPs; provision of services.

(1) Each public agency shall ensure that within a reasonable period of time following the agency’s receipt of parent consent to an initial evaluation of a child—

   (i) The child is evaluated; and
   (ii) If determined eligible under this part, special education and related services are made available to the child in accordance with an IEP.

(2) In meeting the requirement in paragraph (b)(1) of this section, a meeting to develop an IEP for the child must be conducted within 30-days of a determination that the child needs special education and related services.

(c) Review and revision of IEPs. Each public agency shall ensure that the IEP team—

   (1) Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
   (2) Revises the IEP as appropriate to address—

      (i) Any lack of expected progress toward the annual goals described in §300.347(a), and in the general curriculum, if appropriate;
      (ii) The results of any reevaluation conducted under §300.536;
      (iii) Information about the child provided to, or by, the parents, as described in §300.533(a)(1);
      (iv) The child’s anticipated needs; or
      (v) Other matters.

(Authority: 20 U.S.C. 1413(a)(1), 1414(d)(4)(A)

§ 300.344  IEP team.

(a) General. The public agency shall ensure that the IEP team for each child with a disability includes—

   (1) The parents of the child;
   (2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
   (3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child;
   (4) A representative of the public agency who—

      (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
      (ii) Is knowledgeable about the general curriculum; and
      (iii) Is knowledgeable about the availability of resources of the public agency;
   (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section;
   (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
(7) If appropriate, the child.

(b) Transition services participants. (1) Under paragraph (a)(7) of this section, the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of—

(i) The student’s transition services needs under §300.347(b)(1);

(ii) The needed transition services for the student under §300.347(b)(2); or

(iii) Both.

(2) If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student’s preferences and interests are considered.

(3)(i) In implementing the requirements of §300.347(b)(2), the public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

(ii) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP.

(d) Designating a public agency representative. A public agency may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7), (B))

§ 300.345 Parent participation.

(a) Public agency responsibility—general. Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in §300.344(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child).

(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also—

(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in §300.347(b)(1); and

(ii) Indicate that the agency will invite the student.

(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must—

(i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in §300.347(b)(2);

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent’s home or place of employment and the results of those visits.
§ 300.346  Development, review, and revision of IEP.

(a) Development of IEP. (1) General. In developing each child’s IEP, the IEP team, shall consider—

(i) The strengths of the child and the concerns of the parents for enhancing the education of their child;

(ii) The results of the initial or most recent evaluation of the child; and

(iii) As appropriate, the results of the child’s performance on any general State or district-wide assessment programs.

(2) Consideration of special factors. The IEP team also shall—

(i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child’s IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communication with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode; and

(v) Consider whether the child requires assistive technology devices and services.

(b) Review and Revision of IEP. In conducting a meeting to review, and, if appropriate, revise a child’s IEP, the IEP team shall consider the factors described in paragraph (a) of this section.

(c) Statement in IEP. If, in considering the special factors described in paragraphs (a)(1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child’s IEP.

(d) Requirement with respect to regular education teacher. The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child’s IEP, including assisting in the determination of—

(1) Appropriate positive behavioral interventions and strategies for the child; and

(2) Supplementary aids and services, program modifications or supports for school personnel that will be provided for the child, consistent with § 300.347(a)(3).

(e) Construction. Nothing in this section shall be construed to require the IEP team to include information under one component of a child’s IEP that is already contained under another component of the child’s IEP.

(Authority: 20 U.S.C. 1414(d)(3) and (4)(B) and (e))

§ 300.347  Content of IEP.

(a) General. The IEP for each child with a disability must include—

(1) A statement of the child’s present levels of educational performance, including—

(i) How the child’s disability affects the child’s involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); or
(ii) For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;

(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to—

(i) Meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum (i.e., the same curriculum as for non-disabled children), or for preschool children, as appropriate, to participate in appropriate activities; and

(ii) Meeting each of the child’s other educational needs that result from the child’s disability;

(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(3) of this section;

(5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and

(ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of—

(A) Why that assessment is not appropriate for the child; and

(B) How the child will be assessed;

(6) The projected date for the beginning of the services and modifications described in paragraph (a)(3) of this section, and the anticipated frequency, location, and duration of those services and modifications; and

(7) A statement of—

(i) How the child’s progress toward the annual goals described in paragraph (a)(2) of this section will be measured; and

(ii) How the child’s parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children’s progress, of—

(A) Their child’s progress toward the annual goals; and

(B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(b) Transition services. The IEP must include—

(1) For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student’s IEP that focuses on the student’s courses of study (such as participation in advanced-placement courses or a vocational education program); and

(2) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(c) Transfer of rights. In a State that transfers rights at the age majority, beginning at least one year before a student reaches the age of majority under State law, the student’s IEP must include a statement that the student has been informed of his or her rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority, consistent with §300.517.
§ 300.348

(d) Students with disabilities convicted as adults and incarcerated in adult prisons. Special rules concerning the content of IEPs for students with disabilities convicted as adults and incarcerated in adult prisons are contained in §300.311(b) and (c).

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6)(A)(ii))

§ 300.348 Agency responsibilities for transition services.

(a) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.347(b)(1), the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(Authority: 20 U.S.C. 1414(d)(5); 1414(d)(1)(A)(vii))

§ 300.349 Private school placements by public agencies.

(a) Developing IEPs. (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.346 and 300.347.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) Reviewing and revising IEPs. (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child’s IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative—

(i) Are involved in any decision about the child’s IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child’s IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.350 IEP—accountability.

(a) Provision of services. Subject to paragraph (b) of this section, each public agency must—

(1) Provide special education and related services to a child with a disability in accordance with the child’s IEP; and

(2) Make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

(b) Accountability. Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the Act does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school, or agency performance.

(c) Construction—parent rights. Nothing in this section limits a parent’s right to ask for revisions of the child’s IEP or to invoke due process procedures if the parent feels that the efforts required in paragraph (a) of this section are not being made.


DIRECT SERVICES BY THE SEA

§ 300.360 Use of LEA allocation for direct services.

(a) General. An SEA shall use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency—
(1) Has not provided the information needed to establish the eligibility of the agency under Part B of the Act;
(2) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;
(3) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs;
or
(4) Has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of these children.

(b) \textit{SEA responsibility if an LEA does not apply for Part B funds.} (1) If an LEA elects not to apply for its Part B allotment, the SEA must use those funds to ensure that FAPE is available to all eligible children residing in the jurisdiction of the LEA.

(2)(i) If the local allotment is not sufficient to meet the purpose described in paragraph (b)(1) of this section, the SEA must ensure compliance with §§ 300.121(a) and 300.300(a).

(ii) Consistent with §300.301(a), the \{State; SEA\} may use whatever funding sources are available in the State to implement paragraph (b)(2)(i) of this section.

(c) \textit{SEA administrative procedures.} (1) In meeting the requirements in paragraph (a) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

(2) The excess cost requirements of §§ 300.184 and 300.185 do not apply to the SEA.

(Authority: 20 U.S.C. 1413(h)(1))

§ 300.361 Nature and location of services.

The SEA may provide special education and related services under § 300.360(a) in the manner and at the location it considers appropriate (including regional and State centers). However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE provisions of §§300.550–300.556).

(Authority: 20 U.S.C. 1413(h)(2))

§§ 300.362–300.369 [Reserved]

§ 300.370 Use of SEA allocations.

(a) Each State shall use any funds it retains under §300.602 and does not use for administration under §300.620 for any of the following:
(1) Support and direct services, including technical assistance and personnel development and training.
(2) Administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.
(3) To establish and implement the mediation process required by §300.506, including providing for the costs of mediators and support personnel.
(4) To assist LEAs in meeting personnel shortages.
(5) To develop a State Improvement Plan under subpart 1 of Part D of the Act.
(6) Activities at the State and local levels to meet the performance goals established by the State under §300.137 and to support implementation of the State Improvement Plan under subpart 1 of Part D of the Act if the State receives funds under that subpart.
(7) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 611 of the Act. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under Part C of the Act.
(8) For subgrants to LEAs for the purposes described in §300.622 (local capacity building).

(b) For the purposes of paragraph (a) of this section—
(1) \textit{Direct services} means services provided to a child with a disability by the State directly, by contract, or through other arrangements; and
(2) \textit{Support services} includes implementing the comprehensive system of personnel development under §§300.380–300.382, recruitment and training of mediators, hearing officers, and surrogate parents, and public information and
§ 300.371 Parent training activities relating to FAPE for children with disabilities.

(c) Of the funds an SEA retains under paragraph (a) of this section, the SEA may use the funds directly, or distribute them to LEAs on a competitive, targeted, or formula basis.

(Authority: 20 U.S.C. 1411(f)(3))

§ 300.371 [Reserved]

§ 300.372 Nonapplicability of requirements that prohibit commingling and supplanting of funds.

A State may use funds it retains under §300.602 without regard to—

(a) The prohibition on commingling of funds in §300.152; and

(b) The prohibition on supplanting other funds in §300.153.

(Authority: 20 U.S.C. 1411(f)(1)(C))

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD)

§ 300.380 General CSPD requirements.

(a) Each State shall develop and implement a comprehensive system of personnel development that—

(1) Is consistent with the purposes of this part and with section 635(a)(8) of the Act;

(2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel;

(3) Meets the requirements of §§300.381 and 300.382; and

(4) Is updated at least every five years.

(b) A State that has a State improvement grant has met the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(14))

§ 300.381 Adequate supply of qualified personnel.

Each State must include, at least, an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum—

(a) The number of personnel providing special education and related services; and

(b) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (a) of this section with temporary certification), and on the extent of certification or retraining necessary to eliminate these shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs.

(Authority: 20 U.S.C. 1453(b)(2)(B))

§ 300.382 Improvement strategies.

Each State must describe the strategies the State will use to address the needs identified under §300.381. These strategies must include how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities. The plan must include a description of how the State will—

(a) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities including how the State will work with other States on common certification criteria;

(b) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(c) Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(d) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of a program of preparation;

(e) Work in collaboration with other States, particularly neighboring
§ 300.401 Responsibility of State educational agency.

Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§300.340–300.350; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs (including the requirements of this part); and

(c) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.402 Implementation by State educational agency.

In implementing §300.401, the SEA shall—

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1412(a)(10)(B))

§ 300.403 Placement of children by parents if FAPE is at issue.

(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency
§ 300.450

shall include that child in the population whose needs are addressed consistent with §§ 300.450–300.462.

(b) Disagreements about FAPE. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§ 300.500–300.517.

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—

(1) If—

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents’ removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if—

(1) The parent is illiterate and cannot write in English;

(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1412(a)(10)(C))

§ 300.451 Child find for private school children with disabilities.

As used in this part, private school children with disabilities means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§ 300.400–300.402.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.452 Children with Disabilities Enrolled by Their Parents in Private Schools.

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§ 300.452 Provision of services—basic requirement.

(a) General. To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act by providing them with special education and related services in accordance with §§ 300.453–300.462.

(b) SEA Responsibility—services plan. Each SEA shall ensure that, in accordance with paragraph (a) of this section and §§ 300.454–300.456, a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this part.

§ 300.453 Expenditures.

(a) Formula. To meet the requirement of § 300.452(a), each LEA must spend on providing special education and related services to private school children with disabilities—

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA’s total subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and

(2) For children aged 3 through 5, an amount that is the same proportion of the LEA’s total subgrant under section 619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

(b) Child count. (1) Each LEA shall—

(i) Consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities; and

(ii) Ensure that the count is conducted on December 1 or the last Friday of October of each year.

(2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

(c) Expenditures for child find may not be considered. Expenditures for child find activities described in § 300.451 may not be considered in determining whether the LEA has met the requirements of paragraph (a) of this section.

(d) Additional services permissible. State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy.

§ 300.454 Services determined.

(a) No individual right to special education and related services. (1) No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(2) Decisions about the services that will be provided to private school children with disabilities under §§ 300.452–300.462, must be made in accordance with paragraphs (b), and (c) of this section.

(b) Consultation with representatives of private school children with disabilities. (1) General. Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding under § 300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide—

(i) Which children will receive services under § 300.452;

(ii) What services will be provided;

(iii) How and where the services will be provided; and

(iv) How the services provided will be evaluated.

(2) Genuine opportunity. Each LEA shall give appropriate representatives...
§ 300.455 Services provided.

(a) General. (1) The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(3) No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

(b) Services provided in accordance with a services plan. (1) Each private school child with a disability who has been designated to receive services under §300.452 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.453–300.454, it will make available to private school children with disabilities.

(2) The services plan must, to the extent appropriate—

(i) Meet the requirements of §300.347, with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§300.342–300.346.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.456 Location of services; transportation.

(a) On-site. Services provided to private school children with disabilities may be provided on-site at a child’s private school, including a religious school, to the extent consistent with law.

(b) Transportation. (1) General. (i) If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation—

(A) From the child’s school or the child’s home to a site other than the private school; and

(B) From the service site to the private school, or to the child’s home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child’s home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.453.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.457 Complaints.

(a) Due process inapplicable. The procedures in §§300.504–300.515 do not apply to complaints that an LEA has failed to meet the requirements of §§300.452–300.462, including the provision of services indicated on the child’s services plan.

(b) Due process applicable. The procedures in §§300.504–300.515 do apply to complaints that an LEA has failed to
meet the requirements of §300.451, including the requirements of §§300.530–300.543.

(c) State complaints. Complaints that an SEA or LEA has failed to meet the requirements of §§300.451–300.462 may be filed under the procedures in §§300.660–300.662.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.458 Separate classes prohibited.

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if—

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.459 Requirement that funds not benefit a private school.

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA shall use funds provided under Part B of the Act to meet the special education and related services needs of students enrolled in private schools, but not for—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.460 Use of public school personnel.

An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities—

(a) To the extent necessary to provide services under §§300.450–300.462 for private school children with disabilities; and

(b) If those services are not normally provided by the private school.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.461 Use of private school personnel.

An LEA may use funds available under section 611 or 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.450-300.462 if—

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.462 Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.

(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 1412(a)(10)(A))

PROCEDURES FOR BY-PASS

§ 300.480 By-pass—general.

(a) The Secretary implements a by-pass if an SEA is, and was on December
§ 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State to consider matters such as—

(1) The prohibition imposed by State law that results in the need for a by-pass;

(2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school children with disabilities receive services consistent with the requirements of section 612(a)(10)(A) of the Act and §§ 300.452–300.462.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State in a manner consistent with the requirements of section 612(a)(10)(A) of the Act and §§ 300.452–300.462 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount that may not exceed the amount per child provided by the Secretary under Part B of the Act for all children with disabilities in the State for the preceding fiscal year; and

(2) The number of private school children with disabilities (as defined by §§ 300.7(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.

(d) The Secretary deducts from the State’s allocation under Part B of the Act the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State’s allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

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§ 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA to respond; and

(2) Advises the SEA that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA by certified mail with return receipt requested.

§ 300.483 Request to show cause.

An SEA seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

§ 300.484 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee
must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee’s decision to the Secretary within 15 days of the date the party receives the designee’s decision.

(c) The Secretary adopts, reverses, or modifies the designee’s decision and notifies the SEA of the Secretary’s final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.486 Filing requirements.

(a) Any written submission under §§ 300.482–300.485 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.487 Judicial review.

If dissatisfied with the Secretary’s final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located. The procedures for judicial review are described in section 612(f)(3)(B)–(D) of the Act.


Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

§ 300.500 General responsibility of public agencies; definitions.

(a) Responsibility of SEA and other public agencies. Each SEA shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500–300.529.

(b) Definitions of “consent,” “evaluation,” and “personally identifiable.” As used in this part—

(1) Consent means that—

(i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
§ 300.501 Opportunity to examine records; parent participation in meetings.

(a) General. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.562–300.569, an opportunity to—

1. Inspect and review all education records with respect to—
   (i) The identification, evaluation, and educational placement of the child; and
   (ii) The provision of FAPE to the child; and

2. Participate in meetings with respect to—
   (i) The identification, evaluation, and educational placement of the child; and
   (ii) The provision of FAPE to the child.

(b) Parent participation in meetings. (1) Each public agency shall provide notice consistent with §300.345(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of this section.

(2) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child’s IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions. (1) Each public agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall use procedures consistent with the procedures described in §300.345(a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents’ participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of §300.345(d).

(5) The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

(Authority: 20 U.S.C. 1414(f), 1415(b)(1))
§ 300.503 Independent educational evaluation.

(a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable to independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this part—

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.301.

(b) Parent right to evaluation at public expense. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) Initiate a hearing under §300.507 to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under §300.507 that the evaluation obtained by the parent did not meet agency criteria.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) Agency criteria. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1))

§ 300.503 Prior notice by the public agency; content of notice.

(a) Notice. (1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—

(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
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(i) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under §300.505, the agency may give notice at the same time it requests parent consent.

(b) Content of notice. The notice required under paragraph (a) of this section must include—

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of any other options that the agency considered and the reasons why those options were rejected;

(4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

(5) A description of any other factors that are relevant to the agency’s proposal or refusal;

(6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(c) Notice in understandable language. The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2) (i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(3), (4) and (c), 1414(b)(1))

§ 300.504 Procedural safeguards notices.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum—

(1) Upon initial referral for evaluation;

(2) Upon each notification of an IEP meeting;

(3) Upon reevaluation of the child; and

(4) Upon receipt of a request for due process under §300.507.

(b) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §§300.403, 300.500–300.529, and 300.560–300.577, and the State complaint procedures available under §§300.660–300.662 relating to—

(1) Independent educational evaluation;

(2) Prior written notice;

(3) Parental consent;

(4) Access to educational records;

(5) Opportunity to present complaints to initiate due process hearings;

(6) The child’s placement during pendency of due process proceedings;

(7) Procedures for students who are subject to placement in an interim alternative educational setting;

(8) Requirements for unilateral placement by parents of children in private schools at public expense;

(9) Mediation;

(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;

(11) State-level appeals (if applicable in that State);

(12) Civil actions;

(13) Attorneys’ fees; and

(14) The State complaint procedures under §§300.660–300.662, including a description of how to file a complaint and the timelines under those procedures.

(c) Notice in understandable language. The notice required under paragraph
§ 300.505 Parental consent.

(a) General. (1) Subject to paragraphs (a)(3), (b) and (c) of this section, informed parent consent must be obtained before—
   (i) Conducting an initial evaluation or reevaluation; and
   (ii) Initial provision of special education and related services to a child with a disability.
   (2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.
   (3) Parental consent is not required before—
      (i) Reviewing existing data as part of an evaluation or a reevaluation; or
      (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
   (b) Refusal. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under §§ 300.507–300.509, or the mediation procedures under § 300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent.
   (c) Failure to respond to request for reevaluation. (1) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child’s parent has failed to respond.
   (2) To meet the reasonable measures requirement in paragraph (c)(1) of this section, the public agency must use procedures consistent with those in § 300.345(d).
   (d) Additional State consent requirements. In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with FAPE.
   (e) Limitation. A public agency may not use a parent’s refusal to consent to one service or activity under paragraphs (a) and (d) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

§ 300.506 Mediation.

(a) General. Each public agency shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in § 300.503(a)(1) to resolve the disputes through a mediation process that, at a minimum, must be available whenever a hearing is requested under §§ 300.507 or 300.520–300.528.
   (b) Requirements. The procedures must meet the following requirements:
      (1) The procedures must ensure that the mediation process—
         (i) Is voluntary on the part of the parties;
         (ii) Is not used to deny or delay a parent’s right to a due process hearing under § 300.507, or to deny any other rights afforded under Part B of the Act; and
         (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
      (2) (i) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
         (ii) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.
   (3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.
   (4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
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(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) Impartiality of mediator. (1) An individual who serves as a mediator—
   (i) May not be an employee of—
      (A) Any LEA or any State agency described under §300.194; or
      (B) An SEA that is providing direct services to a child who is the subject of the mediation process; and
   (ii) Must not have a personal or professional conflict of interest.

   (2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.194 solely because he or she is paid by the agency to serve as a mediator.

(d) Meeting to encourage mediation. (1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—
   (i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and
   (ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

   (2) A public agency may not deny or delay a parent’s right to a due process hearing under §300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1415(e))

§ 300.507 Impartial due process hearing; parent notice.

(a) General. (1) A parent or a public agency may initiate a hearing on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) When a hearing is initiated under paragraph (a)(1) of this section, the public agency shall inform the parents of the availability of mediation described in §300.506.

(3) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—
   (i) The parent requests the information; or
   (ii) The parent or the agency initiates a hearing under this section.

(b) Agency responsible for conducting hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Parent notice to the public agency. (1) General. The public agency must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the public agency in a request for a hearing under paragraph (a)(1) of this section.

   (2) Content of parent notice. The notice required in paragraph (c)(1) of this section must include—
      (i) The name of the child;
      (ii) The address of the residence of the child;
      (iii) The name of the school the child is attending;
      (iv) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
      (v) A proposed resolution of the problem to the extent known and available to the parents at the time.

(3) Model form to assist parents. Each SEA shall develop a model form to assist parents in filing a request for due process that includes the information required in paragraphs (c)(1) and (2) of this section.

(4) Right to due process hearing. A public agency may not deny or delay a parent’s right to a due process hearing for
§ 300.508 Impartial hearing officer.

(a) A hearing may not be conducted—

(1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1415(f)(3))

§ 300.509 Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§300.507 or 300.520–300.528, or an appeal conducted pursuant to §300.510, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information.

(1) At least 5 business days prior to a hearing conducted pursuant to §300.507(a), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings.

(1) Parents involved in hearings must be given the right to—

(i) Have the child who is the subject of the hearing present; and

(ii) Open the hearing to the public.

(2) The record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section must be provided at no cost to parents.

(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions referred to in paragraph (a)(5) of this section to the State advisory panel established under §300.650; and

(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(2) and (h))

§ 300.510 Finality of decision; appeal; impartial review.

(a) Finality of decision. A decision made in a hearing conducted pursuant to §§300.507 or 300.520–300.528 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.512.

(Authority: 20 U.S.C. 1415(i)(1)(A))

(b) Appeal of decisions; impartial review.

(1) General. If the hearing required by §300.507 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) SEA responsibility for review. If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall—

(i) Examine the entire hearing record;
§ 300.511 Timelines and convenience of hearings and reviews.

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

§ 300.512 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§300.507 or 300.520–300.528 who does not have the right to an appeal under §300.510(b), and any party aggrieved by the findings and decision under §300.510(b), has the right to bring a civil action with respect to the complaint presented pursuant to §300.507. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Additional requirements. In any action brought under paragraph (a) of this section, the court—

(1) Shall receive the records of the administrative proceedings;

(2) Shall hear additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

(c) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(d) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(2), (i)(3)(A), and 1415(l))

§ 300.513 Attorneys’ fees.

(a) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award
reasonable attorneys’ fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(b)(1) Funds under Part B of the Act may not be used to pay attorneys’ fees or costs of a party related to an action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) A court awards reasonable attorney’s fees under section 615(i)(3) of the Act consistent with the following:

(1) Determination of amount of attorneys’ fees. Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(2) Prohibition of attorneys’ fees and related costs for certain services. (i) Attorneys’ fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys’ fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506 that is conducted prior to the filing of a request for due process under §§300.507 or 300.520–300.528.

(3) Exception to prohibition on attorneys’ fees and related costs. Notwithstanding paragraph (c)(2) of this section, an award of attorneys’ fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Reduction of amount of attorneys’ fees. Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys’ fees awarded under section 615 of the Act, if the court finds that—

(i) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys’ fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding;

(iv) The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with §300.507(c).

(5) Exception to reduction in amount of attorneys’ fees. The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(3)(B)–(G))

§300.514 Child’s status during proceedings.

(a) Except as provided in §300.526, during the pendency of any administrative or judicial proceeding regarding a complaint under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of
§ 300.515 Surrogate parents.  
(a) General. Each public agency shall ensure that the rights of a child are protected if—  
(1) No parent (as defined in §300.20) can be identified;  
(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or  
(3) The child is a ward of the State under the laws of that State.  
(b) Duty of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method—  
(1) For determining whether a child needs a surrogate parent; and  
(2) For assigning a surrogate parent to the child.  
(c) Criteria for selection of surrogates.  
(1) The public agency may select a surrogate parent in any way permitted under State law.  
(2) Except as provided in paragraph (c)(3) of this section, public agencies shall ensure that a person selected as a surrogate—  
(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;  
(ii) Has no interest that conflicts with the interest of the child he or she represents; and  
(iii) Has knowledge and skills that ensure adequate representation of the child.  
(3) A public agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraphs (c)(2)(i) and (iii) of this section.  
(d) Non-employee requirement; compensation. A person who otherwise qualifies to be a surrogate parent under paragraph (c) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.  
(e) Responsibilities. The surrogate parent may represent the child in all matters relating to—  
(1) The identification, evaluation, and educational placement of the child; and  
(2) The provision of FAPE to the child.  
(Authority: 20 U.S.C. 1415(b)(2))

§ 300.516 [Reserved]

§ 300.517 Transfer of parental rights at age of majority.  
(a) General. A State may provide that, when a student with a disability reaches the age of majority under State law that applies to all students (except for a student with a disability who has been determined to be incompetent under State law)—  
(1)(i) The public agency shall provide any notice required by this part to both the individual and the parents; and  
(ii) All other rights accorded to parents under Part B of the Act transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution.  
(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency shall notify the individual and the parents of the transfer of rights.  
(b) Special rule. If, under State law, a State has a mechanism to determine that a student with a disability, who has reached the age of majority under State law that applies to all children and has not been determined incompetent under State law, does not have the ability to provide informed consent with respect to his or her educational program, the State shall establish procedures for appointing the parent, or, if
the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student’s eligibility under Part B of the Act.

(Authority: 20 U.S.C. 1415(m))

DISCIPLINE PROCEDURES

§ 300.519 Change of placement for disciplinary removals.

For purposes of removals of a child with a disability from the child’s current educational placement under §§300.520–300.529, a change of placement occurs if—

(a) The removal is for more than 10 consecutive school days; or

(b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

(Authority: 20 U.S.C. 1415(k))

§ 300.520 Authority of school personnel.

(a) School personnel may order—

(1)(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child’s current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.519(b));

(ii) After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under §300.121(d); and

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if—

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b)(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under §300.519, including the action described in paragraph (a)(2) of this section—

(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.

(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child’s current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under §300.519, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

(d) For purposes of this section, the following definitions apply:
§ 300.521

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug—

(i) Means a controlled substance; but

(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(Authority: 20 U.S.C. 1415(k)(1), (10))

§ 300.522 Determination of setting.

(a) General. The interim alternative educational setting referred to in §300.520(a)(2) must be determined by the IEP team.

(b) Additional requirements. Any interim alternative educational setting in which a child is placed under §§300.520(a)(2) or 300.521 must—

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child’s current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in §§300.520(a)(2) or 300.521, that are designed to prevent the behavior from recurring.

(Authority: 20 U.S.C. 1415(k)(3))

§ 300.523 Manifestation determination review.

(a) General. If an action is contemplated regarding behavior described in §§300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under §300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children—

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in §300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child’s disability and the behavior subject to the disciplinary action.

(b) Individuals to carry out review. A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) Conduct of review. In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child’s disability only if the IEP team and other qualified personnel—
§ 300.524 Determination that behavior was not manifestation of disability.

(a) General. If the result of the review described in §300.523 is a determination, consistent with §300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in §300.121(d).

(b) Additional requirement. If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) Child's status during due process proceedings. Except as provided in §300.526, §300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in §300.523, that the behavior of the child was not a manifestation of the child's disability.

(Authority: 20 U.S.C. 1415(k)(5))

§ 300.525 Parent appeal.

(a) General. (1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under §§300.520–300.528, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

(b) Review of decision. (1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of §300.523(d).

(2) In reviewing a decision under §300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in §300.521.

(Authority: 20 U.S.C. 1415(k)(6))

§ 300.526 Placement during appeals.

(a) General. If a parent requests a hearing or an appeal regarding a disciplinary action described in §300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting until the conclusion of the hearing or appeal process.
§ 300.527 Protections for children not yet eligible for special education and related services.

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §§300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if—

1. The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

2. The behavior or performance of the child demonstrates the need for these services, in accordance with §300.7;

3. The parent of the child has requested an evaluation of the child pursuant to §§300.530–300.536; or

4. The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency’s established child find or special education referral system.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency—

1. Either—
   (i) Conducted an evaluation under §§300.530–300.536, and determined that the child was not a child with a disability under this part; or
   (ii) Determined that an evaluation was not necessary; and

2. Provided notice to the child’s parents of its determination under paragraph (c)(1) of this section, consistent with §300.503.

(d) Conditions that apply if no basis of knowledge. (1) General. If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.
(2) **Limitations.** (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.520 or 300.521, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of §§300.520–300.529 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(8))

§ 300.529 Referral to and action by law enforcement and judicial authorities.

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b)(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child’s special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(9))

§ 300.530 General.

Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§300.531–300.536.

(Authority: 20 U.S.C. 1414(b)(3); 1412(a)(7))

§ 300.531 Initial evaluation.

Each public agency shall conduct a full and individual initial evaluation, in accordance with §§300.532 and 300.533, before the initial provision of special education and related services to a child with a disability under Part B of the Act.

(Authority: 20 U.S.C. 1414(a)(1))

§ 300.532 Evaluation procedures.

Each public agency shall ensure, at a minimum, that the following requirements are met:

(a)(1) Tests and other evaluation materials used to assess a child under Part B of the Act—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and
§ 300.533 Determination of needed evaluation data.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a group that includes the individuals described in §300.344, and other qualified professionals, as appropriate, shall—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;
(ii) Current classroom-based assessments and observations; and
(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine—

(i) Whether the child has a particular category of disability, as described in

(b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining—

(1) Whether the child is a child with a disability under §300.7; and

(c)(1) Any standardized tests that are given to a child—

(i) Have been validated for the specific purpose for which they are used; and

(ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

(2) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

(d) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

(g) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(h) In evaluating each child with a disability under §§300.531–300.536, the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(i) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(j) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(Authority: 20 U.S.C. 1412(a)(6)(B), 1414(b)(2) and (3))

§ 300.533 Determination of needed evaluation data.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a group that includes the individuals described in §300.344, and other qualified professionals, as appropriate, shall—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;
(ii) Current classroom-based assessments and observations; and
(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine—

(i) Whether the child has a particular category of disability, as described in

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§ 300.536 Reevaluation.

Each public agency shall ensure—
(a) That the IEP of each child with a disability is reviewed in accordance with §§300.340–300.350; and
(b) That a reevaluation of each child, in accordance with §§300.532–300.535, is conducted if conditions warrant a reevaluation, or if the child’s parent or
§ 300.540 Additional team members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.7, must be made by the child’s parents and a team of qualified professionals which must include—
(a)(1) The child’s regular teacher; or
(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: Sec. 5(b), Pub. L. 94–142)

§ 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if—
(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child’s age and ability levels; and
(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:
   (i) Oral expression.
   (ii) Listening comprehension.
   (iii) Written expression.
   (iv) Basic reading skill.
   (v) Reading comprehension.
   (vi) Mathematics calculation.
   (vii) Mathematics reasoning.
(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—
(1) A visual, hearing, or motor impairment;
(2) Mental retardation;
(3) Emotional disturbance; or
(4) Environmental, cultural or economic disadvantage.

(Authority: Sec. 5(b), Pub. L. 94–142)

§ 300.542 Observation.

(a) At least one team member other than the child’s regular teacher shall observe the child’s academic performance in the regular classroom setting.
(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: Sec. 5(b), Pub. L. 94–142)

§ 300.543 Written report.

(a) For a child suspected of having a specific learning disability, the documentation of the team’s determination of eligibility, as required by §300.534(a)(2), must include a statement of—
(1) Whether the child has a specific learning disability;
(2) The basis for making the determination;
(3) The relevant behavior noted during the observation of the child;
(4) The relationship of that behavior to the child’s academic functioning;
(5) The educationally relevant medical findings, if any;
(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.
(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(Authority: Sec. 5(b), Pub. L. 94–142)
Least Restrictive Environment (LRE)

§ 300.550 General LRE requirements.
(a) Except as provided in §300.311(b) and (c), a State shall demonstrate to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets the requirements of §§300.550–300.556.
(b) Each public agency shall ensure—
(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.551 Continuum of alternative placements.
(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
(b) The continuum required in paragraph (a) of this section must—
(1) Include the alternative placements listed in the definition of special education under §300.26 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.552 Placements.
In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that—
(a) The placement decision—
(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
(2) Is made in conformity with the LRE provisions of this subpart, including §§300.550–300.554;
(b) The child’s placement—
(1) Is determined at least annually;
(2) Is based on the child’s IEP; and
(3) Is as close as possible to the child’s home;
(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.553 Nonacademic settings.
In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.554 Children in public or private institutions.
Except as provided in §300.600(d), an SEA must ensure that §300.550 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

(Authority: 20 U.S.C. 1412(a)(5))
§ 300.555 Technical assistance and training activities.

Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.550; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.556 Monitoring activities.

(a) The SEA shall carry out activities to ensure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550, the SEA shall—

(1) Review the public agency’s justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(a)(5))

CONFIDENTIALITY OF INFORMATION

§ 300.560 Definitions.

As used in §§ 300.560–300.577—

(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) Education records means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

§ 300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of § 300.127, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §§ 300.507 and 300.521–300.528, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the
right to inspect and review the records; and
(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.566 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.567 Amendment of records at parent’s request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
§ 300.570

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.570 Hearing procedures.

A hearing held under §300.568 must be conducted according to the procedures under 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.571 Consent.

(a) Except as to disclosures addressed in §300.529(b) for which parental consent is not required by Part 99, parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99.

(c) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State’s policies and procedures under §300.127 and 34 CFR part 99.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student’s name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.574 Children’s rights.

(a) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.

(b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99.

(c) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.575 Enforcement.

The SEA shall provide the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed
and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(a)(8), 1417(c))

§ 300.576 Disciplinary information.

(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child’s records must include both the child’s current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.

(Authority: 20 U.S.C. 1413(j))

§ 300.577 Department use of personally identifiable information.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to 5 U.S.C. 552a (the Privacy Act of 1974), the Secretary applies the requirements of 5 U.S.C. 552a (b)(1)-(2), (4)-(11); (c); (d); (e)(1), (2), (3)(A), (B), and (D), (5)-(10); (h); (m); and (n); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(6), 1417(c))

DEPARTMENT PROCEDURES

§ 300.580 Determination by the Secretary that a State is eligible.

If the Secretary determines that a State is eligible to receive a grant under Part B of the Act, the Secretary notifies the State of that determination.

(Authority: 20 U.S.C. 1412(d))

§ 300.581 Notice and hearing before determining that a State is not eligible.

(a) General. (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until providing the State—

(i) With reasonable notice; and

(ii) With an opportunity for a hearing.

(2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the SEA by certified mail with return receipt requested.

(b) Content of notice. In the written notice described in paragraph (a)(2) of this section, the Secretary—

(1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible;

(2) May describe possible options for resolving the issues;

(3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and

(4) Provides information about the procedures followed for a hearing.

(Authority: 20 U.S.C. (1412(d)(2))

§ 300.582 Hearing official or panel.

(a) If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(Authority: 20 U.S.C. (1412(d)(2))

§ 300.583 Hearing procedures.

(a) As used in §§300.581–300.586 the term party or parties means the following:
§ 300.583

(1) An SEA that requests a hearing regarding the proposed disapproval of the State's eligibility under this part.

(2) The Department official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

(i) Narrowing and clarifying issues;
(ii) Assisting the parties in reaching agreements and stipulations;
(iii) Clarifying the positions of the parties;
(iv) Determining whether an evidentiary hearing or oral argument should be held; and
(v) Setting dates for—
(A) The exchange of written documents;
(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;
(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);
(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or
(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Panel may examine witnesses.

(j) The Hearing Official or Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.
§ 300.585 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under §300.581.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party’s counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 days of the date the party receives the Panel’s decision.

(e) The Hearing Official or Panel sends a copy of a party’s initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties’ initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official’s or Panel’s proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

(Authority: 20 U.S.C. (1412(d)(2))

§ 300.585 Filing requirements.

(a) Any written submission under §§300.581–300.585 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.
§ 300.586 Judicial review.

If a State is dissatisfied with the Secretary’s final action with respect to the eligibility of the State under section 612 of the Act, the State may, not later than 60 days after notice of that action, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that action. A copy of the petition must be forthwith transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the Secretary’s action was based, as provided in section 2112 of title 28, United States Code.

(Authority: 20 U.S.C. 1416(b))

§ 300.587 Enforcement.

(a) General. The Secretary initiates an action described in paragraph (b) of this section if the Secretary finds—

(1) That there has been a failure by the State to comply substantially with any provision of Part B of the Act, this part, or 34 CFR part 301; or

(2) That there is a failure to comply with any condition of an LEA’s or SEA’s eligibility under Part B of the Act, this part, or 34 CFR part 301, including the terms of any agreement to achieve compliance with Part B of the Act, this part, or Part 301 within the timelines specified in the agreement.

(b) Types of action. The Secretary, after notifying the SEA (and any LEA or State agency affected by a failure described in paragraph (a)(2) of this section)—

(1) Withholds in whole or in part any further payments to the State under Part B of the Act;

(2) Refers the matter to the Department of Justice for enforcement; or

(3) Takes any other enforcement action authorized by law.

(c) Nature of withholding. (1) If the Secretary determines that it is appropriate to withhold further payments under paragraph (b)(1) of this section, the Secretary may determine that the withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the SEA shall not make further payments under Part B of the Act to specified LEA or State agencies affected by the failure.

(2) Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of Part B of the Act, this part, or 34 CFR part 301, as specified in paragraph (a) of this section, payments to the State under Part B of the Act are withheld in whole or in part, or payments by the SEA under Part B of the Act are limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be.

(3) Any SEA, LEA, or other State agency that has received notice under paragraph (a) of this section shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of that agency.

(4) Before withholding under paragraph (b)(1) of this section, the Secretary provides notice and a hearing pursuant to the procedures in §§300.581–300.586.

(d) Referral for appropriate enforcement. (1) Before the Secretary makes a referral under paragraph (b)(2) of this section for enforcement, or takes any other enforcement action authorized by law under paragraph (b)(3), the Secretary provides the State—

(1) With reasonable notice; and

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(ii) With an opportunity for a hearing.

(2) The hearing described in paragraph (d)(1)(ii) of this section consists of an opportunity to meet with the Assistant Secretary for the Office of Special Education and Rehabilitative Services to demonstrate why the Department should not make a referral for enforcement.

(e) Divided State agency responsibility.
For purposes of this part, if responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to §300.600(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act or this part are related to a failure by the public agency, the Secretary takes one of the enforcement actions described in paragraph (b) of this section to ensure compliance with Part B of the Act and this part, except—

(1) Any reduction or withholding of payments to the State under paragraph (b)(1) of this section is proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) Any withholding of funds under paragraph (e)(1) of this section is limited to the specific agency responsible for the failure to comply with Part B of the Act or this part.

(Authority: 20 U.S.C. 1416)

§ 300.589 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

(a) Except as provided under §§300.232–300.235, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under §300.602 without regard to the prohibition on supplanting other funds (see §300.372).

(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.153 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes—

(1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;

(2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail—

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include—

(A) The State’s procedures under §300.125 for ensuring that all eligible children are identified, located and evaluated;

(B) The State’s procedures for monitoring public agencies to ensure that they comply with all requirements of this part;

(C) The State’s complaint procedures under §§300.660–300.662; and
§300.600

(D) The State’s hearing procedures under §§300.507–300.511 and 300.520–300.528; (3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.660–300.662) and hearing decisions (see §§300.507–300.511 and 300.520–300.528), issued within three years prior to the date of the State’s request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and (4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.650, the State’s parent training and information center or centers, the State’s protection and advocacy organization, and other organizations representing the interests of children with disabilities and their parents, and a summary of the input of these organizations.

(d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:

1. Whether FAPE is currently available to all eligible children with disabilities in the State.
2. Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(f) A State may receive a waiver of the requirement of section 612(a)(19)(A) and §300.154(a) if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

(Authority: 20 U.S.C. 1412(a)(18)(C), (19)(C)(i) and (E))

Subpart F—State Administration

§300.600 Responsibility for all educational programs.

(a) The SEA is responsible for ensuring—

1. That the requirements of this part are carried out; and
2. That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency—

i. Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and
ii. Meets the education standards of the SEA (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the
Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

Authority: 20 U.S.C. 1412(a)(11)

§ 300.601 Relation of Part B to other Federal programs.

Part B of the Act may not be construed to permit a State to reduce medical and other assistance available to children with disabilities, or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE.

Authority: 20 U.S.C. 1412(e)

§ 300.602 State-level activities.

(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration in accordance with §§ 300.620 and 300.621 and other State-level activities in accordance with § 300.370.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State’s allocation under section 611 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Authority: 20 U.S.C. 1411(f)(1)(A) and (B)

§ 300.620 Use of funds for State administration.

(a) For the purpose of administering Part B of the Act, including section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities)—

(1) Each State may use not more than twenty percent of the maximum amount it may retain under § 300.602(a) for any fiscal year or $500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

(2) Each outlying area may use up to five percent of the amount it receives under this section for any fiscal year or $35,000, whichever is greater.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that part.

Authority: 20 U.S.C. 1411(f)(2)

§ 300.621 Allowable costs.

(a) The SEA may use funds under § 300.620 for—

(1) Administration of State activities under Part B of the Act and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilities;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;

(3) Technical assistance to LEAs with respect to the requirements of Part B of the Act;

(4) Leadership services for the program supervision and management of special education activities for children with disabilities; and

(5) Other State leadership activities and consultative services.

(b) The SEA shall use the remainder of its funds under § 300.620 in accordance with § 300.370.

Authority: 20 U.S.C. 1411(f)(2)

§ 300.622 Subgrants to LEAs for capacity-building and improvement.

In any fiscal year in which the percentage increase in the State’s allocation under 611 of the Act exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater—

(1) Each State may use not more than twenty percent of the maximum amount it may retain under § 300.602(a) for any fiscal year or $500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

(2) Each outlying area may use up to five percent of the amount it receives under this section for any fiscal year or $35,000, whichever is greater.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that part.

Authority: 20 U.S.C. 1411(f)(2)
§ 300.623 Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under 611 of the Act, the amount described in §300.623 to make subgrants to LEAs, unless that amount is less than $100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:

(a) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

(b) Addressing needs or carrying out improvement strategies identified in the State’s Improvement Plan under subpart 1 of Part D of the Act.

(c) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.

(d) Establishing, expanding, or implementing interagency agreements and arrangements between LEAs and other agencies or organizations concerning the provision of services to children with disabilities and their families.

(e) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

(Authority: 20 U.S.C. 1411(f)(4)(A))

§ 300.624 State discretion in awarding subgrants.

The State may establish priorities in awarding subgrants under §300.622 to LEAs competitively or on a targeted basis.

(Authority: 20 U.S.C. 1411(f)(4)(A))

§ 300.650 Establishment of advisory panels.

(a) Each State shall establish and maintain, in accordance with §§300.650–300.653, a State advisory panel on the education of children with disabilities.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in §300.652, the State may modify the existing panel so that it fulfills all of the requirements of §§300.650–300.653, instead of establishing a new advisory panel.

(Authority: 20 U.S.C. 1412(a)(21)(A))

§ 300.651 Membership.

(a) General. The membership of the State advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make these appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with the education of children with disabilities, including—

(1) Parents of children with disabilities;

(2) Individuals with disabilities;

(3) Teachers;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

(5) State and local education officials;

(6) Administrators of programs for children with disabilities;

(7) Representatives of other State agencies involved in the financing or
delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(10) Representatives from the State juvenile and adult corrections agencies.

(b) Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities.

(Authority: 20 U.S.C. 1412(a)(21)(B) and (C))

§ 300.652 Advisory panel functions.

(a) General. The State advisory panel shall—

(1) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(2) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(3) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;

(4) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and

(5) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

(b) Advising on eligible students with disabilities in adult prisons. The advisory panel also shall advise on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons, even if, consistent with §300.600(d), a State assigns general supervision responsibility for those students to a public agency other than an SEA.

(Authority: 20 U.S.C. 1412(a)(21)(D))

§ 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.

(c) Official minutes must be kept on all panel meetings and must be made available to the public on request.

(d) All advisory panel meetings and agenda items must be announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under §300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under §300.620 for this purpose.

(Authority: 20 U.S.C. 1412(a)(21))

STATE COMPLAINT PROCEDURES

§ 300.660 Adoption of State complaint procedures.

(a) General. Each SEA shall adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.662 by—

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA’s discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency’s decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State’s procedures under §§300.660–300.662.

(Authority: 20 U.S.C. 1412(a)(21))

§ 300.665 Adoption of State complaint procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual re-
§ 300.661  Minimum State complaint procedures.

(a) Time limit; minimum procedures. Each SEA shall include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.660(a) to—

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA’s final decision.

(b) Time extension; final decision; implementation. The SEA’s procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and

(2) Include procedures for effective implementation of the SEA’s final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section, and due process hearings under §§ 300.507 and 300.520–300.528. (1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.520–300.528, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties—

(i) The hearing decision is binding; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency’s failure to implement a due process decision must be resolved by the SEA.

(Authority: 20 U.S.C. 1221e–3)
Subpart G—Allocation of Funds; Reports

§ 300.700 Special definition of the term "State".
For the purposes of §§300.701, and 300.703–300.714, the term State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.
(Authority: 20 U.S.C. 1411(h)(2))

§ 300.701 Grants to States.
(a) Purpose of grants. The Secretary makes grants to States and the outlying areas and provides funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with Part B of the Act.
(b) Maximum amounts. The maximum amount of the grant a State may receive under section 611 of the Act for any fiscal year is—
(1) The number of children with disabilities in the State who are receiving special education and related services—
(i) Aged 3 through 5 if the State is eligible for a grant under section 619 of the Act; and
(ii) Aged 6 through 21; multiplied by—
(2) Forty (40) percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.
(Authority: 20 U.S.C. 1411(a))

§ 300.702 Definition.
For the purposes of this section the term average per-pupil expenditure in public elementary and secondary schools in the United States means—
(a) Without regard to the source of funds—
(1) The aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia; plus
(2) Any direct expenditures by the State for the operation of those agencies; divided by
(b) The aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.
(Authority: 20 U.S.C. 1411(h)(1))

§ 300.703 Allocations to States.
(a) General. After reserving funds for studies and evaluations under section 674(e) of the Act, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under §§300.715 and 300.717-300.719, the Secretary allocates the remaining amount among the States in accordance with paragraph (b) of this section and §§300.706–300.709.
(b) Interim formula. Except as provided in §§300.706–300.709, the Secretary allocates the amount described in paragraph (a) of this section among the States in accordance with section 611(a)(3), (4), (5) and (b)(1), (2) and (3) of the Act, as in effect prior to June 4, 1997, except that the determination of the number of children with disabilities receiving special education and related services under section 611(a)(3) of the Act (as then in effect) may be calculated as of December 1, or, at the State’s discretion, the last Friday in October, of the fiscal year for which the funds were appropriated.
(Authority: 20 U.S.C. 1411(d))

§§ 300.704–300.705 [Reserved]

§ 300.706 Permanent formula.
(a) Establishment of base year. The Secretary allocates the amount described in §300.703(a) among the States in accordance with §§300.706–300.709 for each fiscal year beginning with the first fiscal year for which the amount appropriated under 611(j) of the Act is more than $4,924,672,200.
(b) Use of base year. (1) Definition. As used in this section, the term base year means the fiscal year preceding the first fiscal year in which this section applies.
(2) Special rule for use of base year amount. If a State received any funds
under section 611 of the Act for the base year on the basis of children aged 3 through 5, but does not make FAPE available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary computes the State’s base year amount, solely for the purpose of calculating the State’s allocation in that subsequent year under §§300.707–300.709, by subtracting the amount allocated to the State for the base year on the basis of those children.

(Authority: 20 U.S.C. 1411(e)(1) and (2))

§ 300.707 Increase in funds.

If the amount available for allocations to States under §300.706 is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in §300.708, the Secretary—

(1) Allocates to each State the amount it received for the base year;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1411(e)(3))

§ 300.708 Limitation.

(a) Allocations under §300.707 are subject to the following:

(1) No State’s allocation may be less than its allocation for the preceding fiscal year.

(2) No State’s allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for the base year; and

(B) One-third of one percent of the amount by which the amount appropriated under section 611(j) of the Act exceeds the amount appropriated under section 611 of the Act for the base year; or

(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated.

(b) Notwithstanding paragraph (a)(2) of this section, no State’s allocation under §300.707 may exceed the sum of—

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(c) If the amount available for allocations to States under §300.703 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full those allocations are ratably reduced, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1411(e)(3)(B) and (C))

§ 300.709 Decrease in funds.

If the amount available for allocations to States under §300.706 is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State is allocated the sum of—

(1) The amount it received for the base year; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of those increases for all States.
§ 300.712 Allocations to LEAs.

(a) **Interim procedure.** For each fiscal year for which funds are allocated to States under §300.703(b), each State shall allocate funds under §300.711 in accordance with section 611(d) of the Act, as in effect prior to June 4, 1997.

(b) **Permanent procedure.** For each fiscal year for which funds are allocated to States under §§300.706–300.709, each State shall allocate funds under §300.711 as follows:

1. **Base payments.** The State first shall award each agency described in §300.711 the amount that agency would have received under this section for the base year, as defined in §300.706(b)(1), if the State had distributed 75 percent of its grant for that year under section §300.703(b).

2. **Base payment adjustments.** For any fiscal year after the base year fiscal year—

   (i) If a new LEA is created, the State shall divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under §300.706(b)(2), currently provided special education by each of the LEAs;

   (ii) If one or more LEAs are combined into a single new LEA, the State shall combine the base allocations of the merged LEAs; and

   (iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under §300.706(b)(2), currently provided special education by each affected LEA.

3. **Allocation of remaining funds.** The State then shall—

   (i) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within each agency’s jurisdiction; and

   (ii) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers
§ 300.713 Former Chapter 1 State agencies.

(a) To the extent necessary, the State—

(1) Shall use funds that are available under §300.602(a) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994) receives, from the combination of funds under §300.602(a) and funds provided under §300.711, an amount no less than—

(i) The number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1, or, at the State’s discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, subject to the limitation in paragraph (b) of this section; multiplied by

(ii) The per-child amount provided under that subpart for fiscal year 1994; and

(2) May use funds under §300.602(a) to ensure that each LEA that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under §300.602(a) and funds provided under §300.711, an amount for each child, aged 3 through 21, to whom the agency was providing special education and related services on December 1, or, at the State’s discretion, the last Friday in October, of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

(b) The number of children counted under paragraph (a)(1)(i) of this section may not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of Part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect in fiscal year 1994).

(Authority: 20 U.S.C. 1411(g)(2))

§ 300.714 Reallocation of LEA funds.

If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under Part B of the Act that are not needed by that local agency to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

(Authority: 20 U.S.C. 1411(g)(3))

§ 300.715 Payments to the Secretary of the Interior for the education of Indian children.

(a) Reserved amounts for Secretary of Interior. From the amount appropriated for any fiscal year under 611(j) of the Act, the Secretary reserves 1.226 percent to provide assistance to the Secretary of the Interior in accordance with this section and §300.716.

(b) Provision of amounts for assistance. The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted under paragraph (a) of this section for that fiscal year.

(c) Calculation of number of children. In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (BIA) schools and that are required by the States in which these schools are located to attain or maintain State accreditation, and which
schools have this accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school may count those children for the purpose of distribution of the funds provided under this section to the Secretary of the Interior.

(d) Responsibility for meeting the requirements of Part B. The Secretary of the Interior shall meet all of the requirements of Part B of the Act for the children described in paragraphs (b) and (c) of this section, in accordance with §300.260.

(Authority: 20 U.S.C. 1411(c); 1411(i)(1)(A) and (B))

§300.716 Payments for education and services for Indian children with disabilities aged 3 through 5.

(a) General. With funds appropriated under 611(j) of the Act, the Secretary makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of those tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payments under paragraph (b) of this section for any fiscal year is equal to 20 percent of the amount allotted under §300.715(a).

(b) Distribution of funds. The Secretary of the Interior shall distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(c) Submission of information. To receive a payment under this section, the tribe or tribal organization shall submit the figures to the Secretary of the Interior as required to determine the amounts to be allocated under paragraph (b) of this section. This information must be compiled and submitted to the Secretary.

(d) Use of funds. (1) The funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, LEAs, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities.

(2) The entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) Biennial report. To be eligible to receive a grant pursuant to paragraph (a) of this section, the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the two years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary required under section 611(i) of the Act. The Secretary may require any additional information from the Secretary of the Interior.

(f) Prohibitions. None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(Authority: 20 U.S.C. 1411(i)(3))

§300.717 Outlying areas and freely associated States.

From the amount appropriated for any fiscal year under section 611(j) of the Act, the Secretary reserves not more than one percent, which must be used—
§ 300.718 Outlying area—definition.

As used in this part, the term outlying area means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 300.719 Limitation for freely associated States.

(a) Competitive grants. The Secretary uses funds described in §300.717(b) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States to carry out the purposes of this part.

(b) Award basis. The Secretary awards grants under paragraph (a) of this section on a competitive basis, pursuant to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations must be made by experts in the field of special education and related services.

(c) Assistance requirements. Any freely associated State that wishes to receive funds under Part B of the Act shall include, in its application for assistance—

(1) Information demonstrating that it will meet all conditions that apply to States under Part B of the Act;

(2) An assurance that, notwithstanding any other provision of Part B of the Act, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make FAPE available to all children with disabilities;

(3) The identity of the source and amount of funds, in addition to funds under Part B of the Act, that it will make available to ensure that FAPE is available to all children with disabilities within its jurisdiction; and

(4) Such other information and assurances as the Secretary may require.

(d) Termination of eligibility. Notwithstanding any other provision of law, the freely associated States may not receive any funds under Part B of the Act for any program year that begins after September 30, 2001.

(e) Administrative costs. The Secretary may provide not more than five percent of the amount reserved for grants under this section to pay the administrative costs of the Pacific Region Educational Laboratory under paragraph (b) of this section.

(f) Eligibility for award. An outlying area is not eligible for a competitive award under §300.719 unless it receives assistance under §300.717(a).

§ 300.720 Special rule.

The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, do not apply to funds provided to those areas or to the freely associated States under Part B of the Act.

§ 300.721 [Reserved]

§ 300.722 Definition.

As used in this part, the term freely associated States means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

§ 300.7250 Annual report of children served—report requirement.

(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities aged 3 through 21 residing in the State who are receiving special education and related services.
§ 300.751 Annual report of children served—information required in the report.

(a) For any year the SEA shall include in its report a table that shows the number of children with disabilities receiving special education and related services on December 1, or at the State’s discretion on the last Friday in October, of that school year—
   (1) Aged 3 through 5;
   (2) Aged 6 through 17; and
   (3) Aged 18 through 21.

(b) For the purpose of this part, a child’s age is the child’s actual age on the date of the child count: December 1, or, at the State’s discretion, the last Friday in October.

(c) Reports must also include the number of those children with disabilities aged 3 through 21 for each year of age (3, 4, 5, etc.) within each disability category, as defined in the definition of “children with disabilities” in §300.7; and

(d) The Secretary may permit the collection of the data in paragraph (c) of this section through sampling.

(e) The SEA may not report a child under paragraph (c) of this section under more than one disability category.

(f) If a child with a disability has more than one disability, the SEA shall report that child under paragraph (c) of this section in accordance with the following procedure:
   (1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category “deaf-blindness”.
   (2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category “multiple disabilities”.

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

§ 300.752 Annual report of children served—certification.

The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided under §300.751(a) is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411(d)(2); 1418(a))

§ 300.753 Annual report of children served—criteria for counting children.

(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that—
   (1) Provides them with both special education and related services that meet State standards;
   (2) Provides them only with special education, if a related service is not required, that meets State standards; or
   (3) In the case of children with disabilities enrolled by their parents in private schools, provides them with special education or related services under §§300.452–300.462 that meet State standards.

(b) The SEA may not include children with disabilities in its report who are receiving special education funded solely by the Federal Government, including children served by the Department of Interior, the Department of Defense, or the Department of Education. However, the State may count children covered under §300.184(c)(2).

(Authority: 20 U.S.C. 1411(d)(2); 1417(b))

§ 300.754 Annual report of children served—other responsibilities of the SEA.

In addition to meeting the other requirements of §§300.750–300.753, the SEA shall—

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with §300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;
§ 300.755

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.750–300.753; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

(Approval: 20 U.S.C. 1411(d)(2); 1417(b))

§ 300.755 Disproportionality.

(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State or in the schools operated by the Secretary of the Interior with respect to—

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; and

(2) The placement in particular educational settings of these children.

(b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior shall provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the Act.

(Approval: 20 U.S.C. 1412(c))

§ 300.756 Acquisition of equipment; construction or alteration of facilities.

(a) General. If the Secretary determines that a program authorized under Part B of the Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.

(b) Compliance with certain regulations. Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of—

(1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the `Americans with Disabilities Accessibility Guidelines for Buildings and Facilities’); or


(Approval: 20 U.S.C. 1407)

APPENDIX A TO PART 300—NOTICE OF INTERPRETATION

I. INVOLVEMENT AND PROGRESS OF EACH CHILD WITH A DISABILITY IN THE GENERAL CURRICULUM

1. What are the major Part B IEP requirements that govern the involvement and progress of children with disabilities in the general curriculum?

2. Must a child’s IEP address his or her involvement in the general curriculum, regardless of the nature and severity of the child’s disability and the setting in which the child is educated?

3. What must public agencies do to meet the requirements at §§ 300.344(a)(2) and 300.346(d) regarding the participation of a “regular education teacher” in the development, review, and revision of the IEPs, for children age 3 through 5 who are receiving special education and related services?

4. Must the measurable annual goals in a child’s IEP address all areas of the general curriculum, or only those areas in which the child’s involvement and progress are affected by the child’s disability?

II. INVOLVEMENT OF PARENTS AND STUDENTS

5. What is the role of the parents, including surrogate parents, in decisions regarding the educational program of their children?

6. What are the Part B requirements regarding the participation of a student (child) with a disability in an IEP meeting?

7. Must the public agency inform the parents of who will be at the IEP meeting?

8. Do parents have the right to a copy of their child’s IEP?

9. What is a public agency’s responsibility if it is not possible to reach consensus on what services should be included in a child’s IEP?

10. Does Part B require that public agencies inform parents regarding the educational progress of their children with disabilities?
III. PREPARING STUDENTS WITH DISABILITIES FOR EMPLOYMENT AND OTHER POST-SCHOOL EXPERIENCES

11. What must the IEP team do to meet the requirements that the IEP include a statement of “transition service needs” beginning at age 14 (300.347(b)(1), and a statement of “needed transition services” beginning at age 16 (300.347(b)(2)?

12. Must the IEP for each student with a disability, beginning no later than age 16, include all “needed transition services,” as identified by the IEP team and consistent with the definition at §300.29, even if an agency other than the public agency will provide those services? What is the public agency’s responsibility if another agency fails to provide agreed-upon transition services?

13. Under what circumstances must a public agency invite representatives from other agencies to an IEP meeting at which a child’s need for transition services will be considered?

IV. OTHER QUESTIONS REGARDING IMPLEMENTATION OF IDEA

14. For a child with a disability receiving special education for the first time, when must an IEP be developed—before placement or after placement?

15. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

16. For a placed out of State by an educational or non-educational State or local agency, is the placing or receiving State responsible for the child’s IEP?

17. If a disabled child has been receiving special education from one public agency and transfers to another public agency in the same State, must the new public agency develop an IEP before the child can be placed in a special education program?

18. What timelines apply to the development and implementation of an initial IEP for a child with a disability?

19. Must a public agency hold separate meetings to determine a child’s eligibility for special education and related services, develop the child’s IEP, and determine the child’s placement, or may the agency meet all of these requirements in a single meeting?

20. How frequently must a public agency conduct meetings to review, and if appropriate revise, the IEP for each child with a disability?

21. May IEP meetings be audio or videotape-recorded?

22. Who can serve as the representative of the public agency at an IEP meeting?

23. For a child with a disability being considered for initial placement in special education, which teacher or teachers should attend the IEP meeting?

24. What is the role of a regular education teacher in the development, review, and revision of the IEP for a child who is, or may be, participating in the regular education environment?

25. If a child with a disability attends several regular classes, must all of the child’s regular education teachers be members of the child’s IEP team?

26. How should a public agency determine which regular education teacher and special education teacher will members of the IEP team for a particular child with a disability?

27. For a child whose primary disability is a speech impairment, may a public agency meet its responsibility under §300.344(a)(3) to ensure that the IEP team includes “at least one special education teacher, or, if appropriate, at least one special education provider of the child” by including a speech-language pathologist on the IEP team?

28. Do public agencies and parents have the option of having any individual of their choice attend a child’s IEP meeting as participants on their child’s IEP team?

29. Can parents or public agencies bring their attorneys to IEP meetings, and, if so under what circumstances? Are attorney’s fees available for parents’ attorneys if the parents are prevailing parties in actions or proceedings brought under Part B?

30. Must related services personnel attend IEP meetings?

31. Must the public agency ensure that all services specified in a child’s IEP are provided?

32. Is it permissible for an agency to have the IEP completed before the IEP meeting begins?

33. Must a public agency include transportation in a child’s IEP as a related service?

34. Must a public agency provide related services that are required to assist a child with a disability to benefit from special education, whether or not those services are included in the list of related services in §300.24?

35. Must the IEP specify the amount of services or may it simply list the services to be provided?

36. Under what circumstances is a public agency required to permit a child with a disability to use a school-purchased assistive technology device in the child’s home or in another setting?

37. Can the IEP team also function as the group making the placement decision for a child with a disability?

38. If a child’s IEP includes behavioral strategies to address a particular behavior, can a child ever be suspended for engaging in that behavior?
30. A child’s behavior in the regular classroom, even with appropriate interventions, would significantly impair the learning of others, can the group that makes the placement in the regular classroom inappropriate for that child? 

40. May school personnel during a school year implement more than one short-term removal of a child with disabilities from his or her classroom or school for misconduct? (Authority: Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1401, et seq.), unless otherwise noted.)

INDIVIDUALIZED EDUCATION PROGRAMS (IEPs) AND OTHER SELECTED IMPLEMENTATION ISSUES

Interpretation of IEP and Other selected Requirements under Part B of the Individuals with Disabilities Education Act (IDEA; Part B)

INTRODUCTION

The IEP requirements under Part B of the IDEA emphasize the importance of three core concepts: (1) the involvement and progress of each child with a disability in the general curriculum including addressing the unique needs that arise out of the child’s disability; (2) the involvement of parents and students, together with regular and special education personnel, in making individual decisions to support each student’s (child’s) educational success, and (3) the preparation of students with disabilities for employment and other post-school activities.

The first three sections of this Appendix (I-III) provide guidance regarding the IEP requirements as they relate to the three core concepts described above. Section IV addresses other questions regarding the development and content of IEPs, including questions about the timelines and responsibility for developing and implementing IEPs, participation in IEP meetings, and IEP content. Section IV also addresses questions on other selected requirements under IDEA.

I. INVOLVEMENT AND PROGRESS OF EACH CHILD WITH A DISABILITY IN THE GENERAL CURRICULUM

In enacting the IDEA Amendments of 1997, the Congress found that research, demonstration, and practice over the past 20 years in special education and related disciplines have demonstrated that an effective educational system now and in the future must maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals. (Section 651(a)(6)(A) of the Act.)

Accordingly, the evaluation and IEP provisions of Part B place great emphasis on the involvement and progress of children with disabilities in the general curriculum. (The term “general curriculum,” as used in these regulations, including this Appendix, refers to the curriculum that is used with nondisabled children.)

While the Act and regulations recognize that IEP teams must make individualized decisions about the special education and related services, and supplementary aids and services, provided to each child with a disability, they are driven by IDEA’s strong preference that, to the maximum extent appropriate, children with disabilities be educated in regular classes with their nondisabled peers with appropriate supplementary aids and services.

In many cases, children with disabilities will need appropriate supports in order to successfully progress in the general curriculum, participate in State and district-wide assessment programs, achieve the measurable goals in their IEPs, and be educated together with their nondisabled peers. Accordingly, the Act requires the IEP team to determine, and the public agency to provide, the accommodations, modifications, supports, and supplementary aids and services, needed by each child with a disability to successfully be involved in and progress in the general curriculum achieve the goals of the IEP, and successfully demonstrate his or her competencies in State and district-wide assessments.

1. What are the major Part B IEP requirements that govern the involvement and progress of children with disabilities in the general curriculum?

Present Levels of Educational Performance

Section 300.347(a)(1) requires that the IEP for each child with a disability include “**a statement of the child’s present levels of educational performance, including—**(i) how the child’s disability affects the child’s involvement and progress in the general curriculum; or (ii) for preschool children, as appropriate, how the child’s disability affects the child’s participation in activities.” (Appropriate activities” in this context refers to age-relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved.)

The IEP team’s determination of how each child’s disability affects the child’s involvement and progress in the general curriculum is a primary consideration in the development of the child’s IEP. In assessing children with disabilities, school districts may use a variety of assessment techniques to determine the extent to which these children can
be involved and progress in the general curriculum, such as criterion-referenced tests, standard achievement tests, diagnostic tests, other tests, or any combination of the above. The purpose of using these assessments is to determine the child's present levels of educational performance and areas of need arising from the child's disability so that appropriate and progress in the general curriculum and any needed adaptations or modifications to that curriculum can be identified.

Measurable Annual Goals, including Benchmarks or Short-term Objectives

Measurable annual goals, including benchmarks or short-term objectives, are critical to the strategic planning process used to develop and implement the IEP for each child with a disability. Once the IEP team has developed measurable annual goals for a child, the team (1) can develop strategies that will be most effective in realizing those goals and (2) must develop either measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) that will enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the student's instructional needs.

The strong emphasis in Part B on linking the educational program of children with disabilities to the general curriculum is reflected in §300.347(a)(2), which requires that the IEP include:

A statement of measurable annual goals, including benchmarks or short-term objectives, related to—(i) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and (ii) meeting each of the child's other educational needs that result from the child's disability.

As noted above, each annual goal must include either short-term objectives or benchmarks. The purpose of both is to enable a child’s teacher(s), parents, and others involved in developing and implementing the child’s IEP, to gauge, at intermediate times during the year, how well the child is progressing toward achievement of the annual goal. IEP teams may continue to develop short-term instructional objectives, that generally break the skills described in the annual goal down into discrete components. The revised statute and regulations also provide that, as an alternative, IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child’s progress toward achieving the annual goals. An IEP team may use either short-term objectives or benchmarks or a combination of the two depending on the nature of the annual goals and the needs of the child.

Special Education and Related Services and Supplementary Aids and Services

The requirements regarding services provided to address a child’s present levels of educational performance and to make progress toward the identified goals reinforce the emphasis on progress in the general curriculum, as well as maximizing the extent to which children with disabilities are educated with nondisabled children. Section 300.347(a)(3) requires that the IEP include:

A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—(i) to advance appropriately toward attaining the annual goals; (ii) to be involved and progress in the general curriculum * * * and to participate in extracurricular and other nonacademic activities; and (iii) to be educated and participate with other children with disabilities and nondisabled children in [extracurricular and other nonacademic activities] * * * [Italics added.]

Extent to Which Child Will Participate With Nondisabled Children

Section 300.347(a)(4) requires that each child's IEP include “An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in [extracurricular and other nonacademic] activities * * * This is consistent with the least restrictive environment (LRE) provisions at §§300.550-300.553, which include requirements that:

(1) each child with a disability be educated with nondisabled children to the maximum extent appropriate (§300.550(b)(1));
(2) each child with a disability be removed from the regular educational environment only when the nature or severity of the child’s disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (§300.550(b)(1)); and
(3) to the maximum extent appropriate to the child’s needs, each child with a disability participates with nondisabled children in nonacademic and extracurricular services and activities (§300.553).

All services and educational placements under Part B must be individually determined in light of each child’s unique abilities and needs, to reasonably promote the child’s educational success. Placing children with disabilities in this manner should enable each disabled child to meet high expectations in the future.
educational environment if the child’s education can be achieved satisfactorily in regular classes with the use of supplementary aids and services, Part B’s LRE principle is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully. Even though IDEA does not mandate regular class placement for every disabled student, IDEA presumes that the first placement option considered for each disabled student by the student’s placement team, which must include the parent, is the school the child would attend if not disabled, with appropriate supplementary aids and services to facilitate such placement. Thus, before a disabled child can be placed outside of the regular educational environment, the full range of supplementary aids and services that if provided would facilitate the student’s placement in the regular classroom setting must be considered. Following that consideration, if a determination is made that particular disabled student cannot be educated satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, that student then could be placed in a setting other than the regular classroom. Later, if it becomes apparent that the child’s IEP can be carried out in a less restrictive setting, with the provision of appropriate supplementary aids and services, that student then could be placed in a setting other than the regular classroom. Further, with the emphasis on involvement and progress in the general curriculum added by the IDEA Amendments of 1997, regular education teachers have an increasingly critical role (together with special education and related services personnel) in implementing the program of FAPE for most children with disabilities, as described in their IEPs.

Accordingly, the IDEA Amendments of 1997 added a requirement that each child’s IEP team must include at least one regular education teacher of the child, if the child is, or may be, participating in the regular educational environment (see §300.34(a)(2)). (See also §§300.34(e) on the role of a regular education teacher in the development, review and revision of IEPs.)

2. Must a child’s IEP address his or her involvement in the general curriculum, regardless of the nature and severity of the child’s disability and the setting in which the child is educated?

Yes. The IEP for each child with a disability (including children who are educated in separate classrooms or schools) must address how the child will be involved and progress in the general curriculum. However, the Part B regulations recognize that some children have other educational needs resulting from their disability that also must be met, even though those needs are not directly linked to participation in the general curriculum.

Accordingly, §300.34(a)(1)(2) requires that each child’s IEP include:

A statement of measurable annual goals, including benchmarks or short-term objectives related to—(i) Meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum; and (ii) meeting each of the child’s other educational needs that result from the child’s disability. [Italics added.]

Thus, the IEP team for each child with a disability must make an individualized determination regarding (1) how the child will...
be involved and progress in the general curriculum and what needs that result from the child's disability must be met to facilitate that participation; (2) whether the child has any other educational needs resulting from his or her disability that also must be met; and (3) what special education and other services and supports must be described in the child's IEP to address both sets of needs (consistent with §300.347(a)). For example, if the IEP team determines that in order for a child who is deaf to participate in the general curriculum he or she needs sign language and materials which reflect his or her language development, those needs (relating to the child's participation in the general curriculum) must be addressed in the child's IEP. In addition, if the team determines that the child also needs to expand his or her vocabulary in sign language that service must also be addressed in the applicable components of the child's IEP. The IEP team may also wish to consider whether there is a need for members of the child's family to receive training in sign language in order for the child to receive FAPE.

3. What must public agencies do to meet the requirements at §§300.344(a)(2) and 300.346(d) regarding the participation of a "regular education teacher" in the development, review, and revision of IEPs, for children aged 3 through 5 who are receiving preschool education services to nondisabled children, then the requirements of §§300.344(a)(2) and 300.346(d) apply as they do in the case of older children with disabilities. If a public agency makes kindergarten available to nondisabled children, then a regular education kindergarten teacher could appropriately be the regular education teacher who would be a member of the IEP team, and, as appropriate, participate in IEP meetings, for a kindergarten-aged child who is, or may be, participating in the regular education environment.

If a public agency does not provide regular preschool education services to nondisabled children, the agency could designate an individual who, under State standards, is qualified to serve nondisabled children of the same age.

4. Must the measurable annual goals in a child's IEP address all areas of the general curriculum, or only those areas in which the child's involvement and progress are affected by the child's disability?

Section 300.347(a)(2) requires that each child's IEP include "A statement of measurable annual goals, including benchmarks or short-term objectives, related to—(1) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum * * *; and (1) meeting each of the child's other educational needs that result from the child's disability. . . . " (Italics added).

Thus, a public agency is not required to include in an IEP annual goals that relate to areas of the general curriculum in which the child's disability does not affect the child's ability to be involved in and progress in the general curriculum. If a child with a disability needs only modifications or accommodations in order to progress in an area of the general curriculum, the IEP does not need to include a goal for that area; however, the IEP would need to specify those modifications or accommodations.

Public agencies often require all children, including children with disabilities, to demonstrate mastery in a given area of the general curriculum before allowing them to progress to the next level or grade in that area. Thus, in order to ensure that each child with a disability can effectively demonstrate competencies in an applicable area of the general curriculum, it is important for the IEP team to consider the accommodations and modifications that the child needs to assist him or her in demonstrating progress in that area.

II. INVOLVEMENT OF PARENTS AND STUDENTS

The Congressional Committee Reports on the IDEA Amendments of 1997 express the view that the Amendments provide an opportunity for strengthening the role of parents, and emphasize that one of the purposes of the Amendments is to expand opportunities for parents and key public agency staff (e.g., special education, related services, regular education, and early intervention service providers, and other personnel) to work in new partnerships at both the State and local levels (H. Rep. 105–95, p. 82 (1997); S. Rep. No. 105–17, p. 4 and 5 (1997)). Accordingly, the IDEA Amendments of 1997 require that parents have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (§300.501(a)(2)). Thus, parents must now be part of: (1) the group that determines what additional data are needed as part of an evaluation of their child (§300.533(a)(1)); (2) the team that determines their child's eligibility (§300.534(a)(1)); and (3) the group that makes decisions on the educational placement of their child (§300.501(c)).

In addition, the concerns of parents and the information that they provide regarding their children must be considered in developing and reviewing their children's IEPs (§§300.345(o)(3) and 300.346(a)(1) and (b)); and the requirements for keeping parents informed about the educational progress of their children, particularly as it relates to their progress in the general curriculum, have been strengthened (§300.347(a)(7)).
The IDEA Amendments of 1997 also contain provisions that greatly strengthen the involvement of students with disabilities in decisions regarding their own futures, to facilitate movement from school to post-school activities. For example, those amendments (1) retained, essentially verbatim, the “transition services” requirements from the IDEA Amendments of 1990 (which provide that a statement of needed transition services must be in the IEP of each student with a disability, beginning no later than age 16); and (2) significantly expanded those provisions by adding a new annual requirement for the IEP to include “transition planning” activities for students beginning at age 14. (See section IV of this appendix for a description of the transition services requirements and definition.)

With respect to student involvement in decisions regarding transition services, §300.344(b) provides that (1) “the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of (i) The student’s transition services needs under §§300.347(b)(1); or (ii) The needed transition services for the student under §§300.347(b)(2); or (iii) Both;” and (2) “If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student’s preferences and interests are considered.” (§300.344(b)(2)).

The IDEA Amendments of 1997 also give States the authority to elect to transfer the rights accorded to parents under Part B to each student with a disability upon reaching the age of majority under State law (if the student has not been determined incompetent under State law) (§300.517). (Part B requires that if the rights transfer to the student, the public agency must provide any notice required under Part B to both the student and the parents.) If the State elects to provide for the transfer of rights from the parents to the student at the age of majority, the IEP must, beginning at least one year before a student reaches the age of majority under State law, include a statement that the student has been informed of any rights that will transfer to him or her upon reaching the age of majority. (§300.347(c)).

The IDEA Amendments of 1997 also permit, but do not require, States to establish a procedure for appointing the parent, or another appropriate individual if the parent is not available, to represent the educational interests of a student with a disability who has reached the age of majority under State law and has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to his or her educational program.

5. What is the role of the parents, including surrogate parents, in decisions regarding the educational program of their children?

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child’s need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

As previously noted in the introduction to section II of this Appendix, Part B specifically provides that parents of children with disabilities—

- Have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of FAPE to the child (including IEP meetings) (§§300.301(b), 300.344(a)(1), and 300.517;
- Be part of the groups that determine what additional data are needed as part of an evaluation of their child (§§300.535(a)(1)), and determine the child’s eligibility (§300.534(a)(1)) and educational placement (§300.501(c));
- Have their concerns and the information that they provide regarding their child considered in developing and reviewing their child’s IEPs (§§300.343(c)(1)(i) and 300.346(a)(1)(i) and (b)); and
- Be regularly informed (by such means as periodic report cards), as specified in their child’s IEP, at least as often as parents are informed of their nondisabled children’s progress, of their child’s progress toward the annual goals in the IEP and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year (§300.347(a)(7)).

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process when no parent (as defined at §300.20) is known, the agency, after reasonable efforts, cannot locate the child’s parents, or the child is a ward of the State under the laws of the State. A surrogate parent has all of the rights and responsibilities of a parent under Part B (§300.315).

6. What are the Part B requirements regarding the participation of a student (child) with a disability in an IEP meeting?

If a purpose of an IEP meeting for a student with a disability will be the consideration of the student’s transition services needs or needed transition services under §§300.347(b)(1) or (2), or both, the public agency must invite the student and, as part of
the notification to the parents of the IEP meeting, inform the parents that the agency will invite the student to the IEP meeting. If the student does not attend, the public agency must take other steps to ensure that the student’s preferences and interests are considered. (See §300.344(b)).

Section §300.517 permits, but does not require, States to transfer procedural rights under Part B from the parents to students with disabilities who reach the age of majority under State law, if they have not been determined to be incompetent under State law. If those rights are to be transferred from the parents to the student, the public agency would be required to ensure that the student has the right to participate in IEP meetings set forth for parents in §300.345. However, at the discretion of the student or the public agency, the parents also could attend the IEP meeting as “**individuals who have knowledge or special expertise regarding the child **such as parents and related services personnel as appropriate to be members of the IEP team.**” (§300.344(a)(7)). Generally, a child with a disability should attend the IEP meeting if the parent decides that it is appropriate for the child to do so. If possible, the agency and parents should discuss the appropriateness of the child’s participation before a decision is made, in order to help the parents determine whether or not the child’s attendance would be (1) helpful in developing the IEP or (2) directly beneficial to the child or both. The agency should inform the parents before each IEP meeting—as part of notification under §300.345(a)(1)—that they may invite their child to participate.

7. Must the public agency inform the parents of who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency **“must indicate the purpose, time, and location of the meeting, and who will be in attendance.”** (§300.345(b), italics added.) In addition, if a purpose of the IEP meeting will be the consideration of a student’s transition services needs or needed transition services under §300.347(b)(1) or (2) or both, the notice must also inform the parents that the agency is inviting the student, and identify any other agency that will be invited to send a representative.

The public agency also must inform the parents of the right of the parents and the agency to invite other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate to be members of the IEP team. (§300.345(b)(1)(ii).)

It also may be appropriate for the agency to ask the parents if there are any individuals the agency of any individuals the parents will be bringing to the meeting. Parents are encouraged to let the agency know whom they intend to bring. Such cooperation can facilitate arrangements for the meeting, and help ensure a productive, child-centered meeting.

8. Do parents have the right to a copy of their child’s IEP?

Yes. Section 300.345(f) states that the public agency shall give the parent a copy of the IEP at no cost to the parent.

9. What is a public agency’s responsibility if it is not possible to reach consensus on what services should be included in a child’s IEP?

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the (1) child’s needs and appropriate goals; (2) extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and (3) services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents’ concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs (§§300.345(c)(1) and 300.346(a)(1) and (b)).

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority vote.” If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency’s proposals or refusals, or both, regarding the child’s educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

**Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resort to a due process hearing. However, mediation or other informal procedures may not be used to deny or delay a parent’s right to a due process hearing, or to deny any other rights afforded under Part B.**

10. Does Part B require that public agencies inform parents regarding the educational progress of their children with disabilities?

Yes. The Part B statute and regulations include a number of provisions to help ensure that parents are involved in decisions regarding, and are informed about, their child’s educational progress, including the child’s progress in the general curriculum. First, the parents will be informed regarding their child’s present levels of educational performance through the development of the
IEP. Section 300.347(a)(1) requires that each IEP include:

* * * A statement of the child’s present levels of educational performance, including the unusual disability affectivity the child’s involvement and progress in the general curriculum; or (ii) for preschool children, as appropriate, how the disability affects to, or by, the participation in appropriate activities * * *

Further, §300.347(a)(7) sets forth new requirements for regularly informing parents about their child’s educational progress, as regularly as parents of nondisabled children are informed of their child’s progress. That section requires that the IEP include:

A statement of—(i) How the child’s progress toward the annual goals * * * will be measured; and (ii) how the child’s parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children’s progress, of—(A) the child’s progress toward the annual goals; and (B) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

One method that public agencies could use in meeting this requirement would be to provide periodic report cards to the parents of students with disabilities that include both (1) the grading information provided for all children in the agency at the same intervals; and (2) the specific information required by §300.347(a)(7)(i)(A) and (B).

Finally, the parents, as part of the IEP team, will participate at least once every 12 months in a review of their child’s educational progress. Section 300.343(c) requires that a public agency initiate and conduct a meeting, at which the IEP team:

* * *(1) Reviews the child’s IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and (2) revises the IEP as appropriate to address—(i) any lack of expected progress toward the annual goals * * * and in the general curriculum, if appropriate; (ii) The results of any reevaluation * * *; (iii) Information about the child provided to, or by, the parents * * *; (iv) The child’s anticipated needs; or (V) Other matters.

III. PREPARING STUDENTS WITH DISABILITIES FOR EMPLOYMENT AND OTHER POST-SCHOOL EXPERIENCES

One of the primary purposes of the IDEA is to * * * ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living ** * *" (§300.1(a)). Section 701 of the Rehabilitation Act of 1973 describes the philosophy of independent living as including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and participation of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society. Because many students receiving services under IDEA will also receive services under the Rehabilitation Act, it is important, in planning for their future, to consider the impact of both statutes.

Similarly, one of the key purposes of the IDEA Amendments of 1997 was to "promote improved educational results for children with disabilities through early intervention, preschool, and educational experiences that prepare them for later educational challenges and employment." (H. Rep. No. 105–95, p. 82 (1997); S. Rep. No. 105–17, p. 4 (1997)).

Thus, throughout their preschool, elementary, and secondary education, the IEPs for children with disabilities must, to the extent appropriate for each individual child, focus on providing instruction and experiences that enable the child to prepare himself or herself for later educational experiences and for post-school activities, including formal education, if appropriate, employment, and independent living. Many students with disabilities will obtain services through State vocational rehabilitation programs to ensure that their educational goals are effectively implemented in post-school activities. Services available through rehabilitation programs are consistent with the underlying purpose of IDEA.

Although preparation for adult life is a key component of FAPE throughout the educational experiences of students with disabilities, Part B sets forth specific requirements related to transition planning and transition services that must be implemented no later than ages 14 and 16, respectively, and which require an intensified focus on that preparation as these students begin and prepare to complete their secondary education.

11. What must the IEP team do to meet the requirements that the IEP include "a statement of * * * transition service needs" beginning at age 14 (§300.347(b)(1)(i)) , and a statement of needed transition services" no later than age 16 (§300.347(b)(2)?

Section 300.347(b)(1) requires that, beginning no later than age 14, each student’s IEP include specific transition-related content, and, beginning no later than age 16, a statement of needed transition services:

Beginning at age 14 and younger if appropriate, and updated annually, each student’s IEP must include:

* * * a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses
or a vocational education program)" (§300.347(b)(1)(1)). Beginning at age 16 (or younger, if determined appropriate by the IEP team), each student’s IEP must include:

*** beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages." (§300.347(b)(2)).

The Committee Reports on the IDEA Amendments of 1997 make clear that the requirement added to the statute in 1997 that beginning at age 14, and updated annually, the IEP include “a statement of the transition service needs” is *** designed to augment, and not replace, the separate pre-existing requirement that the IEP include, *** beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services * * " (H. Rep. No. 105–95, p. 102 (1997); S. Rep. No. 105–17, p. 22 (1997)). As clarified by the Reports, “The purpose of [the requirement in §300.347(b)(1)(i)] is to focus attention on how the child’s educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school.” (H. Rep. No. 105–95, pp. 101–102 (1997); S. Rep. No. 105–17, p. 22 (1997)).

The Reports further explain that “[F]or example, for a child whose transition goal is a job, a transition service could be teaching the child how to get to the job site on public transportation.” (H. Rep. No. 105–95, p. 102 (1997); S. Rep. No. 105–17, p. 22 (1997)).

Thus, beginning at age 14, the IEP team, in determining appropriate measurable annual goals (including benchmarks or short-term objectives) and services for a student, must determine what instruction and educational experiences will assist the student to prepare for transition from secondary education to post-secondary life.

The statement of transition service needs should relate directly to the student’s goals beyond secondary education, and show how planned studies are linked to these goals. For example, a student interested in exploring a career in computer science may have a statement of transition services needs connected to technology course work, while another student’s statement of transition services needs could describe why public bus transportation training is important for future independence in the community.

Although the focus of the transition planning process may shift as the student approaches graduation, the IEP team must discuss specific areas beginning at least at the age of 14 years and review these areas annually. As noted in the Committee Reports, a disproportionate number of students with disabilities drop out of school before they complete their secondary education: “Too many students with disabilities are failing courses and dropping out of school. Almost twice as many students with disabilities drop out as compared to students without disabilities.” (H. Rep. No. 105–95, p. 85 (1997); S. Rep. No. 105–17, p. 5 (1997)).

To help reduce the number of students with disabilities that drop out, it is important that the IEP team work with each student with a disability and the student’s family to select courses that study and are meaningful to the student’s future and motivate the student to complete his or her education.

This requirement is distinct from the requirement, at §300.347(b)(2), that the IEP include:

*** beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

The term “transition services” is defined at §300.29 to mean:

*** a coordinated set of activities for a student with a disability that—(1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual student’s needs, taking into account the student’s preferences and interests; and (3) Includes—(i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

Thus, while §300.347(b)(1) requires that the IEP team begin by age 14 to address the student’s need for instruction that will assist the student to prepare for transition, the IEP must include by age 16 a statement of needed transition services under §300.347(b)(2) that includes a “coordinated set of activities * * *, designed within an outcome-oriented process, that promotes movement from school to post-school activities * * *.” (§300.29) Section 300.344(b)(3) further requires that, in implementing §300.347(b)(1), public agencies (in addition to required participants for all IEP meetings), must also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. Thus, §300.347(b)(2) requires a broader focus on coordination of services across, and linkages between, agencies beyond the SEA and LEA.

12. Must the IEP for each student with a disability, beginning no later than age 16, include all “needed transition services,” as identified by the IEP team and consistent
with the definition at §300.29, even if an agency other than the public agency will provide those services? What is the public agency’s responsibility if another agency fails to provide agreed-upon transition services?

Section 300.347(b)(2) requires that the IEP for each child with a disability, beginning no later than age 16, or younger if determined appropriate by the IEP team, include all “needed transition services,” as identified by the IEP team and consistent with the definition at §300.29, regardless of whether the public agency or some other agency will provide those services. Section 300.347(b)(2) specifically requires that the statement of needed transition services include, “* * * if appropriate, a statement of the interagency responsibilities or any needed linkages.”

Further, the IDEA Amendments of 1997 also permit an LEA to use up to five percent of the Part B funds it receives in any fiscal year in combination with other amounts, which must include amounts other than education funds, to develop and implement a coordinated services system. These funds may be used for activities such as: (1) linking IFSPs under Part C and Individualized Family Service Plans (IFSPs) under Part C, with Individualized Service Plans developed under multiple Federal and State programs, such as Title I of the Rehabilitation Act; and (2) developing and implementing interagency financing strategies for the provision of services, including transition services under Part B.

The need to include, as part of a student’s IEP, transition services to be provided by agencies other than the public agency is contemplated by §300.348(a), which specifies what the public agency must do if another agency participating in the development of the statement of needed transition services fails to provide a needed transition service that it had agreed to provide.

If an agreed-upon service by another agency is not provided, the public agency responsible for the student’s education must implement alternative strategies to meet the student’s needs. This requires that the public agency provide the services, or convene an IEP meeting as soon as possible to identify alternative strategies to meet the transition services objectives, and to revise the IEP accordingly.

Alternative strategies might include the identification of another funding source, referral to another agency, the public agency’s identification of other district-wide or community resources that it can use to meet the student’s identified needs appropriately, or a combination of these strategies. As emphasized by §300.348(b), however:

Nothing in [Part B] relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

However, the fact that an agency other than the public agency does not fulfill its responsibility does not relieve the public agency of its responsibility to ensure that FAPE is available to each student with a disability. (Section 300.347(b)(2) specifically requires that if an agency other than the LEA fails to provide or pay for a special education or related service (which could include a transition service), the LEA must, without delay, provide or pay for the service, and may then claim reimbursement from the agency that failed to provide or pay for the service.)

13. Under what circumstances must a public agency invite representatives from other agencies to an IEP meeting at which a child’s need for transition services will be considered?

Section 300.344 requires that, “In implementing the requirements of §300.347(b)(1)(ii) requiring a statement of needed transition services, the public agency shall also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.” To meet this requirement, the public agency must identify all agencies that are “likely to be responsible for providing or paying for transition services” for each student addressed by §300.347(b)(1), and must invite each of those agencies to the IEP meeting; and if an agency invited to send a representative to a meeting does not do so, the public agency must take other steps to obtain the participation of that agency in the planning of any transition services.

If, during the course of an IEP meeting, the team identifies additional agencies that are “likely to be responsible for providing or paying for transition services” for the student, the public agency must determine how it will meet the requirements of §300.344.

IV. OTHER QUESTIONS REGARDING THE DEVELOPMENT AND CONTENT OF IEPs

14. For a child with a disability receiving special education for the first time, when must an IEP be developed—before or after the child begins to receive special education and related services?

Section 300.342(b)(1) requires that an IEP be “in effect before special education and related services are provided to an eligible child” *(italics added).*

The appropriate placement for a particular child with a disability cannot be determined until after decisions have been made about the child’s needs and the services that the public agency will provide to meet those needs. These decisions must be made at the IEP meeting, and it would not be permissible first to place the child and then develop the IEP. Therefore, the IEP must be developed.
before placement. (Further, the child's placement must be based, among other factors, on the child's IEP.)

This requirement does not preclude temporarily assigning an eligible child with a disability in a program as part of the evaluation process—before the IEP is finalized—to assist a public agency in determining the appropriate placement for the child. However, it is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an interim IEP for the child that sets out the specific conditions and timelines for the trial placement. (See paragraph c, following.)
b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.
c. Set a specific timeline (e.g., 30 days) for completing the evaluation, finalizing the IEP, and determining the appropriate placement for the child.
d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

15. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

The answer as to which public agency has direct responsibility for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA will vary from State to State, depending upon State law, policy, or practice. The SEA is ultimately responsible for ensuring that all Part B requirements, including the IEP requirements, are met for eligible children within the State, including those children served by a public agency other than an LEA. Thus, the SEA must ensure that every eligible child with a disability in the State has FAPE available, regardless of which State or local agency is responsible for educating the child. (The only exception to this responsibility is that the SEA is not responsible for ensuring that FAPE is made available to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons, if the State has assigned that responsibility to a public agency other than the SEA. (See §300.600(d)).)

Although the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), the SEA must ensure that no eligible child with a disability is denied FAPE due to jurisdictional disputes among agencies. When an LEA is responsible for the education of a child with a disability, the LEA remains responsible for developing the child's IEP, regardless of the public or private school setting into which it places the child.

16. For a child placed out of State by an educational or non-educational State or local agency, is the placing or receiving State responsible for the child's IEP?

Regardless of the reason for the placement, the placing State is responsible for ensuring that the child's IEP is developed and that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, the SEA in the placing State is ultimately responsible for ensuring that the child has FAPE available.

17. If a disabled child has been receiving special education from one public agency and transfers to another public agency in the same State, must the new public agency develop an IEP before the child can be placed in a special education program?

If a child with a disability moves from one public agency to another in the same State, the State and its public agencies have an ongoing responsibility to ensure that FAPE is made available to that child. This means that if a child moves to another public agency, the new agency is responsible for ensuring that the child has available special education and related services in conformity with an IEP.

The new public agency must ensure that the child has an IEP in effect before the agency can provide special education and related services. The new public agency may meet this responsibility by either adopting the IEP the former public agency developed for the child or by developing a new IEP for the child. (The new public agency is strongly encouraged to continue implementing the IEP developed by the former public agency, if appropriate, especially if the parents believe their child was progressing appropriately under that IEP.) Before the child's IEP is finalized, the new public agency may provide interim services agreed to by both the parents and the new public agency. If the parents and the new public agency are unable to agree on an interim IEP and placement, the new public agency must implement the old IEP to the extent possible until a new IEP is developed and implemented.

In general, while the new public agency must conduct an IEP meeting, it would not be necessary if (1) a copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new public agency determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the new public agency or the parent believes that it is not appropriate, the new public agency must develop a new IEP.
through appropriate procedures within a short time after the child enrolls in the new public agency (normally, within one week).

18. What timelines apply to the development and implementation of an IEP for a child with a disability?

Section 300.343(b) requires each public agency to ensure that within a reasonable period of time following the agency’s receipt of parent consent to an initial evaluation of a child, the child is evaluated and, if determined eligible, special education and related services are made available to the child in accordance with an IEP. The section further requires the agency to conduct a meeting to develop an IEP for the child within 30 days of determining that the child needs special education and related services.

Section 300.342(b)(2) provides that an IEP must be implemented as soon as possible following the meeting in which the IEP is developed.

19. Must a public agency hold separate meetings to determine a child’s eligibility for special education and related services, develop the child’s IEP, and determine the child’s placement, or may the agency meet all of these requirements in a single meeting?

A public agency may, after a child is determined by “a group of qualified professionals and the parent” (see §300.533(a)(1)) to be a child with a disability, continue in the same meeting to develop an IEP for the child and then to determine the child’s placement. However, the public agency must ensure that it meets: (1) the requirements of §300.535 regarding eligibility decisions; (2) all of the Part B requirements regarding meetings to develop IEPs (including providing appropriate notification to the parents, consistent with the requirements of §§300.345, 300.503, and 300.504, and ensuring that all the required team members participate in the development of the IEP, consistent with the requirements of §300.344) and (3) ensuring that the placement is made by the required individuals, including the parent, as required by §§300.552 and 300.501(c).

20. How frequently must a public agency conduct meetings to review, and, if appropriate, revise the IEP for each child with a disability?

A public agency must initiate and conduct meetings periodically, but at least once every twelve months, to review each child’s IEP, in order to determine whether the annual goals for the child are being achieved, and to revise the IEP, as appropriate, to address: (a) Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate; (b) the results of any reevaluation; (c) information about the child provided to, or by, the parents; (d) the child’s anticipated needs; or (e) other matters (§300.343(c)).

A public agency also must ensure that an IEP is in effect for each child at the beginning of each school year (§300.342(a)). It may conduct IEP meetings at any time during the year. However, if the agency conducts the IEP meeting prior to the beginning of the next school year, it must ensure that the IEP contains the necessary special education and related services and supplementary aids and services to ensure that the student’s IEP can be appropriately implemented during the next school year. Otherwise, it would be necessary for the public agency to conduct another IEP meeting.

Although the public agency is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability have the right to request an IEP meeting at any time. For example, if the parents believe that the child is not progressing satisfactorily or that there is a problem with the child’s current IEP, it would be appropriate for the parents to request an IEP meeting.

If a child’s teacher feels that the child’s IEP or placement is not appropriate for the child, the teacher should follow agency procedures with respect to: (1) calling or meeting with the parents or (2) requesting the agency to hold another IEP meeting to review the child’s IEP.

The legislative history of Public Law 94–142 makes it clear that there should be as many meetings a year as any one child may need (121 Cong. Rec. 320428–29 (Nov. 19, 1975) (remarks of Senator Stafford)). Public agencies should grant any reasonable parent request for an IEP meeting. For example, if the parents question the adequacy of services that are provided while their child is suspended for short periods of time, it would be appropriate to convene an IEP meeting.

In general, if either a parent or a public agency believes that a required component of the student’s IEP should be changed, the public agency must conduct an IEP meeting if it believes that a change in the IEP may be necessary to ensure the provision of FAPE.

If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the child or the educational placement of the child, and the agency refuses to convene an IEP meeting to determine whether such a change is needed, the agency must provide written notice to the parents of the refusal, including an explanation of why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student.

Under §300.507(a), the parents or agency may initiate a due process hearing at any time regarding any proposal or refusal regarding the identification, evaluation, or educational placement of the child, or the
 provision of FAPE to the child, and the public agency must inform parents about the availability of mediation.

21. May IEP meetings be audio- or videotape-recorded?

Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, an SEA or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings.

If a public agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B. An SEA or school district that adopts a rule regulating the tape recording of IEP meetings also should ensure that it is uniformly applied.

Any recording of an IEP meeting that is maintained by the public agency is an "education record," within the meaning of the Family Educational Rights and Privacy Act ("FERPA"); 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR part 99) and part B (§§300.560–300.575).

Parents wishing to use audio or video recording devices at IEP meetings should consult State or local policies for further guidance.

22. Who can serve as the representative of the public agency at an IEP meeting?

The IEP team must include a representative of the public agency who: (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (b) is knowledgeable about the general curriculum; and (c) is knowledgeable about the availability of resources of the public agency (§300.346(a)(4)).

Each public agency may determine which specific staff member will serve as the agency representative in a particular IEP meeting, so long as the individual meets the requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

A public agency may designate another public agency member of the IEP team to also serve as the agency representative, so long as that individual meets the requirements of §300.346(a)(4).

23. For a child with a disability being considered for initial provision of special education and related services, which teacher or teachers should attend the IEP meeting?

A child’s IEP team must include at least one of the child’s regular education teachers (if the child is, or may be participating in the regular education environment) and at least one of the child’s special education teachers, or, if appropriate, at least one of the child’s special education providers (§300.344(a)(2) and (3)).

Each IEP must include a statement of the present levels of educational performance, including a statement of how the child’s disability affects the child’s involvement and progress in the general curriculum (§300.347(a)(1)). At least one regular education teacher is a required member of the IEP team of a child who is, or may be, participating in the regular educational environment, regardless of the extent of that participation.

The requirements of §300.344(a)(3) can be met by either: (1) a special education teacher of the child; or (2) another special education provider of the child, such as a speech pathologist, physical or occupational therapist, etc., if the related service consists of specially designed instruction and is considered special education under applicable State standards.

Sometimes more than one meeting is necessary in order to finalize a child’s IEP. In this process, if the special education teacher or special education provider who will be working with the child is identified, it would be useful to have that teacher or provider participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. If this is not possible, the public agency must ensure that the teacher or provider has access to the child’s IEP as soon as possible after it is finalized and before beginning to work with the child.

Further, (consistent with §300.342(b)), the public agency must ensure that each regular education teacher, special education teacher, related services provider and other service provider of an eligible child under this part (1) has access to the child’s IEP, and (2) is informed of his or her specific responsibilities related to implementing the IEP, and of the specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP. This requirement is crucial to ensuring that each child receives FAPE in accordance with his or her IEP, and that the IEP is appropriately and effectively implemented.

24. What is the role of a regular education teacher in the development, review and revision of the IEP for a child who is, or may be, participating in the regular education environment?

As required by §300.344(a)(2), the IEP team for a child with a disability must include at least one regular education teacher of the child if the child is, or may be, participating
in the regular education environment. Section 300.346(d) further specifies that the regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child’s IEP, including assisting in—(1) the determination of appropriate positive behavioral interventions and strategies for the child; and (2) the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the child, consistent with 300.347(a)(3) (300.344(d)).

Thus, while a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not (depending upon the child’s needs and the purpose of the specific IEP team meeting) be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or to attend every meeting. For example, the regular education teacher who is a member of the IEP team must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the child’s involvement and progress in the general curriculum and participation in the regular education environment.

Depending upon the specific circumstances, however, it may not be necessary for the regular education teacher to participate in discussions and decisions regarding, for example, the physical therapy needs of the child, if the teacher is not responsible for implementing that portion of the child’s IEP.

In determining the extent of the regular education teacher’s participation at IEP meetings, public agencies and parents should discuss and try to reach agreement on whether the child’s regular education teacher that is a member of the IEP team should be present at a particular IEP meeting and, if so, for what period of time. The extent to which it would be appropriate for the regular education teacher member of the IEP team to participate in IEP meetings must be decided on a case-by-case basis.

25. If a child with a disability attends several regular classes, must all of the child’s regular education teachers be members of the child’s IEP team?

No. The IEP team need not include more than one regular education teacher of the child. If the participation of more than one regular education teacher would be beneficial to the child’s success in school (e.g., in terms of enhancing the child’s participation in the general curriculum), it would be appropriate for them to attend the meeting.

26. How should a public agency determine which regular education teacher and special education teacher will be members of the IEP team for a particular child with a disability?

The regular education teacher who serves as a member of a child’s IEP team should be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to teach the child. If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, the LEA may designate which teacher or teachers will serve as IEP team member(s), taking into account the best interest of the child.

In a situation in which not all of the child’s regular education teachers are members of the child’s IEP team, the LEA is strongly encouraged to seek input from the teachers who will not be attending. In addition, (consistent with §300.342(b)), the LEA must ensure that each regular education teacher (as well as each special education teacher, related services provider, and other service provider) of an eligible child under this part (1) has access to the child’s IEP, and (2) is informed of his or her specific responsibilities related to implementing the IEP, and of the specific accommodations, modifications and supports that must be provided to the child in accordance with the IEP.

In the case of a child whose behavior impedes the learning of the child or others, the LEA is encouraged to have a regular education teacher or other person knowledgeable about positive behavior strategies at the IEP meeting. This is especially important if the regular education teacher is expected to carry out portions of the IEP.

Similarly, the special education teacher or provider of the child who is a member of the child’s IEP team should be the person who is, or will be, responsible for implementing the IEP. If, for example, the child’s disability is a speech impairment, the special education teacher on the IEP team could be the speech-language pathologist.

27. For a child whose primary disability is a speech impairment, may a public agency meet its responsibility under §300.344(a)(3) to ensure that the IEP team includes “at least one special education teacher, or, if appropriate, at least one special education provider of the child” by including a speech-language pathologist on the IEP team?

Yes, if speech is considered special education under State standards. As with other children with disabilities, the IEP team must also include at least one of the child’s regular education teachers if the child is, or may be, participating in the regular education environment.

28. Do parents and public agencies have the option of inviting any individual of their choice to be participants on their child’s IEP team?

Yes. Parents and public agencies have the option of inviting any individual of their choice to be participants on their child’s IEP team.
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The IEP team may, at the discretion of the parent or the agency, include “other individuals who have knowledge or special expertise regarding the child * * *” §300.34(a)(6), ita added. Under §300.34(a)(6), these individuals are members of the IEP team. This is a change from prior law, which provided, without qualification, that parents or agency personnel at the meeting. The same is true of the presence of an attorney at the discretion of the parents or agency.

Under §300.34(c), the determination as to whether an individual has knowledge or special expertise, within the meaning of §300.34(a)(6), shall be made by the parent or public agency who has invited the individual to be a member of the IEP team. Part B does not provide for including individuals such as representatives of teacher organizations as part of an IEP team, unless they are included because of knowledge or special expertise regarding the child. (Because a representative of a teacher organization would generally be concerned with the interests of the teacher rather than the interests of the child, and generally would not possess knowledge or expertise regarding the child, it generally would be inappropriate for such an official to be a member of the IEP team or to otherwise participate in an IEP meeting.)

29. Can parents or public agencies bring their attorneys to IEP meetings, and, if so under what circumstances? Are attorney’s fees available for parents’ attorneys if the parents are prevailing parties in actions or proceedings brought under Part B?

Section 300.34(a)(6) authorizes the addition to the IEP team of other individuals at the discretion of the parent or the public agency only if those other individuals have knowledge or special expertise regarding the child. The determination of whether an attorney possesses knowledge or special expertise regarding the child would have to be made on a case-by-case basis by the parent or public agency inviting the attorney to be a member of the team. The presence of the agency’s attorney could contribute to a potentially adversarial atmosphere at the IEP meeting. Even if the attorney possessed knowledge or special expertise regarding the child (§300.34(a)(6)), an attorney’s presence would have the potential for creating an adversarial atmosphere that would not necessarily be in the best interests of the child.

Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged. Further, as specified in Section 615(i)(3)(D)(ii) of the Act and §300.513(c)(2)(ii), attorneys’ fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation conducted prior to the request for a due process hearing.

30. Must related services personnel attend IEP meetings?

Although Part B does not expressly require that the IEP team include related services personnel as part of the IEP team (§300.34(a)), it is appropriate for those persons to be included if a particular related service is to be discussed as part of the IEP meeting. Section 300.34(a)(6) provides that the IEP team also includes “at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. * * *” (Italics added.)

Further, §300.34(a)(3) requires that the IEP team for each child with a disability include “at least one special education teacher, or, if appropriate, at least one special education provider of the child * * *” This requirement can be met by the participation of either (1) a special education teacher of the child, or (2) another special education provider such as a speech-language pathologist, physical or occupational therapist, etc., if the related service consists of specially designed instruction and is considered special education under the applicable State standard.

If a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. As explained in the Committee Reports on the IDEA Amendments of 1997, “Related services personnel should be included on the team when a particular related service will be discussed at the request of the child’s parents or the school.” (H. Rep. No. 105-95, p. 103 (1997); S. Rep. No. 105-17, p. 23 (1997).) For example, if the child’s evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, special transportation services, school social work services, school health services, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child. This written recommendation could be a part of the evaluation report.

A public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child’s unique needs, and ensure the provision of FAPE to the child, participate in the child’s IEP meeting.

31. Must the public agency ensure that all services specified in a child’s IEP are provided?

Yes. The public agency must ensure that all services set forth in the child’s IEP are provided, consistent with the child’s needs as...
identified in the IEP. The agency may provide each of those services directly, through its own staff resources; indirectly, by contracting with another public or private agency; or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see §300.245(a)); but the services must be at no cost to the parents, and the public agency remains responsible for ensuring that the IEP services are provided in a manner that appropriately meets the student’s needs as specified in the IEP. The SEA and responsible public agency may not allow the failure of another agency to provide services described in the child’s IEP to deny or delay the provision of FAPE to the child. (See §300.142, Methods of ensuring services.)

32. Is it permissible for an agency to have the IEP completed before the IEP meeting begins?

No. Agency staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full discussion, of the child’s needs and the services to be provided to meet those needs before the IEP is finalized.

Public agencies must ensure that, if agency personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the child’s parents, before the child’s IEP is finalized, regarding drafted content and the child’s needs and the services to be provided to meet those needs.

33. Must a public agency provide related services that are required to assist a child with a disability to benefit from special education, whether or not those services are included in the list of related services in §300.24?

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. This could, depending upon the unique needs of a child, include such services as nutritional services or service coordination.

These determinations must be made on an individual basis by each child’s IEP team.

34. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency’s commitment of resources will be clear to parents and other IEP team members (§300.347(a)(6)). The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP. The amount of a special education or related service to be provided to a child may be stated in the IEP as a range (e.g., speech therapy to be provided three times per week.
for 30–45 minutes per session) only if the IEP team determines that stating the amount of services as a range is necessary to meet the unique needs of the child. For example, it would be appropriate for the IEP to specify, based upon the IEP team’s determination of the student’s unique needs, that particular services are needed only under specific circumstances or when circumstances are met the requirements of paragraph (2)(v); and the nature and extent of the AT devices and services to be provided to the child must be reflected in the child’s IEP (§300.346(c)).

A public agency must permit a child to use school-purchased assistive technology devices at home or in other settings, if the IEP team determines that the child needs access to those devices in nonschool settings in order to receive FAPE (to complete homework, for example).

Any assistive technology devices that are necessary to ensure FAPE must be provided at no cost to the parents, and the parents cannot be charged for normal use, wear and tear. However, while ownership of the devices in these circumstances would remain with the public agency, State law, rather than Part B, generally would govern whether parents are liable for loss, theft, or damage due to negligence or misuse of publicly owned equipment used at home or in other settings in accordance with a child’s IEP.

37. Can the IEP team also function as the group making the placement decision for a child with a disability?

Yes, a public agency may use the IEP team to make the placement decision for a child, so long as the group making the placement decision meets the requirements of §§300.522 and 300.501(c), which requires that the placement decision be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

38. If a child’s IEP includes behavioral strategies to address a particular behavior, can a child ever be suspended for engaging in that behavior?

If a child’s behavior impedes his or her learning or that of others, the IEP team, in developing the child’s IEP, must consider, if appropriate, development of strategies, including positive behavioral interventions, strategies and supports to address that behavior, consistent with §300.346(a)(2)(i). This means that in most cases in which a child’s behavior that impedes his or her learning or that of others is, or can be readily anticipated to be, repetitive, proper development of the child’s IEP will include the development of strategies, including positive behavioral interventions, strategies and supports to address that behavior. See §300.346(c). This includes behavior that could violate a school code of conduct. A failure to, if appropriate, consider and address these behaviors in developing and implementing the child’s IEP would constitute a denial of FAPE to the child. Of course, in appropriate circumstances, the IEP team, which includes the child’s parents, might determine that the child’s behavioral intervention plan includes specific regular or alternative disciplinary measures, such as denial of certain privileges or short suspensions, that would result from particular infractions of school rules, along with positive behavior intervention strategies and supports, as a part of a comprehensive plan to address the child’s behavior. Of course, if short suspensions that are included in a child’s IEP are being implemented in a manner that denies the child access to the ability to progress in the educational program, the child would be denied FAPE.

Whether other disciplinary measures, including suspension, are ever appropriate for behavior that is addressed in a child’s IEP will have to be determined on a case by case basis in light of the particular circumstances of that incident. However, school personnel may not use their ability to suspend a child for 10 days or less at a time on multiple occasions in a school year as a means of avoiding appropriately considering and addressing the child’s behavior as a part of providing FAPE to the child.

39. If a child’s behavior in the regular classroom, even with appropriate interventions, would significantly impair the learning of others, can the group that makes the placement decision determine that placement in the regular classroom is inappropriate for that child?

The IEP team, in developing the IEP, is required to consider, when appropriate, strategies, including positive behavioral interventions, strategies and supports to address the behavior of a child with a disability whose behavior impedes his or her learning or that of others. If the IEP team determines that such supports, strategies or interventions are necessary to address the behavior of the child, those services must be included in the child’s IEP. These provisions are designed to foster increased participation of children with disabilities in regular education environments or other less restrictive environments, not to serve as a basis for placing children with disabilities in more restrictive settings.
The determination of appropriate placement for a child whose behavior is interfering with the education of others requires careful consideration of whether the child can appropriately function in the regular classroom if provided appropriate behavioral supports, strategies and interventions. If the child can appropriately function in the regular classroom with appropriate behavioral supports, strategies or interventions, placement in a more restrictive environment would be inconsistent with the least restrictive environment provisions of the IDEA. If the child’s behavior in the regular classroom, even with the provision of appropriate behavioral supports, strategies or interventions, would significantly impair the learning of others, that placement would not meet his or her needs and would not be appropriate for that child.

Yes. Under §300.520(a)(1), school personnel may order removal of a child with a disability from the child’s current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as these removals do not constitute a change of placement under §300.519(b). However, these removals are permitted only to the extent they are consistent with discipline that is applied to children without disabilities. Also, school personnel should be aware of constitutional due process protections that apply to suspensions of all children. Goss v. Lopez, 419 U.S. 565 (1975). Section 300.121(d) addresses the extent of the obligation to provide services after a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year.
# APPENDIX B
INDEX FOR IDEA—PART B REGULATIONS
(24 CFR Part 300)

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- Definition .......................................................... 300.10

**ERRONEOUSLY CLASSIFIED CHILDREN (Recovery of funds)**

- Evaluation ............................................................ 300.145

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- See also:
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<tr>
<td>* Removal of a child for not more than 10 &quot;school days&quot;</td>
<td>300.519(a)</td>
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<tr>
<td>--- Change of placement for disciplinary removals:</td>
<td>300.519(b)</td>
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<tr>
<td>* Of more than 10 consecutive &quot;school days&quot;</td>
<td>300.519(c)</td>
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<tr>
<td>* That cumulate to more than 10 &quot;school days&quot;</td>
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<tr>
<td>--- Change of placement for disciplinary removals:</td>
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<tr>
<td>* Of more than 10 consecutive &quot;school days&quot;</td>
<td>300.519(c)</td>
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<tr>
<td>* That cumulate to more than 10 &quot;school days&quot;</td>
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<td><strong>TIMELINES—DISCIPLINE (D-L)</strong></td>
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<tr>
<td>--- Development of assessment plan by IEP team (before or not later than 10 &quot;business days&quot;)</td>
<td>300.520(b)</td>
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<tr>
<td>--- Expedited due process hearings</td>
<td>300.528(a)(7)</td>
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<tr>
<td>* Conducted in no less than 2 &quot;business days&quot;</td>
<td>300.528(b)(1)</td>
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<tr>
<td>* Decision in 45 &quot;days&quot;—with no exceptions or extensions</td>
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<tr>
<td>--- Hearing officer (order change of placement for not more than 45 &quot;days&quot;)</td>
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<td><strong>TIMELINES—DISCIPLINE (M-Z)</strong></td>
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<tr>
<td>--- Manifestation determination review (conducted in no case later than 10 &quot;school days&quot;) after date of decision to remove a child under §§309.520(a)(2) or 309.521 or 309.519</td>
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<tr>
<td>--- Placement during appeals—not longer than 45 &quot;days&quot;</td>
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<td>--- Removals for not more than:</td>
<td>300.520(c)</td>
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<td>* 10 &quot;school days&quot; (by school personnel)</td>
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<td>* By a hearing officer (for substantial likelihood of injury to child or others)</td>
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### USE OF FUNDS BY STATES—SEAs (C-H)
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- Coordination of activities with other programs
- Direct and support services
  - Definitions
- Evaluation of effectiveness of local programs
- Leadership services for program supervision and management of special education activities
- Monitoring (see §§300.379(a)(2), 300.623(a)(3))
- Other State leadership activities and consultative services
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### USE OF FUNDS BY STATES—SEAs (S-Z)
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  - Amount for (20% of State set-aside or $500,000)
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  - State improvement plan
  - Statewide coordinated services system
- Support and direct services
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### VOLUNTARY DEPARTURE of personnel (Exception to LEA maintenance of effort)
APPENDIX C TO PART 300;—IMPLEMENTATION OF THE 20 PERCENT RULE UNDER §300.233

This appendix is intended to assist States and LEAs to implement the "20 percent rule" under Part B (section 613(a)(2)(C)) of the Individuals with Disabilities Education Act (IDEA), and, specifically, the regulation implementing that provision in §300.233. The purposes of the appendix are to—(1) provide background information about the 20 percent rule and its intended effect, including specifying which funds under Part B of the Act are covered by the provision (as described in §300.233), and the basis for the Department’s

<table>
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<th>WAIVER(S)</th>
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<td>For exceptional and uncontrollable circumstances (State maintenance of effort)</td>
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| State-level nonsupplanting                      | 300.153(b)      |
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| WHEN IEP MUST BE IN EFFECT | 300.587 |

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[64 FR 34049, June 24, 1999]
decision regarding those funds; and (2) include examples showing how the 20 percent rule would apply in several situations.

A. BACKGROUND

1. Purpose of 20 Percent Rule. The IDEA Amendments of 1997 (Pub. L. 105-17) added a provision related to the permissive treatment of a portion of Part B funds by LEAs for maintenance of effort and non-supplanting purposes in certain fiscal years (see section 613(a)(2)(C) of the Act and §300.233). Under that provision, for any fiscal year (FY) for which the appropriation for section 611 of IDEA exceeds $4.1 billion, an LEA may treat as local funds, for maintenance of effort and non-supplanting purposes, up to 20 percent of the amount it receives that exceeds the amount it received under Part B during the prior year. Thus, under §300.233, an LEA is able to meet the maintenance of effort requirement of §300.231 and the non-supplanting requirement of §300.236(c) even though it reduces the amount it spends of other local or local and State funds, as the case may be, by an amount equal to the amount of Federal funds that may be treated as local funds.

2. 20 Percent Rule Applies Only to LEA Subgrants. Following enactment of the IDEA Amendments of 1997 (and publication of Part B regulations on March 12, 1999), State and local educational agency officials stated that it is not clear from the Act and regulations whether the funds affected by the 20 percent rule are only those that an LEA receives through statutory subgrants under section 611(g), or whether the provision also applies to other Part B funding sources (i.e., subgrants to LEAs for capacity-building and improvement under section 611(f); other funds the SEA may provide to LEAs under section 611(f)(4); other Federal fiscal year. (Emphasis added.)

Thus, the NPRM proposed to exclude the other Federal funds under Part B of the Act (i.e., Subgrants to LEAs for capacity-building and improvement under section 611(f)(4) ($300.622); other funds the SEA may provide to LEAs under section 611(f) ($300.692); and preschool grant funds under section 619 (34 CFR part 301)) from the funds that could be treated as local funds. The reasons for excluding them were to promote increased use of other Part B funds, to avoid any potential for audit exceptions.

B. APPLICATION OF THE 20 PERCENT RULE

1. Examples Related to Implementing the 20 percent rule

The following are examples showing how the 20 percent provision would apply under several situations:

• Example 1: An LEA receives $100,000 in Federal LEA Subgrant funds under section 611(g) of the Act from the appropriation for one fiscal year (FY–1), and $120,000 in section 611(g) funds from the appropriation for the following fiscal year (FY–2). The LEA may
spend and treat as local funds up to 20 percent of the $20,000 in section 611(g) funds it receives from FY-2 (i.e., up to $4,000), since this is the amount that exceeds the amount it received from FY-1 for those purposes in paragraph 1. If, as described in Example 4-A, the SEA subsequently determines that the LEA is in compliance, and releases the FY-2 funds to the LEA later in that fiscal year, the LEA could then spend and treat as local funds up to 20 percent of the $20,000 that exceeds the amount it received in FY-1 (i.e., up to $4,000). Those funds could be used by the LEA for the remainder of FY-2 and through the end of the carry-over period for FY-2 funding.

2. Auditing for Compliance with §300.231 and the 20 percent rule in §300.231

The following provides guidance for use by auditors in determining if LEAs are in compliance with the maintenance of effort requirement in §300.231 and the 20 percent rule in §300.233:

a. Meeting the Maintenance of Effort Requirement. In order to be eligible to receive an IDEA-Part B subgrant in any particular fiscal year, an LEA is required to demonstrate that it has budgeted an amount of State and local funds, or just local funds, to be spent on special education and related services that equals or exceeds (on either an aggregate or per capita basis) the amount of those funds spent by the LEA for those purposes in the prior fiscal year, or in the most recent prior fiscal year for which information is available. 34 CFR 300.231.

b. Auditing Compliance with §300.231. Auditors, in determining if an LEA has complied with §300.231 in any particular fiscal year, review the actual level of expenditures of State and local funds, or just local funds, on special education and related services for the year in question and the prior year. For example, consider an LEA that, in the LEA’s FY-1, spent a total of $1,000,000 of local funds on special education and related services to serve 100 students with disabilities. (For this discussion, assume that the LEA does not receive any State funds for any year for special education and related services.) An auditor, in trying to determine if the LEA, in its FY-2, had complied with §300.231, would review the LEA’s expenditure of local funds on special education and related services. If, in the LEA’s FY-2, the LEA served 100 students with disabilities and spent $1,000,000 or more in local funds on special education and related services, it would have met the requirements of §300.231 for FY-2.

c. Application of the 20 percent rule to §300.231. If the LEA in the preceding example had spent only $996,000 of local funds on special education and related services for its 100 students with disabilities in its FY-2 (not counting any section 611(g) subgrant funds that could be considered local funds under the 20 percent rule), then it would have failed to meet its obligation under §300.231, and an auditor would question $4,000 of the LEA’s IDEA-Part B subgrant expenditures in that year.

This questioned cost, however, could be avoided, if the LEA had available, and spent, $4,000 of Federal funds under the 20 percent rule during its FY-2. These funds may be available from a variety of sources (see Examples in paragraph 1). If, as described in
Example 1 of paragraph 1 the LEA had received from the Federal FY–2 appropriation, a section 611(g) subgrant that was $20,000 greater than the subgrant it received from the Federal FY–1 appropriation, then up to $4,000 of that subgrant could be treated as local funds. The LEA, however, would have to spend at least $4,000 of its Federal FY–2 section 611(g) subgrant during its FY–2 in order for those funds to count as part of its local expenditures for that year for purposes of §300.231.

In this example, if the LEA had carried over all of its Federal FY–2 section 611(g) subgrant to the LEA’s FY–3 (and thus did not spend any of those funds during its FY–2), then none of the section 611(g) subgrant funds subject to the 20 percent rule could be considered as local funds for purposes of determining compliance with §300.231. (The reason for this is that auditors, in determining an LEA’s compliance with §300.231, examine State and local, or local funds the LEA actually spent on special education and related services, and not those funds that the LEA could, but did not, spend for those purposes.)

If the LEA, in its FY–2, spent $4,000 of its Federal FY–2 section 611(g) subgrant, then the LEA could count those expenditures and bring itself into compliance with §300.231 (i.e., $996,000 of the LEA’s own local funds spent on special education and related services plus the $4,000 of Federal FY–2 section 611(g) funds that can be counted as local funds equals a total of $1,000,000 of local expenditures on special education in its FY–2— the amount of local expenditures needed to comply with §300.231). However, if the LEA elected to take this step, it could not count any of the Federal FY–2 section 611(g) subgrant funds that it will spend in its FY–3 as local funds.

If the LEA, in its FY–2, spent only $3,000 of its Federal FY–2 section 611(g) subgrant funds, then those funds could be counted by the LEA as local funds in calculating its compliance with §300.231 for its FY–2. If the remaining $1,000 of Federal FY–2 funds available to be considered local funds were spent in the LEA’s FY–3, those funds could be considered in determining the LEA’s compliance with §300.231 for its FY–3. (Note, however, that if in its FY–2 the LEA had only spent $996,000 of local funds and $3,000 of its Federal funds, it would not have met the requirements of §300.231. In this case the auditor would have $1,000 of questioned costs ($1,000,000 – ($996,000 + $3,000) = $1,000) for FY–2).


PART 301—PRESCCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.
301.1 Purpose of the Preschool Grants for Children With Disabilities program.
301.2–301.3 (Reserved)
301.4 Applicable regulations.
301.5 Applicable definitions.
301.6 Applicability of part C of the Act to 2-year-old children with disabilities.

Subpart B—State Eligibility for a Grant

301.10 Eligibility of a State to receive a grant.
301.11 [Reserved]
301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.

Subpart C—Allocations of Funds to States

301.20 Allocations to States.
301.21 Increase in funds.
301.22 Limitation.
301.23 Decrease in funds.
301.24 State-level activities.
301.25 Use of funds for State administration.
301.26 Use of State agency allocations.

Subpart D—Allocation of Funds to Local Educational Agencies

301.30 Subgrants to local educational agencies.
301.31 Allocations to local educational agencies.
301.32 Reallocation of local educational agency funds.

AUTHORITY: 20 U.S.C. 1419, unless otherwise noted.

SOURCE: 63 FR 29930, June 1, 1998, unless otherwise noted.

Subpart A—General

§301.1 Purpose of the Preschool Grants for Children With Disabilities program.

The purpose of the Preschool Grants for Children With Disabilities program (Preschool Grants program) is to provide grants to States to assist them in providing special education and related services—

(a) To children with disabilities aged three through five years; and
§§ 301.2–301.3

(b) At a State’s discretion, to two-year-old children with disabilities who will turn three during the school year.

(Authority: 20 U.S.C. 1419(a))

§§ 301.2–301.3 [Reserved]

§ 301.4 Applicable regulations.

The following regulations apply to the Preschool Grants program:

(a) The Education Department General Administrative Regulations (EDGAR) in title 34 of the Code of Federal Regulations—

(1) Part 76 (State-Administered Programs) except §§76.125–76.137 and 76.650–76.662;

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provision Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying); and

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)).

(b) The regulations in this part 301.

(c) The regulations in 34 CFR part 300.

(Authority: 20 U.S.C. 1419)

§ 301.5 Applicable definitions.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant Fiscal year
Application Grant period
Award Secretary
EDGAR Subgrant

(b) Other definitions. The following definitions also apply to this part:

Act means the Individuals with Disabilities Education Act, as amended.

Part B child count means the child count required by section 611(d)(2) of the Act.

Preschool means the age range of 3 through 5 years.

State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1402, 1419)

§ 301.6 Applicability of part C of the Act to 2-year-old children with disabilities.

Part C of the Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with part B of the Act, with funds received under the Preschool Grants program.

(Authority: 20 U.S.C. 1419(h))

Subpart B—State Eligibility for a Grant

§ 301.10 Eligibility of a State to receive a grant.

A State is eligible to receive a grant if—

(a) The State is eligible under 34 CFR part 300; and

(b) The State demonstrates to the satisfaction of the Secretary that it has in effect policies and procedures that assure the provision of a free appropriate public education—

(1) For all children with disabilities aged 3 through 5 years in accordance with the requirements in 34 CFR part 300; and

(2) For any 2-year-old children, provided services by the SEA or by an LEA or ESA under §301.1.

(Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1419 (a), (b))

§ 301.11 [Reserved]

§ 301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.

If a State does not meet the requirements in section 619(b) of the Act—

(a) The State is not eligible for a grant under the Preschool Grant program;

(b) The State is not eligible for funds under 34 CFR part 300 for children with disabilities aged 3 through 5 years; and

(c) No SEA, LEA, ESA, or other public institution or agency within the...
State is eligible for a grant under Subpart 2 of part D of the Act if the grant relates exclusively to programs, projects, and activities pertaining to children with disabilities aged 3 through 5 years.

(Authority: 20 U.S.C. 1411(d)(2) and (e)(2)(B); 1419(b); 1461(j))

Subpart C—Allocation of Funds to States

§ 301.20 Allocations to States.

After reserving funds for studies and evaluations under section 674(e) of the Act, the Secretary allocates the remaining amount among the States in accordance with §§301.21–301.23.

(Authority: 20 U.S.C. 1419(c)(1))

§ 301.21 Increase in funds.

If the amount available for allocation to States under §301.20 is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in §301.22, the Secretary—

(1) Allocates to each State the amount it received for fiscal year 1997;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1419(c)(2)(A))

§ 301.22 Limitation.

(a) Notwithstanding §301.21, allocations under that section are subject to the following:

(1) No State’s allocation may be less than its allocation for the preceding fiscal year.

(2) No State’s allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for fiscal year 1997; and

(B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act exceeds the amount appropriated under section 619 of the Act for fiscal year 1997;

(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State’s allocation under §301.21 may exceed the sum of—

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by 90 percent of the percentage increase in the amount appropriated.

(c) If the amount available for allocation to States under §301.21 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, the Secretary ratably reduces those allocations, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1419(c)(2)(B) and (C))

§ 301.23 Decrease in funds.

If the amount available for allocations to States under §301.20 is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of—

(1) The amount it received for fiscal year 1997; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997.
§ 301.24 State-level activities.

(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§301.25 and 301.26.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State’s allocation under section 619 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1419(d))

§ 301.25 Use of funds for State administration.

(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), each State may use not more than twenty percent of the maximum amount it may retain under §301.24 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of part C of the Act, if the SEA is the lead agency for the State under that part.

(Authority: 20 U.S.C. 1419(e))

§ 301.26 Use of State agency allocations.

Each State shall use any funds it retains under §301.24 and does not use for administration under §301.25 for any of the following:

(a) Support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5.

(b) Direct services for children eligible for services under section 619 of the Act.

(c) Developing a State improvement plan under subpart 1 of part D of the Act.

(d) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) of the Act and to support implementation of the State improvement plan under subpart 1 of part D of the Act if the State receives funds under that subpart.

(e) Supplementing other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 619 of the Act for a fiscal year.

(Authority: 20 U.S.C. 1419(f))

Subpart D—Allocation of Funds to Local Educational Agencies

§ 301.30 Subgrants to local educational agencies.

Each State that receives a grant under section 619 of the Act for any fiscal year shall distribute any funds it does not retain under §301.24 to local educational agencies in the State that have established their eligibility under section 613 of the Act.

(Authority: 20 U.S.C. 1419(g)(1))
§ 301.31 Allocations to local educational agencies.

(a) Base payments. The State shall first award each agency described in §301.30 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect.

(b) Base payment adjustments. For fiscal year 1998 and beyond—

(1) If a new LEA is created, the State shall divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 5 currently provided special education by each of the LEAs;

(2) If one or more LEAs are combined into a single new LEA, the State shall combine the base allocations of the merged LEAs; and

(3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 5 changes, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 5 currently provided special education by each affected LEA.

(c) Allocation of remaining funds. After making allocations under paragraph (a) of this section, the State shall—

(1) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency’s jurisdiction; and

(2) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(3) For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

(Authority: 20 U.S.C. 1419(g)(1))

§ 301.32 Reallocation of local education agency funds.

(a) If a SEA determines that an LEA is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve.

(b) If a State provides services to preschool children with disabilities because some or all LEAs or ESAs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs or ESAs to provide special education and related services to children with disabilities aged 3 through 5, and to two-year-old children with disabilities receiving services consistent with §301.1 who are residing in the area served by those LEAs and ESAs.

(Authority: 20 U.S.C. 1414(d), 1419(g)(2))

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

Subpart A—General

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INDIVIDUALIZED FAMILY SERVICE PLANS (IFSPs)

303.340 General.
§ 303.1 Purpose of the early intervention program for infants and toddlers with disabilities.

The purpose of this part is to provide financial assistance to States to—

(a) Maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);
§ 303.2

(c) Enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

(d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

(Authority: 20 U.S.C. 1431)

[58 FR 40959, July 30, 1993, as amended at 63 FR 18293, Apr. 14, 1998; 64 FR 12535, Mar. 12, 1999]

§ 303.2 Eligible recipients of an award.

Eligible recipients include the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(27), 1443)

[58 FR 40959, July 30, 1993, as amended at 63 FR 18293, Apr. 14, 1998]

§ 303.3 Activities that may be supported under this part.

Funds under this part may be used for the following activities:

(a) To maintain and implement a statewide system of early intervention services for children eligible under this part and their families.

(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with §303.527.

(d) To provide a free appropriate public education, in accordance with part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year.

(e) To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purpose of—

(1) Identifying and evaluating at-risk infants and toddlers;

(2) Making referrals of the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and

(3) Conducting periodic follow-up on each referral under paragraph (e)(2) of this section to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

(Authority: 20 U.S.C. 1433 and 1438)

[58 FR 40959, July 30, 1993, as amended at 63 FR 18293, Apr. 14, 1998]

§ 303.4 Limitation on eligible children.

This part 303 does not apply to any child with disabilities receiving a free appropriate public education, in accordance with 34 CFR part 300, with funds received under 34 CFR part 301.

(Authority: 20 U.S.C. 1419(h))

§ 303.5 Applicable regulations.

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR), including—

(i) Part 76 (State Administered Programs), except for §76.103;

(ii) Part 77 (Definitions that Apply to Department Regulations);

(iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(v) Part 81 (Definitions that Apply to Department Regulations);

(vi) Part 82 (New Restrictions on Lobbying); and

(vii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)).

(2) The regulations in this part 303.

(3) The following regulations in 34 CFR part 300 (Assistance to States for
§ 303.12 Early intervention services.

(a) General. As used in this part, early intervention services means services that—

(1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child’s development;

(2) Are selected in collaboration with the parents;

(3) Are provided—

(1) Under public supervision;
§ 303.12

(i) By qualified personnel, as defined in § 303.21, including the types of personnel listed in paragraph (e) of this section;

(ii) In conformity with an individualized family service plan; and

(iv) At no cost, unless, subject to § 303.320(b)(3), Federal or State law provides for a system of payments by families, including a schedule of sliding fees; and

(iv) Meet the standards of the State, including the requirements of this part.

(b) Natural environments. To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.

(c) General role of service providers. To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for—

(1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; and

(3) Participating in the multidisciplinary team’s assessment of a child and the child’s family, and in the development of integrated goals and outcomes for the individualized family service plan.

(d) Types of services; definitions. Following are types of services included under “early intervention services,” and, if appropriate, definitions of those services:

(1) Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. Assistive technology service means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include—

(i) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for a child with disabilities or, if appropriate, that child’s family; and

(vi) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

(2) Audiology includes—

(i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child’s need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(3) Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding
the special needs of the child and enhancing the child’s development.

(4) Health services (See §303.13).

(5) Medical services only for diagnostic or evaluation purposes means services provided by a licensed physician to determine a child’s developmental status and need for early intervention services.

(6) Nursing services includes—

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) Nutrition services includes—

(i) Conducting individual assessments in—

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(8) Occupational therapy includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child’s functional ability to perform tasks in home, school, and community settings, and include—

(i) Identification, assessment, and intervention;

(ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(iii) Prevention or minimization of the impact of initial or future impairments, delay in development, or loss of functional ability.

(9) Physical therapy includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include—

(i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;

(ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(10) Psychological services includes—

(i) Administering psychological and developmental tests and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) Service coordination services means assistance and services provided by a service coordinator to a child eligible under this part and the child’s family that are in addition to the functions and activities included under §303.23.

(12) Social work services includes—

(i) Making home visits to evaluate a child’s living conditions and patterns of parent-child interaction;

(ii) Preparing a social or emotional developmental assessment of the child within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;
§ 303.13 Health services.

(a) As used in this part, health services means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

(b) The term includes—

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

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§ 303.16  Infants and toddlers with disabilities.

(a) As used in this part, infants and toddlers with disabilities means individuals from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

   (i) Cognitive development.

   (ii) Physical development, including vision and hearing.

   (iii) Communication development.

   (iv) Social or emotional development.

   (v) Adaptive development; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State’s discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1432(5))

Note 1: The phrase “a diagnosed physical or mental condition that has a high probability of resulting in developmental delay,” as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances; and severe attachment disorders.

Note 2: With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as disabled.

Under this provision, States have the authority to define who would be “at risk of having substantial developmental delays if early intervention services are not provided.” In defining the “at risk” population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers “at risk” for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that “at risk” factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.
§ 303.17 Multidisciplinary.

As used in this part, *multidisciplinary* means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in §303.322 and development of the IFSP in §303.342.

(Authority: 20 U.S.C. 1435(a)(3), 1436(a))

§ 303.18 Natural environments.

As used in this part, *natural environments* means settings that are natural or normal for the child’s age peers who have no disabilities.

(Authority: 20 U.S.C. 1435 and 1436)

[63 FR 18294, Apr. 14, 1998]

§ 303.19 Parent.

(a) General. As used in this part, “parent” means—

(1) A natural or adoptive parent of a child;

(2) A guardian;

(3) A person acting in the place of a parent (such as a grandparent or step-parent with whom the child lives, or a person who is legally responsible for the child’s welfare); or

(4) A surrogate parent who has been assigned in accordance with §303.406.

(b) Foster parent. Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part C of the Act if—

(1) The natural parents’ authority to make the decisions required of parents under the Act has been extinguished under State law; and

(2) The foster parent—

(i) Has an ongoing, long-term parental relationship with the child;

(ii) Is willing to make the decisions required of parents under the Act; and

(iii) Has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1401(19), 1431-1445)

[64 FR 12535, Mar. 12, 1999]

§ 303.20 Policies.

(a) As used in this part, *policies* means State statutes, regulations, Governor’s orders, directives by the lead agency, or other written documents that represent the State’s position concerning any matter covered under this part.

(b) State policies include—

(1) A State’s commitment to maintain the statewide system (see §303.140);

(2) A State’s eligibility criteria and procedures (see §303.300);

(3) A statement that, consistent with §303.520(b), provides that services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law.

(4) A State’s standards for personnel who provide services to children eligible under this part (see §303.361);

(5) A State’s position and procedures related to contracting or making other arrangements with service providers under subpart F of this part; and

(6) Other positions that the State has adopted related to implementing any of the other requirements under this part.

(Authority: 20 U.S.C. 1431-1445)

[58 FR 12535, Mar. 12, 1993. Redesignated at 63 FR 18294, Apr. 14, 1998]

§ 303.21 Public agency.

As used in this part, *public agency* includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.

(Authority: 20 U.S.C. 1431-1445)

[58 FR 12535, Mar. 12, 1993. Redesignated at 63 FR 18294, Apr. 14, 1998]

§ 303.22 Qualified.

As used in this part, *qualified* means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(Authority: 20 U.S.C. 1432(4))

*Note:* These regulations contain the following provisions relating to a State’s responsibility to ensure that personnel are qualified to provide early intervention services:
1. Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under part B of the Act (i.e., that the State educational agency establish standards and ensure that those standards are currently met for all programs providing special education and related services).

2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel.

3. Section 303.361(b) requires statewide systems to have policies and procedures relating to personnel standards.

[58 FR 40959, July 30, 1993. Redesignated at 63 FR 18294, Apr. 14, 1998]

§ 303.23 Service coordination (case management).

(a) General. (1) As used in this part, except in §303.12(d)(11), service coordination means the activities carried out by a service coordinator to assist and enable a child eligible under this part and the child’s family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State’s early intervention program.

(2) Each child eligible under this part and the child’s family must be provided with one service coordinator who is responsible for—

(i) Coordinating all services across agency lines; and

(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.

(3) Service coordination is an active, ongoing process that involves—

(i) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;

(ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;

(iii) Facilitating the timely delivery of available services; and

(iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child’s eligibility.

(b) Specific service coordination activities. Service coordination activities include—

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review, and evaluation of individualized family service plans;

(3) Assisting families in identifying available service providers;

(4) Coordinating and monitoring the delivery of available services;

(5) Informing families of the availability of advocacy services;

(6) Coordinating with medical and health providers; and

(7) Facilitating the development of a transition plan to preschool services, if appropriate.

(c) Employment and assignment of service coordinators. (1) Service coordinators may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.

(2) A State’s policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that service coordinators are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.

(d) Qualifications of service coordinators. Service coordinators must be persons who, consistent with §303.344(g), have demonstrated knowledge and understanding about—

(1) Infants and toddlers who are eligible under this part;

(2) Part C of the Act and the regulations in this part; and

(3) The nature and scope of services available under the State’s early intervention program, the system of payments for services in the State, and other pertinent information.

(Authority: 20 U.S.C. 1432(4))

Note 1: If States have existing service coordination systems, the States may use or adapt those systems, so long as they are consistent with the requirements of this part.

Note 2: The legislative history of the 1991 amendments to the Act indicates that the use of the term “service coordination” was not intended to affect the authority to seek reimbursement for services provided under Medicaid or any other legislation that makes
[58 FR 40959, July 30, 1993. Redesignated at 63 FR 18294, Apr. 14, 1998]

§ 303.24  State.
Except as provided in §303.200(b)(3), State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(27))
[58 FR 40959, July 30, 1993. Redesignated and amended at 63 FR 18294, Apr. 14, 1998]

§ 303.25  EDGAR definitions that apply.
The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Contract
Department
EDGAR
Fiscal year
Grant
Grantee
Grant period
Private
Public
Secretary

(Authority: 20 U.S.C. 1431–1445)
[58 FR 40959, July 30, 1993. Redesignated at 63 FR 18294, Apr. 14, 1998]

Subpart B—State Application for a Grant

GENERAL REQUIREMENTS

§ 303.100  Conditions of assistance.
(a) In order to receive funds under this part for any fiscal year, a State must have—
(1) An approved application that contains the information required in this part, including—
   (i) The information required in §§303.140 through 303.148; and
   (ii) The information required in §§303.161 through 303.176; and
(2) The statement of assurances required under §§303.120 through 303.128, on file with the Secretary.

(b) If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets an application requirement, including any policy or procedure filed under this part before July 1, 1998, that meets such a requirement, the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.

(c) An application that meets the requirements of this part remains in effect until the State submits to the Secretary modifications of that application.

(d) The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State’s compliance with this part if—
   (1) An amendment is made to the Act, or to a regulation under this part;
   (2) A new interpretation is made of the Act by a Federal court or the State’s highest court; or
   (3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.

(Authority: 20 U.S.C. 1434 and 1437)
[63 FR 18294, Apr. 14, 1998, as amended at 64 FR 12535, Mar. 12, 1999]

§ 303.101  How the Secretary disapproves a State’s application or statement of assurances.
The Secretary follows the procedures in 34 CFR 300.581 through 300.586 before disapproving a State’s application or statement of assurances submitted under this part.

(Authority: 20 U.S.C. 1437)

PUBLIC PARTICIPATION

§ 303.110  General requirements and timelines for public participation.
(a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State shall—
   (1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;
§ 303.111 Notice of public hearings and opportunity to comment.

The notice required in § 303.110(a)(3) must—

(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public, including individuals with disabilities and parents of infants and toddlers with disabilities, throughout the State about the hearings and opportunity to comment on the application or policy; and

(b) Be in sufficient detail to inform the public about—

(1) The purpose and scope of the State application or policy, and its relationship to part C of the Act;

(2) The length of the comment period and the date, time, and location of each hearing; and

(3) The procedures for providing oral comments or submitting written comments.

(Authority: 20 U.S.C. 1437(a)(7))

§ 303.112 Public hearings.

Each State shall hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1437(a)(7))
§ 303.122 Control of funds and property.

The statement must provide assurance satisfactory to the Secretary that—

(a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and

(b) A public agency will administer the funds and property.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(3))

§ 303.123 Prohibition against commingling.

The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(5)(A))

NOTE: As used in this part, commingle means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified—with a clear audit trail for each source—it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State’s early intervention program.

Thus, the assurance in this section is satisfied by the use of an accounting system that includes an “audit trail” of the expenditure of funds awarded under this part. Separate bank accounts are not required.

§ 303.124 Prohibition against supplanting.

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(1) Decreases in the number of children who are eligible to receive early intervention services under this part; and

(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(5)(B))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18294, Apr. 14, 1998]

§ 303.125 Fiscal control.

The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(6))

§ 303.126 Payor of last resort.

The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in §303.527, including the requirements on—

(a) Nonsubstitution of funds; and

(b) Non-reduction of other benefits.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(2))
§ 303.127 Assurances regarding expenditure of funds.

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in §303.3.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(1))

§ 303.128 Traditionally underserved groups.

The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure—

(a) That traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all the requirements of this part; and

(b) That these families have access to culturally competent services within their local geographical areas.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(7))

GENERAL REQUIREMENTS FOR A STATE APPLICATION

§ 303.140 General.

A State's application under this part must contain information and assurances demonstrating to the satisfaction of the Secretary that—

(a) The statewide system of early intervention services required in this part is in effect; and

(b) A State policy is in effect that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State.

(Authority: 20 U.S.C. 1434 and 1435(a)(2))

§ 303.141 Information about the Council.

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of subpart G of this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(a)(3))

§ 303.142 Designation of lead agency.

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(a)(1))

§ 303.143 Designation regarding financial responsibility.

Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(a)(2))

§ 303.144 Assurance regarding use of funds.

Each application must include an assurance that funds received under this part will be used to assist the State to maintain and implement the statewide system required under subparts D through F of this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475, 1437(a)(3))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18294, Apr. 14, 1998]

§ 303.145 Description of use of funds.

(a) General. Each application must include a description of how a State proposes to use its funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (e) of this section.
(b) Administrative positions. Each application must include—
   (1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and
   (2) For each position, the percentage of salary paid with those funds.

c) Maintenance and implementation activities. Each application must include—
   (1) A description of the nature and scope of each major activity to be carried out under this part in maintaining and implementing the statewide system of early intervention services; and
   (2) The approximate amount of funds to be spent for each activity.

(d) Direct services. (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, including a description of any services provided to at-risk infants and toddlers as defined in §303.16(b), and their families, consistent with §§303.521 and 303.527.
   (2) The description must include information about each type of service to be provided, including—
      (i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and
      (ii) The approximate amount of funds under this part to be used for the service.

e) At-risk infants and toddlers. For any State that does not provide direct services for at-risk infants and toddlers described in paragraph (d)(1) of this section, but chooses to use funds as described in §303.16(b), each application must include a description of how those funds will be used.

(f) Activities by other agencies. If other agencies are to receive funds under this part, the application must include—
   (1) The name of each agency expected to receive funds;
   (2) The approximate amount of funds each agency will receive; and
   (3) A summary of the purposes for which the funds will be used.

§ 303.146 Information about public participation.

Each application must include the information on public participation that is required in §303.113(b).

§ 303.147 Services to all geographic areas.

Each application must include a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State.

§ 303.148 Transition to preschool programs.

Each application must include a description of the policies and procedures to be used to ensure a smooth transition for children receiving early intervention services under this part to preschool or other appropriate services, including—
   (a) A description of how the families will be included in the transition plans;
   (b) A description of how the lead agency under this part will—
      (1) Notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law;
      (2)(i) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, convene a conference among the lead agency, the
family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive; or

(ii) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive;

(3) Review the child’s program options for the period from the child’s third birthday through the remainder of the school year; and

(4) Establish a transition plan; and

(c) If the State educational agency, which is responsible for administering preschool programs under part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(a)(8))

§ 303.164 Public awareness program.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program.

[58 FR 40959, July 30, 1993, as amended at 63 FR 18294, Apr. 14, 1998]
§ 303.165 Comprehensive child find system.
Each application must include—
(a) The policies and procedures required in § 303.321(b);
(b) Information demonstrating that the requirements on coordination in § 303.321(c) are met;
(c) The referral procedures required in § 303.321(d), and either—
1. A description of how the referral sources are informed about the procedures; or
2. A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and
(d) The timelines in § 303.321(e).

§ 303.166 Evaluation, assessment, and nondiscriminatory procedures.
Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.

§ 303.167 Individualized family service plans.
Each application must include—
(a) An assurance that a current IFSP is in effect and implemented for each eligible child and the child's family;
(b) Information demonstrating that—
1. The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343 and 303.345; and
2. The content of IFSPs used in the State is consistent with the requirements in § 303.344; and
(c) Policies and procedures to ensure that—
(1) To the maximum extent appropriate, early intervention services are provided in natural environments; and
(2) The provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

§ 303.168 Comprehensive system of personnel development (CSPD).
Each application must include information to show that the requirements in § 303.360(b) are met.

§ 303.169 Personnel standards.
(a) Each application must include policies and procedures that are consistent with the requirements in § 303.361.

§ 303.170 Procedural safeguards.
Each application must include procedural safeguards that—
(a) Are consistent with §§ 303.400 through 303.406, 303.419 through 303.425 and 303.460; and
(b) Incorporate either—
1. The due process procedures in 34 CFR 300.506 through 300.512; or
2. The procedures that the State has developed to meet the requirements in §§ 303.419, 303.420(b) and 303.421 through 303.425.
§ 303.171 Supervision and monitoring of programs.
Each application must include information to show that the requirements in § 303.501 are met.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1435(a)(10)(A))

§ 303.172 Lead agency procedures for resolving complaints.
Each application must include procedures that are consistent with the requirements in §§ 303.510 through 303.512.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1435(a)(11))

§ 303.173 Policies and procedures related to financial matters.
Each application must include—
(a) Funding policies that meet the requirements in §§ 303.520 and 303.521;
(b) Information about funding sources, as required in § 303.522;
(c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and
(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1435(a)(10) (D) and (E), 1435(a)(12), 1440)

§ 303.174 Interagency agreements; resolution of individual disputes.
Each application must include—
(a) A copy of each interagency agreement that has been developed under § 303.523; and
(b) Information to show that the requirements in § 303.524 are met.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1435(a)(10) (E) and (F))

§ 303.175 Policy for contracting or otherwise arranging for services.
Each application must include a policy that meets the requirements in § 303.526.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1435(a)(11))

§ 303.176 Data collection.
Each application must include procedures that meet the requirements in § 303.540.
(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1435(a)(14))

PARTICIPATION BY THE SECRETARY OF THE INTERIOR

§ 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.
(a) The Secretary makes payments to the Secretary of the Interior for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.
(b)(1) The Secretary of the Interior shall distribute payments under this section to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act.
(2) A tribe or tribal organization is eligible to receive a payment under this section if the tribe is on a reservation that is served by an elementary or secondary school operated or funded by the Bureau of Indian Affairs (“BIA”).
(c)(1) Within 90 days after the end of each fiscal year the Secretary of the Interior shall provide the Secretary with a report on the payments distributed under this section.
(2) The report must include—
(i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;
(ii) The amount of each payment; and
§ 303.200 Formula for State allocations.

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purpose of allotting funds to the States under paragraph (a) of this section—

1. Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under §303.203 and to the jurisdictions under §303.204;

2. Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and

3. State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1443(c))

§ 303.201 Distribution of allotments from non-participating States.

If a State elects not to receive its allotment, the Secretary reallocates those funds among the remaining States, in accordance with §303.200(a).

(Authority: 20 U.S.C. 1443(d))

§ 303.202 Minimum grant that a State may receive.

No State receives less than 0.5 percent of the aggregate amount available under §303.200 or $500,000, whichever is greater.

(Authority: 20 U.S.C. 1443(c)(2))

§ 303.203 Payments to the Secretary of the Interior.

The amount of the payment to the Secretary of the Interior under §303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under §303.204.

(Authority: 20 U.S.C. 1443(b))

§ 303.204 Payments to the jurisdictions.

(a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in §303.2 in accordance with their respective needs.

(b) The provisions of Pub. L. 95–134, permitting the consolidation of grants to the outlying areas, do not apply to funds provided under paragraph (a) of this section.

(Authority: 20 U.S.C. 1443(a))

38 FR 40959, July 30, 1993, as amended at 63 FR 18295, Apr. 14, 1998

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

GENERAL

§ 303.300 State eligibility criteria and procedures.

Each statewide system of early intervention services must include the eligibility criteria and procedures, consistent with §303.16, that will be used by the State in carrying out programs under this part.

(a) The State shall define developmental delay by—

1. Describing, for each of the areas listed in §303.16(a)(1), the procedures, including the use of informed clinical opinion, that will be used to measure a child’s development; and

2. Stating the levels of functioning or other criteria that constitute a developmental delay in each of those areas.

(b) The State shall describe the criteria and procedures, including the use of informed clinical opinion, that will
be used to determine the existence of a condition that has a high probability of resulting in developmental delay under §303.16(a)(2).

(c) If the State elects to include in its system children who are at risk under §303.16(b), the State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1432(5), 1435(a)(1))

NOTE: Under this section and §303.322(c)(2), States are required to ensure that informed clinical opinion is used in determining a child’s eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State’s criteria could include percentiles or percentages of levels of functioning on standardized measures.

§ 303.301 Central directory.

(a) Each system must include a central directory of information about—

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and demonstration projects being conducted in the State; and

(3) Professional and other groups that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to—

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be—

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available—

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons with disabilities.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(7))

NOTE: Examples of appropriate groups that provide assistance to eligible children and their families include parent support groups and advocate associations.

IDENTIFICATION AND EVALUATION

§ 303.320 Public awareness program.

Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part and includes the preparation and dissemination by the lead agency to all primary referral sources, especially hospitals and physicians, of materials for parents on the availability of early intervention services. The public awareness program must provide for informing the public about—

(a) The State’s early intervention program;

(b) The child find system, including—

(1) The purpose and scope of the system;

(2) How to make referrals; and

(3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(c) The central directory.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(6))

NOTE 1: An effective public awareness program is one that does the following:

1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;

2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;

3. Has coverage broad enough to reach the general public, including those who have disabilities; and

4. Includes a variety of methods for informing the public about the provisions of this part.
§ 303.321

NOTE 2: Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctors' offices, hospitals, and other appropriate locations, and (3) the use of a toll-free telephone service.

[58 FR 40959, July 30, 1993, as amended at 63 FR 18295, Apr. 14, 1998]

§ 303.321 Comprehensive child find system.

(a) General. (1) Each system must include a comprehensive child find system that is consistent with part B of the Act (see 34 CFR 300.128), and meets the requirements of paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) Procedures. The child find system must include the policies and procedures that the State will follow to ensure that—

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services.

(c) Coordination. (1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, tribes and tribal organizations that receive payments under this part, and other tribes and tribal organizations as appropriate, including efforts in the—

(i) Program authorized under part B of the Act;

(ii) Maternal and Child Health program under title V of the Social Security Act;

(iii) Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under title XIX of the Social Security Act;

(iv) Developmental Disabilities Assistance and Bill of Rights Act;

(v) Head Start Act; and


(2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that—

(i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and

(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.

(d) Referral procedures. (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—

(i) Evaluation and assessment, in accordance with §§303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with §303.342(a) or §303.345.

(2) The procedures required in paragraph (b)(1) of this section must—

(i) Provide for an effective method of making referrals by primary referral sources;

(ii) Ensure that referrals are made no more than two working days after a child has been identified; and

(iii) Include procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate the information, as described in §303.320, prepared by the lead agency on the availability of early intervention services to parents of infants and toddlers with disabilities.

(3) As used in paragraph (d)(1) of this section, primary referral sources includes—

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

(iv) Day care programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies; and

(viii) Other health care providers.

(e) Timelines for public agencies to act on referrals. (1) Once the public agency receives a referral, it shall appoint a service coordinator as soon as possible.
§ 303.322 Evaluation and assessment.

(a) General. (1) Each system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, and a family-directed identification of the needs of each child’s family to appropriately assist in the development of the child.

(2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) Definitions of evaluation and assessment. As used in this part—

(1) Evaluation means the procedures used by appropriate qualified personnel to determine a child’s initial and continuing eligibility under this part, consistent with the definition of “infants and toddlers with disabilities” in §303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child’s eligibility under this part to identify—

(i) The child’s unique strengths and needs and the services appropriate to meet those needs; and

(ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family’s capacity to meet the developmental needs of their infant or toddler with a disability.

(c) Evaluation and assessment of the child. The evaluation and assessment of each child must—

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) A review of pertinent records related to the child’s current health status and medical history.

(ii) An evaluation of the child’s level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Communication development.

(D) Social or emotional development.

(E) Adaptive development.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) Family assessment. (1) Family assessments under this part must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must—

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family’s description of its resources, priorities, and concerns related to enhancing the child’s development.

(e) Timelines. (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in §303.321(e).

(2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make
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It impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will—
(i) Document those circumstances; and
(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345 (b)(1) and (b)(2).

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(3); 1436 (a)(1), (a)(2), (d)(1), and (d)(2))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18295, Apr. 14, 1998]

§ 303.323 Nondiscriminatory procedures.

Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that—
(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;
(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;
(c) No single procedure is used as the sole criterion for determining a child’s eligibility under this part; and
(d) Evaluations and assessments are conducted by qualified personnel.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(3); 1436 (a)(1), (a)(2), (d)(1), and (d)(2))

INDIVIDUALIZED FAMILY SERVICE PLANS (IFSPs)

§ 303.340 General.

(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§ 303.341 through 303.346.

(b) As used in this part, individualized family service plan and IFSP mean a written plan for providing early intervention services to a child eligible under this part and the child’s family. The plan must—
(1) Be developed in accordance with §§ 303.342 and 303.343;
(2) Be based on the evaluation and assessment described in § 303.322; and
(3) Include the matters specified in § 303.344.

(c) Lead agency responsibility. The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute or assign responsibility.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1436)

NOTE: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it (1) contains all of the required information in §303.344, and (2) is developed in accordance with the requirements of this part.

§ 303.341 [Reserved]

§ 303.342 Procedures for IFSP development, review, and evaluation.

(a) Meeting to develop initial IFSP—timelines. For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45-day time period in §303.321(e).

(b) Periodic review. (1) A review of the IFSP for a child and the child’s family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine—
(i) The degree to which progress toward achieving the outcomes is being made; and
(ii) Whether modification or revision of the outcomes or services is necessary.

(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.
§ 303.343 Participants in IFSP meetings and periodic reviews.

(a) Initial and annual IFSP meetings. (1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(i) The parent or parents of the child.
(ii) Other family members, as requested by the parent, if feasible to do so;
(iii) An advocate or person outside of the family, if the parent requests that the person participate.
(iv) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP.
(v) A person or persons directly involved in conducting the evaluations and assessments in §303.322.
(vi) As appropriate, persons who will be providing services to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person’s involvement through other means, including—

(i) Participating in a telephone conference call;
(ii) Having a knowledgeable authorized representative attend the meeting; or
(iii) Making pertinent records available at the meeting.

(b) Periodic review. Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1436(b))

§ 303.344 Content of an IFSP.

(a) Information about the child’s status. (1) The IFSP must include a statement of the child’s present levels of physical development (including vision, hearing,
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and health status), cognitive development, communication development, social or emotional development, and adaptive development.

(2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) Family information. With the concurrence of the family, the IFSP must include a statement of the family’s resources, priorities, and concerns related to enhancing the development of the child.

(c) Outcomes. The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timeliness used to determine—

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary.

(d) Early intervention services. (1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including—

(i) The frequency, intensity, and method of delivering the services;

(ii) The natural environments, as described in § 303.12(b), and § 303.18 in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment;

(iii) The location of the services; and

(iv) The payment arrangements, if any.

(2) As used in paragraph (d)(1) of this section—

(i) Frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

(ii) Method means how a service is provided.

(e) Other services. (1) To the extent appropriate, the IFSP must include—

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and “well-baby” care), unless a child needs those services and the services are not otherwise available or being provided.

(f) Dates; duration of services. The IFSP must include—

(1) The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in § 303.342; and

(2) The anticipated duration of those services.

(g) Service coordinator. (1) The IFSP must include the name of the service coordinator from the profession most immediately relevant to the child’s or family’s needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may—

(i) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child’s and family’s IFSP; or

(ii) Appoint a new service coordinator.

(3) As used in paragraph (g)(1) of this section, the term profession includes “service coordination.”

(h) Transition from Part C services. (1) The IFSP must include the steps to be taken to support the transition of the child, in accordance with § 303.148, to—

(i) Preschool services under Part B of the Act, to the extent that those services are appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include—
§ 303.345 Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child’s family may commence before the completion of the evaluation and assessment in § 303.322, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes—

(1) The name of the service coordinator who will be responsible, consistent with § 303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child’s family.
§ 303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child’s IFSP. However, part C of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child’s IFSP.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1436(c))

NOTE: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible), and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.

§ 303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child’s IFSP. However, part C of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child’s IFSP.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1436)

PERSONNEL TRAINING AND STANDARDS

§ 303.360 Comprehensive system of personnel development.

(a) Each system must include a comprehensive system of personnel development.

(b) The personnel development system under this part must—

(1) Be consistent with the comprehensive system of personnel development required under part B of the Act (34 CFR 300.380 through 300.387);

(2) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate;

(3) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators; and

(4) Ensure that the training provided relates specifically to—

(i) Understanding the basic components of early intervention services available in the State;

(ii) Meeting the interrelated social or emotional, health, developmental, and educational needs of eligible children under this part; and

(iii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.

(c) A personnel development system under this part may include—

(1) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;

(2) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

(3) Training personnel to work in rural and inner-city areas; and

(4) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program under this part to a preschool program under part B of the Act or to other preschool or other appropriate services.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(8))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18295, Apr. 14, 1998]

§ 303.361 Personnel standards.

(a) As used in this part—

(1) Appropriate professional requirements in the State means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by State, local, and private agencies.

(2) Highest requirements in the State applicable to a specific profession or discipline means the highest entry-level academic degree needed for any State
approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) **Profession or discipline** means a specific occupational category that—
   (i) Provides early intervention services to children eligible under this part and their families;
   (ii) Has been established or designated by the State; and
   (iii) Has a required scope of responsibility and degree of supervision.

(4) **State approved or recognized certification, licensing, registration, or other comparable requirements** means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each statewide system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(c) To the extent that a State’s standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State’s application for assistance under this part must include the steps the State is taking, the procedures for notifying public agencies and personnel of those steps, and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) In identifying the “highest requirements in the State” for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(f) A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to eligible children under this part.

(g) In implementing this section, a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to eligible children, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law, within 3 years.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(9))

NOTE: This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master’s degree, for employment of personnel who provide services under this part.

The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these

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§ 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency shall be responsible for—
(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and
(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1439)

§ 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart—
(a) Consent means that—
(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language or other mode of communication;
(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;
(b) Native language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;
(c) Personally identifiable means that information includes—
(1) The name of the child, the child’s parent, or other family member;
(2) The address of the child;
(3) A personal identifier, such as the child’s or parent’s social security number; or
(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1439)

§ 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child’s family.

(Authority: 20 U.S.C. 1439(a)(4))

§ 303.403 Prior notice; native language.

(a) General. Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child’s family.

(b) Content of notice. The notice must be in sufficient detail to inform the parents about—
(1) The action that is being proposed or refused;
(2) The reasons for taking the action;
(3) All procedural safeguards that are available under §§303.401–303.460 of this part; and
(4) The State complaint procedures under §§303.510–303.512, including a description of how to file a complaint and the timelines under those procedures.

(c) Native language. (1) The notice must be—
(i) Written in language understandable to the general public; and
(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public
agency, or designated service provider, shall take steps to ensure that—

(i) The notice is translated orally or by other means to the parent in the parent’s native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1439(a)(6) and (7))

§ 303.404 Parent consent.

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under § 303.322; and

(2) Initiating the provision of early intervention services (see § 303.342(e)).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1439)

NOTE 1: In addition to the consent requirements in this section, other consent requirements are included in (1) § 303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

NOTE 2: Under § 300.504(b) of the part B regulations, a public agency may initiate procedures to challenge a parent’s refusal to consent to the initial evaluation of the parent’s child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

§ 303.405 Parent right to decline service.

The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

(Authority: 20 U.S.C. 1439(a)(3))

§ 303.406 Surrogate parents.

(a) General. Each lead agency shall ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in § 303.18) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) Duty of lead agency and other public agencies. The duty of the lead agency or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) Criteria for selecting surrogates. (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate parent—

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) Non-employee requirement; compensation. (1) A person assigned as a surrogate parent may not be—

(i) An employee of any State agency; or

(ii) A person or an employee of a person providing early intervention services to the child or to any family member of the child.
§ 303.419 Mediation.

(a) General. Each State shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in §303.403(a) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under §303.420. The lead agency may either use the mediation system established under Part B of the Act or establish its own system.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—
   (i) Is voluntary on the part of the parties;
   (ii) Is not used to deny or delay a parent’s right to a due process hearing under §303.420, or to deny any other rights afforded under Part C of the Act; and
   (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (c) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(c) Meeting to encourage mediation. A State may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—

(1) Who is under contract with a parent training and information center or community parent resource center in the State established under sections 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

[Authority: 20 U.S.C. 1415(e) and 1439(a)(8)]

[63 FR 18296, Apr. 14, 1998]

§ 303.420 Due process procedures.

Each system must include written procedures including procedures for mediation as described in §303.419, for the timely administrative resolution of individual child complaints by parents concerning any of the matters in §303.403(a). A State may meet this requirement by—

(a) Adopting the mediation and due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of §303.425; or

(b) Developing procedures that—

(1) Meet the requirements in §303.419 and §§303.421 through 303.425; and
(2) Provide parents a means of filing a complaint.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1439(a)(1))

NOTE 1: Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child’s family). These procedures require the appointment of a decision-maker who is impartial, as defined in §303.421(b), to resolve a dispute concerning any of the matters in §303.403(a).

The decision of the impartial decision-maker is binding unless it is reversed on appeal.

A different type of administrative procedure is included in §§303.510 through 303.512 of subpart F of this part. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints and those that are systemic in nature), and (2) resolving the complaint if the agency determines that a violation has occurred.

NOTE 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant’s or toddler’s development is so rapid that undue delay could be potentially harmful.

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

§ 303.421 Appointment of an impartial person.

(a) Qualifications and duties. An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) Definition of impartial. (1) As used in this section, impartial means that the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1439)

§ 303.422 Parent rights in administrative proceedings.

(a) General. Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under §303.420.

(b) Rights. Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1439)

§ 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent’s complaint, the impartial proceeding required under this
§ 303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1439(a)(1))

NOTE: Under part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of §303.420, elects to adopt the due process procedures under part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.

§ 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1439(a)(7))

Confidentiality

§ 303.460 Confidentiality of information.

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in §303.5(b).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1439(a)(2), 1442)

NOTE: With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under part C of the Act and this section (§303.460).

The part B provisions incorporate by reference the regulations in 34 CFR part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

Subpart F—State Administration

General

§ 303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(10))

§ 303.501 Supervision and monitoring of programs.

(a) General. Each lead agency is responsible for—

(1) The general administration and supervision of programs and activities receiving assistance under this part; and

(2) The monitoring of programs and activities used by the State to carry
out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part.

(b) Methods of administering programs. In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including—

(1) Monitoring agencies, institutions, and organizations used by the State to carry out this part;
(2) Enforcing any obligations imposed on those agencies under part C of the Act and these regulations;
(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and
(4) Correcting deficiencies that are identified through monitoring.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(10))

§ 303.510 Adopting complaint procedures.

(a) General. Each lead agency shall adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that any public agency or private service provider is violating a requirement of part C of the Act or this Part by—

(i) Providing for the filing of a complaint with the lead agency; and
(ii) At the lead agency’s discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency’s decision on the complaint; and
(2) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State’s procedures under §§ 303.510–303.512.

(b) Remedies for denial of appropriate services. In resolving a complaint in which it finds a failure to provide appropriate services, a lead agency, pursuant to its general supervisory authority under Part C of the Act, must address:

(1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child’s family; and
(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

(Authority: 20 U.S.C. 1435(a)(10))

[64 FR 12536, Mar. 12, 1999]

§ 303.511 An organization or individual may file a complaint.

(a) General. An individual or organization may file a written signed complaint under § 303.510. The complaint must include—

(1) A statement that the State has violated a requirement of part C of the Act or the regulations in this part; and
(2) The facts on which the complaint is based.

(b) Limitations. The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless—

(1) The alleged violation continues for that child or other children; or
(2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.

(Authority: 20 U.S.C. 1435(a)(10))

[64 FR 12536, Mar. 12, 1999]

§ 303.512 Minimum State complaint procedures.

(a) Time limit, minimum procedures. Each lead agency shall include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under § 303.510(a) to—

(1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary;
(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this Part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the lead agency’s final decision.

(b) Time extension; final decisions; implementation. The lead agency’s procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and

(2) Include procedures for effective implementation of the lead agency’s final decision, if needed, including—

(i) Technical assistance activities; 

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section, and due process hearings under §303.420. 

(1) If a written complaint is received that is also the subject of a due process hearing under §303.420, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60-calendar-day timeline using the complaint procedures described in paragraphs (a) and (b) of this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties—

(i) The hearing decision is binding; and

(ii) The lead agency must inform the complainant to that effect.

(3) A complaint alleging a public agency’s or private service provider’s failure to implement a due process decision must be resolved by the lead agency.

(Authority: 20 U.S.C. 1435(a)(10))

[64 FR 12536, Mar. 12, 1999]

POLICIES AND PROCEDURES RELATED TO FINANCIAL MATTERS

§303.520 Policies related to payment for services.

(a) General. Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State’s early intervention program. The policies must—

(1) Meet the requirements in paragraph (b) of this section; and

(2) Be reflected in the interagency agreements required in §303.523.

(b) Specific funding policies. A State’s policies must—

(1) Specify which functions and services will be provided at no cost to all parents;

(2) Specify which functions or services, if any, will be subject to a system of payments, and include—

(i) Information about the payment system and schedule of sliding fees that will be used; and

(ii) The basis and amount of payments; and

(3) Include an assurance that—

(i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and

(ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child’s family; and

(4) Set out any fees that will be charged for early intervention services and the basis for those fees.

(c) Procedures to ensure the timely provision of services. No later than the beginning of the fifth year of a State’s participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.
§ 303.523 Interagency agreements.

(a) General. Each lead agency is responsible for—

(1) The development, review, and evaluation of IFSPs in §§303.340 through 303.346; and

(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F of this part.

(c) States with mandates to serve children from birth. If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1432(4))

§ 303.522 Identification and coordination of resources.

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and H of the Act;

(5) The Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. 94–103); and

(6) Other Federal programs.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(10)(B))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

§ 303.521 Fees.

(a) General. A State may establish, consistent with §303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.

(b) Functions not subject to fees. The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in §303.321.

(2) Evaluation and assessment, as included in §303.322, and including the functions related to evaluation and assessment in §303.12.

(3) Service coordination, as included in §§303.22 and 303.344(g).

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs in §§303.340 through 303.346; and

(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F of this part.

(c) States with mandates to serve children from birth. If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1432(4))
§ 303.524 Resolution of disputes.

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(i).

(b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under § 303.143 (“financial designee”) shall assign financial responsibility to—

(i) An agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) The lead agency, in accordance with the “payor of last resort” provisions in § 303.527.

(2) If, during the lead agency’s resolution of the dispute, the financial designee determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made—

(i) The financial designee shall reassign the responsibility to the appropriate agency; and

(ii) The lead agency shall make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with § 303.525.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(10)(C) and (a)(10)(E))

§ 303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(10)(D))

§ 303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and
(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(11))

NOTE: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.

§ 303.527 Payor of last resort.

(a) Nonsubstitution of funds. Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of part C of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) Interim payments—reimbursement.

(1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child’s family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in §303.12;

(ii) Eligible health services (see §303.13); and

(iii) Other functions and services authorized under this part, including child find and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or “well-baby” health care (see §303.13(c)(1)).

(c) Non-reduction of benefits. Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (SSA) (relating to maternal and child health) or title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1440)

NOTE: The Congress intended that the enactment of part C not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) an amendment to title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to an infant or toddler with a disability because those services are included in the child’s IFSP adopted pursuant to part C of the Act.

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

§ 303.528 Reimbursement procedure.

Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with §303.527(b).

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(12))

REPORTING REQUIREMENTS

§ 303.540 Data collection.

(a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must—

(1) Include a process for—

(i) Collecting data from various agencies and service providers in the State;
§ 303.560 Use of funds by the lead agency.

A lead agency may use funds under this part that are reasonable and necessary for administering the State’s early intervention program for infants and toddlers with disabilities.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1433, 1435(a)(10))

Subpart G—State Interagency Coordinating Council

GENERAL

§ 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council.

(b) The Council must be appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(c) The Governor shall designate a member of the Council to serve as the chairperson of the Council or require the Council to do so. Any member of the Council who is a representative of the lead agency designated under §303.500 may not serve as the chairperson of the Council.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1441(a))

Note: To avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services.

It is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

§ 303.601 Composition.

(a) The Council must be composed as follows:

1. At least 10 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities; and

(ii) At least one member must be a parent of an infant or toddler with a disability or a child with a disability aged six or younger.

2. At least 10 percent of the members must be public or private providers of early intervention services.

3. At least one member must be from the State legislature.

4. At least one member must be involved in personnel preparation.

5. At least one member must—

(i) Be from each of the State agencies involved in the provisions of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and

(ii) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

6. At least one member must—

(i) Be from the State educational agency responsible for preschool services to children with disabilities; and

(ii) Have sufficient authority to engage in policy planning and implementation on behalf of that agency.

7. At least one member must be from the agency responsible for the State governance of health insurance.

8. At least one member must be from a Head Start agency or program in the State.

9. At least one member must be from a State agency responsible for child care.

(b) The Council may include other members selected by the Governor, including a representative from the BIA.
or, where there is no school operated or funded by the BIA, from the Indian Health Service or the tribe or tribal council.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1441(b))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

§ 303.602 Use of funds by the Council.

(a) General. Subject to the approval of the Governor, the Council may use funds under this part—

(1) To conduct hearings and forums;

(2) To reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);

(3) To pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;

(4) To hire staff; and

(5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) Compensation and expenses of Council members. Except as provided in paragraph (a) of this section, Council members shall serve without compensation from funds available under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1438, 1441 (c) and (d))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

§ 303.603 Meetings.

(a) The Council shall meet at least quarterly and in such places as it deems necessary.

(b) The meetings must—

(1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and

(2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants. The Council may use funds under this part to pay for those services.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1441 (c) and (d))

§ 303.604 Conflict of interest.

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1441(f))

FUNCTIONS OF THE COUNCIL

§ 303.650 General.

(a) Each Council shall—

(1) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(2) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(3) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

(i) Seeking information from service providers, service coordinators, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(ii) Taking steps to ensure that any policy problems identified under paragraph (a)(3)(i) of this section are resolved; and

(4) To the extent appropriate, assist the lead agency in the resolution of disputes.

(b) Each Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to five, inclusive.

(c) Each Council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and
§ 303.651 Advising and assisting the lead agency in its administrative duties.

Each Council shall advise and assist the lead agency in the—
(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;
(b) Assignment of financial responsibility to the appropriate agency; and
(c) Promotion of the interagency agreements under § 303.523.

(Approved by the Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1441(e)(1)(A))

§ 303.652 Applications.

Each Council shall advise and assist the lead agency in the preparation of applications under this part and amendments to those applications.

(Approved by the Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1441(e)(1)(A))

§ 303.653 Transitional services.

Each Council shall advise and assist the State educational agency regarding the transition of toddlers with disabilities to services provided under part B of the Act, to preschool and other appropriate services.

(Approved by the Office of Management and Budget under control number 1820–0578)
(Authority: 20 U.S.C. 1441(e)(1)(B))

§ 303.654 Annual report to the Secretary.

(a) Each Council shall—
(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and
(2) Submit the report to the Secretary by a date that the Secretary establishes.
(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Approved by the Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1441(e)(1)(D))
Subpart A—General

§ 304.1 Purpose.
Individuals who receive scholarship assistance from projects funded under the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities program are required to complete a service obligation, or repay all or part of the costs of such assistance, in accordance with section 673(h) of the Individuals with Disabilities Education Act and the regulations of this part.

(Authority: 20 U.S.C. 1473(h))

§ 304.2 What is the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program?
The Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program (program) provides financial assistance under section 673 of the Act to—
(a) Help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and
(b) Ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children.

(Authority: 20 U.S.C. 1473(a))

§ 304.3 What definitions apply to this program?
(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:
Applicant
Award
Department
EDGAR
Grantee
Project
Recipient
Secretary
(b) The following definitions apply to this program:
Academic year means—
(1) A full-time course of study—
(i) Taken for a period totaling at least nine months; or
(ii) Taken for the equivalent of at least two semesters, two trimesters, or three quarters; or
(2) For a part-time student, the accumulation of periods of part-time courses of study that is equivalent to an “academic year” under paragraph (b)(1) of this section.
Act means the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.
Early intervention services means early intervention services as defined in section 632(4) of the Act.
Full-time, for purposes of determining whether an individual is employed full-time in accordance with § 304.23, means a full-time position as defined by the individual’s employer or by the agencies served by the individual.
Payback means monetary repayment of scholarship assistance in lieu of completion of a service obligation.
Related services means related services as defined in section 602(22) of the Act.
Scholar means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under this part.
Scholarship means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, student stipends, and books, and travel in conjunction with training assignments.
Service obligation means a scholar’s employment obligation, as described in section 673(h) of the Act and § 304.23(b).
Special education means special education as defined in section 602(25) of the Act.

(Authority: 20 U.S.C. 1473(h))

§ 304.4 What regulations apply to this program?
The following regulations apply to this program:
(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:
(i) Taken for a period totaling at least nine months; or
(ii) Taken for the equivalent of at least two semesters, two trimesters, or three quarters; or
(2) For a part-time student, the accumulation of periods of part-time courses of study that is equivalent to an “academic year” under paragraph (b)(1) of this section.
Act means the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.
Early intervention services means early intervention services as defined in section 632(4) of the Act.
Full-time, for purposes of determining whether an individual is employed full-time in accordance with § 304.23, means a full-time position as defined by the individual’s employer or by the agencies served by the individual.
Payback means monetary repayment of scholarship assistance in lieu of completion of a service obligation.
Related services means related services as defined in section 602(22) of the Act.
Scholar means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under this part.
Scholarship means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, student stipends, and books, and travel in conjunction with training assignments.
Service obligation means a scholar’s employment obligation, as described in section 673(h) of the Act and § 304.23(b).
Special education means special education as defined in section 602(25) of the Act.

(Authority: 20 U.S.C. 1473(h))
§ 304.20 What are the requirements for directing grant funds?

(a) The Secretary, as appropriate, identifies in a notice published in the Federal Register, the percentage (up to 75 percent) of a total award under the program that must be used to support scholarships as defined in §304.3.

(b) The Secretary may award a grant that uses a percentage for scholarships, as determined by the Secretary, that is lower than that published under paragraph (a) of this section in exceptional circumstances if the Secretary determines that such an exception is necessary to achieve the purposes of the program.

(Authority: 20 U.S.C. 1473(h))

§ 304.21 What are allowable costs?

In addition to the allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable expenditures by projects funded under the program:

(a) Tuition and fees.
(b) Student stipends and books.
(c) Travel in conjunction with training assignments.

(Authority: 20 U.S.C. 1473(h))

§ 304.22 What are the requirements for grantees in disbursing scholarships?

Before disbursement of scholarship assistance to an individual, a grantee must—

(a) Ensure that the scholar—

(1) Is a citizen or national of the United States;

(2) Is a permanent resident of—

(i) Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

(ii) The Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (during the period in which these entities are eligible to receive an award under the program); or

(3) Provides evidence from the U.S. Immigration and Naturalization Service that the individual is—

(i) A lawful permanent resident of the United States; or

(ii) In the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.

(b) Limit scholarship assistance to the amount by which the individual’s cost of attendance at the institution exceeds the amount of grant assistance the scholar is to receive for the same academic year under Title IV of the Higher Education Act; and

(c) Obtain a Certification of Eligibility for Federal Assistance from each scholar, as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820–0622)

(Authority: 20 U.S.C. 1473)
§ 304.23 What assurances must be provided by a grantee that intends to provide scholarships?

Before receiving an award, a grantee that intends to grant scholarships under the program must assure that the following requirements will be satisfied:

(a) Requirement for agreement. Each scholar who will receive a scholarship must first enter into a written agreement with the grantee that contains the terms and conditions required by this section.

(b) Terms of the agreement. Each agreement under paragraph (a) of this section must contain, at a minimum, the following provisions:

(1) Individuals who receive scholarship assistance from projects funded under section 673(b) and (c) and to the extent determined appropriate by the Secretary, section 673(d), of the Act will subsequently maintain employment—
   (i) In which the individual provides special education or related services to children with disabilities or early intervention services to infants and toddlers, and their families;
   (ii) On a full-time or full-time equivalent basis; and
   (iii) For a period of at least two years for every academic year for which assistance was received.

(2) In order to meet the requirements of paragraph (b)(1) of this section, an individual must be employed in a position in which—
   (i) A majority of the persons to whom the individual provides services are receiving from the individual special education, related services, or early intervention services; or
   (ii) The individual spends a majority of his or her time providing special education or related services to children with disabilities or early intervention services to infants and toddlers with disabilities.

(3) Individuals who receive scholarship assistance from a leadership preparation project funded under section 673(c) of the Act will subsequently maintain employment—
   (i) In which the individual expends a majority of his or her time performing work related to the individual’s preparation;
   (ii) On a full-time or full-time equivalent basis; and
   (iii) For a period of at least two years for every academic year for which assistance was received.

(4) A scholarship recipient must complete the service obligation under paragraph (b)(1)(iii) or (b)(3)(iii) of this section within the period ending not more than the sum of the number of years required in paragraph (b)(1)(iii) or (b)(3)(iii) of this section, as appropriate, plus three additional years, from the date the recipient completes the training for which the scholarship assistance was awarded.

(5) Employment that meets the requirements of paragraph (b) of this section, and is performed by a scholar subsequent to the completion of one academic year of the training for which the scholarship assistance was received, can be used to meet, in part, the period of the scholar’s service obligation under paragraph (b)(1)(iii) or (b)(3)(iii) of this section.

(6) The service obligation in paragraph (b) of this section, as applied to a part-time scholar, is based on the accumulated academic years of training for which the scholarship is received.

(c) Repayment. (1) Subject to the provisions in §304.31 regarding a deferral or exception, a scholar who does not fulfill the requirements in paragraph (b)(1) or (b)(3) of this section, as appropriate, must repay all or part of any scholarship received, plus interest.

(2) The amount of the scholarship that has not been retired through eligible service will constitute a debt owed to the United States that—
   (i) Will be repaid by the scholar in accordance with §304.32; and
   (ii) May be collected by the Secretary in accordance with 34 CFR part 30, in the case of the scholar’s failure to meet the obligation of §304.32.

(d) Standards for satisfactory progress. The grantee must establish, notify students of, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar’s course of study.

(e) Compliance. The grantee must establish policies and procedures to determine compliance of scholars with the terms of the written agreement developed under this section;
§ 304.30  Exit certification. The grantee must establish policies and procedures for receiving written certification from scholars at the time of exit from the program that identifies—
(1) The number of years the scholar needs to work to satisfy the work requirements in paragraph (b) of this section;
(2) The total amount of scholarship assistance received subject to the work-or-repay provision in paragraph (b) of this section;
(3) The time period, consistent with paragraph (b)(1)(iii) or (b)(3)(iii) of this section, during which the scholar must satisfy the work requirements in paragraph (b) of this section;
(4) All other obligations of the scholar under this section.

(g) Information. The grantee must provide, upon request of the Secretary, information, including records maintained under paragraphs (e) and (f) of this section, that is necessary to carry out the Secretary’s functions under this part.

(h) Records. The grantee must maintain the information under this section related to a scholar for a period of time equal to the time required to fulfill the obligation under paragraph (b) of this section.

(i) Notification. The grantee must inform the Secretary if a scholar fails to fulfill or chooses not to fulfill the obligation under paragraph (b)(1) or (b)(3) of this section.

(Approved by the Office of Management and Budget under control number 1820–0622)
(Authority: 20 U.S.C. 1473(h))

§ 304.31 What are the requirements for obtaining a deferral or exception to performance or repayment under an agreement?

(a) An exception to the repayment requirement in §304.23(c) may be granted, in whole or part, if the scholar—
(1) Is unable to continue the course of study or perform the service obligation because of a disability that is expected to continue indefinitely; or
(2) Has died.

(b) Deferral of the repayment requirement in §304.23(c) may be granted during the time the scholar—
(1) Is engaging in a full-time course of study at an institution of higher education;
(2) Is serving, not in excess of three years, on active duty as a member of the armed services of the United States;
(3) Is serving as a volunteer under the Peace Corps Act;
(4) Is serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;
(5) Has a disability which prevents the individual from working, for a period not to exceed three years; or
(6) Is unable to secure employment as required by the agreement by reason of
the care provided to a disabled family member for a period not to exceed 12 months.

(c) Deferrals or exceptions to performance or repayment may be provided by grantees based upon sufficient evidence to substantiate the grounds for an exception under paragraph (a) of this section or a deferral under paragraph (b) of this section.

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(Authority: 20 U.S.C. 1473(h))

§ 304.32 What are the consequences of a scholar’s failure to meet the terms and conditions of a scholarship agreement?

If a scholar fails to meet the terms and conditions of a scholarship agreement under §304.23(b) or to obtain a deferral or an exception as provided in §304.31, the scholar must repay all or part of the scholarship assistance to the Secretary as follows:

(a) Amount. The amount of the scholarship to be repaid is proportional to the service obligation not completed.

(b) Interest Rate. The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) Interest accrual. (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar’s repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under §304.31.

(d) Collection costs. Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) Repayment status. A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the grantee that he or she does not plan to fulfill the service obligation under the agreement.

(2) Any date when the scholar’s failure to begin or maintain employment makes it impossible for that individual to complete the service obligation within the number of years required in §304.23(b).

(3) Any date on which the scholar discontinues enrollment in the course of study under §304.30(a).

(f) Amounts and frequency of payment. The scholar must make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0622)

(Authority: 20 U.S.C. 1473(h))

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec. 345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?

345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?

345.3 What are the types of awards under this program?

345.4 Who is eligible to receive a development grant?

345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?

345.6 How does a State designate the lead agency?

345.7 Who is eligible to receive an extension grant?

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§ 345.1

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Authority: 29 U.S.C. 2201-2217, unless otherwise noted.

Source: 61 FR 8161, Mar. 1, 1996, unless otherwise noted.

Subpart A—General

§ 345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?

This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive statewide programs of technology-related assistance that accomplish the purposes in §345.2.

Authority: 29 U.S.C. 2211(a); section 101(a) of the Act

§ 345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?

The purposes of this program are to provide financial assistance to States to support systems change and advocacy activities designed to assist each State in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance, for individuals with disabilities of all ages, that is designed to—

(a)(1) Increase the availability of, funding for, access to, and provision of, assistive technology devices and assistive technology services;

(2) Increase the active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, in the planning, development, implementation, and evaluation of the program;

(3) Increase the involvement of individuals with disabilities and, if appropriate, their family members, guardians, advocates, or authorized representatives, in decisions related to the provision of assistive technology devices and assistive technology services;

(4) Increase the provision of outreach to underrepresented populations and rural populations, to enable the two populations to enjoy the benefits of programs carried out to accomplish the purposes described in this section to the same extent as other populations;

(5) Increase and promote coordination among State agencies, and between State agencies and private entities, that are involved in carrying out activities under this part, particularly providing assistive technology devices and assistive technology services, that accomplish a purpose described in another paragraph of this section;

(6)(i) Increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures, that facilitate the availability or provision of assistive technology devices and assistive technology services; and
(ii) Facilitate the change of laws, regulations, policies, practices, procedures, and organizational structures, that impede the availability or provision of assistive technology devices and assistive technology services;

(7) Increase the probability that individuals with disabilities of all ages will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as these individuals make the transition between services offered by human service agencies or between settings of daily living;

(8) Enhance the skills and competencies of individuals involved in providing assistive technology devices and assistive technology services;

(9) Increase awareness and knowledge of the efficacy of assistive technology devices and assistive technology services among—

(i) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(ii) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(iii) Educators and related services personnel;

(iv) Technology experts (including engineers);

(v) Employers; and

(vi) Other appropriate individuals;

(10) Increase the capacity of public agencies and private entities to provide and pay for assistive technology devices and assistive technology services on a statewide basis for individuals with disabilities of all ages; and

(11) Increase the awareness of the needs of individuals with disabilities for assistive technology devices and for assistive technology services.

(b)(1) Identify Federal policies that facilitate payment for assistive technology devices and assistive technology services.

(2) Identify Federal policies that impede this payment.

(3) Eliminate inappropriate barriers to this payment.

(c) Enhance the ability of the Federal Government to provide States with—

(1) Technical assistance, information, training, and public awareness programs relating to the provision of assistive technology devices and assistive technology services; and

(2) Funding for demonstration projects.

(Authority: 29 U.S.C. 2201(b); section 2(b) of the Act)

§ 345.3 What are the types of awards under this program?

(a) Under this program, the Secretary—

(1) Awards three-year development grants to assist States in developing and implementing consumer-responsive comprehensive statewide programs that accomplish the purposes in §345.2;

(2) May award an initial two-year extension grant to any State that meets the standards in §345.42(a); and

(3) May award a second extension grant, for a period of not more than 5 years, to any State that meets the standards in §345.42(b).

(b) The Secretary calculates the amount of the development grants in paragraph (a)(1) of this section on the basis of—

(1) Amounts available for making grants under this part;

(2) The population of the State or territory concerned; and

(3) The types of assistance proposed by the State in its application; and

(4) A description in its application of the amount of resources committed by the State and available to the State from other sources to sustain the program after federal funding ends.

(d)(1) In providing any increases in initial extension grants in paragraph (a)(2) of this section above the amounts provided to States for Fiscal Year 1993, the Secretary may give priority to States (other than the territories) that—
§ 345.4 Who is eligible to receive a development grant?

A State is eligible to receive a development grant under this program, provided that the Governor has designated a lead agency to carry out the responsibilities contained in § 345.5.

(Authority: 29 U.S.C. 2212(a) and 2212(d); section 102(a) and 102(d)(1) of the Act)

§ 345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?

(a) The lead agency is responsible for the following:

(1) Submitting the application containing the information and assurances contained in §345.30.

(2) Administering and supervising the use of amounts made available under the grant.

(3)(i) Coordinating efforts related to, and supervising the preparation of, the application;

(ii) Coordinating the planning, development, implementation, and evaluation of the consumer-responsive, comprehensive statewide program of technology-related assistance among public agencies and private agencies, including coordinating efforts related to entering into interagency agreements; and

(iii) Coordinating efforts related to, and supervising, the active, timely, and meaningful participation by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals, with respect to activities carried out under the grant.

(4) The delegation, in whole or in part, of any responsibilities described in paragraphs (a)(1) through (3) of this section to one or more appropriate offices, agencies, entities, or individuals.

(b) If the lead agency is not a public agency, a public agency shall have the responsibility of controlling and administering amounts received under the grant.

(Authority: 29 U.S.C. 2212(d)(1) and 2212(e)(12); section 102(d)(1) and 102(e)(12) of the Act)

§ 345.6 How does a State designate the lead agency?

(a) The Governor may designate—

(1) A commission appointed by the Governor;

(2) A public-private partnership or consortium;

(3) A university-affiliated program;

(4) A public agency;

(5) A council established under Federal or State law; or

(6) Another appropriate office, agency, entity, or individual.

(b) The State shall provide evidence that the lead agency has the ability—

(1) To respond to assistive technology needs across disabilities and ages;

(2) To promote the availability throughout the State of assistive technology devices and assistive technology services;

(3) To promote and implement systems change and advocacy activities;

(4) To promote and develop public-private partnerships;

(5) To exercise leadership in identifying and responding to the technology needs of individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(6) To promote consumer confidence, responsiveness, and advocacy; and

(7) To exercise leadership in implementing effective strategies for capacity building, staff and consumer training, and enhancement of access to
funding for assistive technology devices and assistive technology services across agencies.

(Authority: 29 U.S.C. 2212(d)(2) and (3); sections 102(d)(2) and (3) of the Act)

§ 345.7 Who is eligible to receive an extension grant?

A State is eligible to receive an extension grant under this program.

§ 345.8 What are the responsibilities of the lead agency in applying for and in administering an extension grant?

(a) To be eligible to receive an initial extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in §345.31; and

(2) Hold a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(b) To be eligible to receive a second extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in §345.31; and

(2) Hold a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(Authority: 29 U.S.C. 2213(d) and (e); section 103(d) and (e) of the Act)

§ 345.9 What regulations apply to this program?

The following regulations apply to the State Grants Program for Technology-Related Assistance for Individuals with Disabilities:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) 34 CFR part 75 (Direct Grant Programs), except §75.618;

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations);

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except §§80.32(a) and 80.33(a);

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement);

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part.


§ 345.10 What definitions apply to this program?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Nonpublic
Private
Project
Project period
Public

(b) Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988. (1) The following terms used in this part are defined in section 3 of the Act:

Advocacy services
Assistive technology device
Assistive technology service
Comprehensive statewide program of technology-related assistance
Consumer-responsive
Disability
Individual with a disability; individuals with disabilities
Institution of higher education
§ 345.20 What type of activities are authorized under this program?

Any State that receives a development or extension grant shall use the funds made available through the grant to accomplish the purposes described in § 345.2(a) and, in accomplishing such purposes, may carry out any of the following systems change and advocacy activities:

(a) Support activities to increase access to, and funding for, assistive technology, including—

(i) The development, and evaluation of the efficacy, of model delivery systems that provide assistive technology devices and assistive technology services to individuals with disabilities, that pay for devices and services, and that, if successful, could be replicated or generally applied, such as—

1. The development of systems for the purchase, lease, other acquisition, or payment for the provision of assistive technology devices and assistive technology services; or

2. The establishment of alternative State or privately financed systems of subsidies for the provision of assistive technology devices and assistive technology services, such as—

(A) A loan system for assistive technology devices;

(B) An income-contingent loan fund;

(C) A low interest loan fund;

(D) A revolving loan fund;

(E) A loan insurance program; or

(F) A partnership with private entities for the purchase, lease, or other acquisition of assistive technology devices and the provision of assistive technology services;

(ii) The demonstration of assistive technology devices, including—

1. The provision of a location or locations within the State where the following individuals can see and touch assistive technology devices, and learn about the devices from personnel who are familiar with such devices and their applications:

(A) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(B) Education, rehabilitation, health care, and other service providers;

(C) Individuals who work for Federal, State, or local government entities; and

(D) Employers.

2. The provision of counseling and assistance to individuals with disabilities and their family members, guardians, advocates, and authorized representatives to determine individual needs for assistive technology devices and assistive technology services; and

3. The demonstration or short-term loan of assistive technology devices to individuals, employers, public agencies, or public accommodations seeking strategies to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(iii) The establishment of information systems about, and recycling centers for, the redistribution of assistive technology devices and equipment that may include device and equipment loans, rentals, or gifts.

(b) Support activities to—

(i) Identify and coordinate Federal and State policies, resources, and services, relating to the provision of assistive technology devices and assistive
technology services, including entering into interagency agreements;

(2) Convene interagency work groups to enhance public funding options and coordinate access to funding for assistive technology devices and assistive technology services for individuals with disabilities of all ages, with special attention to the issues of transition (such as transition from school to work, and transition from participation in programs under part H of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.), to participation in programs under part B of such Act (20 U.S.C. 1411 et seq.)) home use, and individual involvement in the identification, planning, use, delivery, and evaluation of such devices and services; or

(3) Document and disseminate information about interagency activities that promote coordination with respect to assistive technology devices and assistive technology services, including evidence of increased participation of State and local special education, vocational rehabilitation, and State medical assistance agencies and departments.

(c) Carry out activities to encourage the creation or maintenance of, support, or provide assistance to, statewide and community-based organizations, or systems, that provide assistive technology devices and assistive technology services to individuals with disabilities or that assist individuals with disabilities in using assistive technology devices or assistive technology services. The activities may include outreach to consumer organizations and groups in the State to coordinate the activities of the organizations and groups with efforts (including self-help, support groups, and peer mentoring) to assist individuals with disabilities and their family members, guardians, advocates, or authorized representatives, to obtain funding for, and access to, assistive technology devices and assistive technology services.

(d) Pay for expenses, including travel expenses, and services, including services of qualified interpreters, readers, and personal assistants services that may be necessary to ensure access to the comprehensive statewide program of technology-related assistance by individuals with disabilities who are determined by the State to be in financial need. The expenses must be incurred by participants in activities associated with the state technology program.

(e) Conduct a statewide needs assessment that may be based on data in existence on the date on which the assessment is initiated and may include—

(1) Estimates of the numbers of individuals with disabilities within the State, categorized by residence, type and extent of disabilities, age, race, gender, and ethnicity;

(2) In the case of an assessment carried out under a development grant, a description of efforts, during the fiscal year preceding the first fiscal year for which the State received a grant, to provide assistive technology devices and assistive technology services to individuals with disabilities within the State, including—

(i) The number of individuals with disabilities who received appropriate assistive technology devices and assistive technology services; and

(ii) A description of the devices and services provided;

(3) Information on the number of individuals with disabilities who are in need of assistive technology devices and assistive technology services, and a description of the devices and services needed;

(4) Information on the cost of providing assistive technology devices and assistive technology services to all individuals with disabilities within the State who need such devices and services;

(5) A description of State and local public resources and private resources (including insurance) that are available to establish a consumer-responsive comprehensive statewide program of technology-related assistance;

(6) Information identifying Federal and State laws, regulations, policies, practices, procedures, and organizational structures, that facilitate or interfere with the operation of a consumer responsive comprehensive statewide program of technology related assistance;

(7) A description of the procurement policies of the State and the extent to
which such policies will ensure, to the extent practicable, that assistive technology devices purchased, leased, or otherwise acquired with assistance made available through a development or extension grant under this part are compatible with other technology devices, including technology devices designed primarily for use by—

(i) Individuals who are not individuals with disabilities;

(ii) Individuals who are elderly; or

(iii) Individuals with particular disabilities; and

(8) Information resulting from an inquiry about whether a State agency or task force (composed of individuals representing the State and individuals representing the private sector) should study the practices of private insurance companies holding licenses within the State that offer health or disability insurance policies under which an individual may obtain reimbursement for—

(i) The purchase, lease, or other acquisition of assistive technology devices; or

(ii) The use of assistive technology services.

(f) Support—(1)(i) A public awareness program designed to provide information relating to the availability and efficacy of assistive technology devices and assistive technology services for—

(A) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(B) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(C) Educators and related services personnel;

(D) Technology experts (including engineers);

(E) Employers; and

(F) Other appropriate individuals and entities; or

(ii) Establish and support the program if no such program exists.

(2) A public awareness program that may include—

(A) Training in the use of assistive technology devices and assistive technology services;

(B) The development of written materials, training, and technical assistance describing the means by which agencies consider the needs of an individual with a disability for assistive technology devices and assistive technology services in developing, for the individual, any individualized education program described in section 614(a)(5) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(a)(5)), any individualized written rehabilitation program described in section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722), any individualized family service plan described in section 677 of the Individuals with Disabilities Education Act (20 U.S.C. 1477), and any other individualized plans or programs;

(C) Training regarding the rights of the persons described in paragraph (f)(1)(i) of this section to assistive technology devices and assistive technology services under any law other
than this Act, to promote fuller independence, productivity, and inclusion in and integration into society of such persons; and

(D) Training to increase consumer participation in the identification, planning, use, delivery, and evaluation of assistive technology devices and assistive technology services; and

(2)(i) Enhance the assistive technology skills and competencies of—

(A) Individuals who work for public agencies or for private entities (including insurers) that have contact with individuals with disabilities;

(B) Educators and related services personnel;

(C) Technology experts (including engineers);

(D) Employers; and

(E) Other appropriate personnel; and

(ii) Include taking actions to facilitate the development of standards, or, when appropriate, the application of standards, to ensure the availability of qualified personnel.

(h) Support the compilation and evaluation of appropriate data related to a program described in §345.1.

(i)(1) Develop, operate, or expand a system for public access to information concerning an activity carried out under another paragraph of this section, including information about assistive technology devices and assistive technology services, funding sources and costs of assistance, and individuals, organizations, and agencies capable of carrying out such an activity for individuals with disabilities.

(2) Access to the system may be provided through community-based entities, including public libraries, centers for independent living (as defined in section 702(1) of the Rehabilitation Act of 1973 (29 U.S.C. 796a(1)), and community rehabilitation programs, as defined in section 7(25) of such Act (29 U.S.C. 706(25)).

(3) In developing, operating, or expanding a system described in paragraph (i)(1) of this section, the State may—

(i) Develop, compile, and categorize print, large print, braille, audio, and video materials, computer disks, compact discs (including compact discs formatted with read-only memory), information that can be used in telephone-based information systems, and other media as technological innovation may make appropriate;

(ii) Identify and classify existing funding sources, and the conditions of and criteria for access to such sources, including any funding mechanisms or strategies developed by the State;

(iii) Identify existing support groups and systems designed to help individuals with disabilities make effective use of an activity carried out under another paragraph of this section; and

(iv) Maintain a record of the extent to which citizens of the State use or make inquiries of the system established in paragraph (i)(1) of this section, and of the nature of inquiries.

(4) The information system may be organized on an interstate basis or as part of a regional consortium of States in order to facilitate the establishment of compatible, linked information systems.

(j)(1) The State may enter into cooperative agreements with other States to expand the capacity of the States involved to assist individuals with disabilities of all ages to learn about, acquire, use, maintain, adapt, and upgrade assistive technology devices and assistive technology services that individuals need at home, at school, at work, or in other environments that are part of daily living.

(2) The State may operate or participate in a computer system through which the State may electronically communicate with other States to gain technical assistance in a timely fashion and to avoid the duplication of efforts already undertaken in other States.

(k) Support the establishment or continuation of partnerships and cooperative initiatives between the public sector and the private sector to promote the greater participation by business and industry in the—

(1) Development, demonstration, and dissemination of assistive technology devices; and

(2) Ongoing provision of information about new products to assist individuals with disabilities.

(l) Provide advocacy services.

(m) Utilize amounts made available through development and extension
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grants for any systems change and advocacy activities, other than the activities described in another paragraph of this section, that are necessary for developing, implementing, or evaluating the consumer-responsive comprehensive statewide program of technology-related assistance.

(n)(1) Accomplish the purposes in §345.2(b) and (c).

(2) [Reserved]

(Authority: 29 U.S.C. 2201(b) and 2211(b); sections 2(b)(2), 2(b)(3) and 101(b) of the Act)

Subpart C—How Does a State Apply for a Grant?

§ 345.30 What is the content of an application for a development grant?

(a) Applicants for development grants under this program shall include the following information in their applications:

(1) Information identifying the lead agency designated by the Governor under §345.4 and the evidence described in §345.6(b).

(2) A description of the nature and extent of involvement of various State agencies, including the State insurance department, in the preparation of the application and the continuing role of each agency in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance, including the identification of the available resources and financial responsibility of each agency for paying for assistive technology devices and assistive technology services.

(3)(i) A description of procedures that provide for—

(A)(1) The active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, and other appropriate individuals, in the development, implementation, and evaluation of the program; and

(B) To the maximum extent appropriate, the active involvement of individuals with disabilities who use assistive technology devices or assistive technology services, in decisions relating to such devices and services; and

(B) Mechanisms for determining consumer satisfaction and participation of individuals with disabilities who represent a variety of ages and types of disabilities, in the consumer-responsive comprehensive statewide program of technology-related assistance.

(ii) A description of the nature and extent of the—

(A) Involvement, in the designation of the lead agency under §345.4, and in the development of the application, of—

(1) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(2) Other appropriate individuals who are not employed by a State agency; and

(3) Organizations, providers, and interested parties, in the private sector; and

(B) Continuing role of the individuals and entities described in paragraph (a)(3)(ii)(A) of this section in the program.

(4) A tentative assessment of the extent of the need of individuals with disabilities in the State, including individuals from underrepresented populations or rural populations for a statewide program of technology-related assistance and a description of previous efforts and efforts continuing on the date of the application to develop a consumer-responsive comprehensive statewide program of technology-related assistance.

(5) A description of State resources and other resources (to the extent this information is available) that are available to commit to the development of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6) Information on the program with respect to the—

(i) Goals and objectives of the State for the program;

(ii) Systems change and advocacy activities that the State plans to carry out under the program; and

(iii) Expected outcomes of the State for the program, consistent with the purposes described in §345.2(a).

(7)(i) A description of the data collection system used for compiling information on the program, consistent with requirements established by the Secretary for systems, and, when a national classification system is developed pursuant to section 201 of the Act,
consistent with the classification system; and
(ii) Procedures that will be used to conduct evaluations of the program.
(8) A description of the policies and procedures governing contracts, grants, and other arrangements with public agencies, private nonprofit organizations, and other entities or individuals for the purpose of providing assistive technology devices and assistive technology services consistent with this part.
(b) Applicants for development grants shall include the following assurances in their applications:
(1)(i) An assurance that the State will use funds from a development or extension grant to accomplish the purposes described in §345.2(a) and the goals, objectives, and outcomes described in paragraph (a)(6) of this section, and to carry out the systems change and advocacy activities described in paragraph (a)(6)(ii) of this section, in a manner that is consumer-responsive.
(ii) An assurance that the State, in carrying out systems change and advocacy activities, shall carry out the following activities, unless the State demonstrates through the progress reports required under §345.50 that significant progress has been made in the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, and that other systems change and advocacy activities will increase the likelihood that the program will accomplish the purposes described in §345.2(a):
(A) The development, implementation, and monitoring of State, regional, and local laws, regulations, policies, practices, procedures, and organizational structures, that will improve access to, provision of, funding for, and timely acquisition and delivery of, assistive technology devices and assistive technology services;
(B) The development and implementation of strategies to overcome barriers regarding access to, provision of, and funding for, such devices and services, with priority for identification of barriers to funding through State education (including special education) services, vocational rehabilitation services, and medical assistance services or, as appropriate, other health and human services, and with particular emphasis on overcoming barriers for underrepresented populations and rural populations;
(C) Coordination of activities among State agencies, in order to facilitate access to, provision of, and funding for, assistive technology devices and assistive technology services;
(D) The development and implementation of strategies to empower individuals with disabilities and their family members, guardians, advocates, and authorized representatives, to successfully advocate for increased access to, funding for, and provision of, assistive technology devices and assistive technology services, and to increase the participation, choice, and control of individuals with disabilities and their family members, guardians, advocates, and authorized representatives in the selection and procurement of assistive technology devices and assistive technology services;
(E) The provision of outreach to underrepresented populations and rural populations, including identifying and assessing the needs of such populations, providing activities to increase the accessibility of services to such populations, training representatives of such populations to become service providers, and training staff of the consumer-responsive comprehensive statewide program of technology-related assistance to work with such populations; and
(F) The development and implementation of strategies to ensure timely acquisition and delivery of assistive technology devices and assistive technology services, particularly for children.
(2) An assurance that the State will conduct an annual assessment of the consumer-responsive comprehensive statewide program of technology-related assistance, in order to determine—
(i) The extent to which the State’s goals and objectives for systems change and advocacy activities, as identified in the State plan under paragraph (a)(6) of this section, have been achieved; and
(ii) The areas of need that require attention in the next year.

(3) An assurance that amounts received under the grant will be expended in accordance with the provisions of this part;

(4) An assurance that amounts received under the grant—

(i) Will be used to supplement amounts available from other sources that are expended for technology-related assistance, including the provision of assistive technology devices and assistive technology services; and

(ii) Will not be used to pay a financial obligation for technology-related assistance (including the provision of assistive technology devices or assistive technology services) that would have been paid with amounts available from other sources if amounts under the grant had not been available, unless—

(A) The payment is made only to prevent a delay in the receipt of appropriate technology-related assistance (including the provision of assistive technology devices or assistive technology services) by an individual with a disability; and

(B) The entity or agency responsible subsequently reimburses the appropriate account with respect to programs and activities under the grant in an amount equal to the amount of the payment;

(5) An assurance that—

(i) A public agency shall control and administer amounts received under the grant; and

(ii) A public agency or an individual with a disability shall—

(A) Hold title to property purchased with such amounts; and

(B) Administer such property.

(6) An assurance that the State will—

(i) Prepare reports to the Secretary in the form and containing information required by the Secretary to carry out the Secretary’s functions under this part; and

(ii) Keep records and allow access to records as the Secretary may require to ensure the correctness and verification of information provided to the Secretary under this paragraph of this section.

(7) An assurance that amounts received under the grant will not be commingled with State or other funds;

(8) An assurance that the State will adopt fiscal control and accounting procedures as may be necessary to ensure proper disbursement of an accounting for amounts received under the grant;

(9) An assurance that the State will—

(i) Make available to individuals with disabilities and their family members, guardians, advocates, or authorized representatives information concerning technology-related assistance in a form that will allow individuals to effectively use the information; and

(ii) In preparing information for dissemination, consider the media-related needs of individuals with disabilities who have sensory and cognitive limitations and consider the use of auditory materials, including audio cassettes and video discs, and braille materials.

(10) An assurance that, to the extent practicable, technology-related assistance made available with amounts received under the grant will be equitably distributed among all geographical areas of the State;

(11) An assurance that the lead agency will have the authority to use funds made available through a development or extension grant to comply with the requirements of this part, including the ability to hire qualified staff necessary to carry out activities under the program;

(12)(i) An assurance that the State will annually provide, from the funds made available to the State through a development or extension grant under this part, an amount calculated in accordance with section 102(f)(4) of the Act in order to make a grant to, or enter into a contract with—

(A) An entity to support protection and advocacy services through the systems established to provide protection and advocacy under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.), the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), and section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e); or
(B) An entity described in §345.55(a)(1).

(ii) The State need not provide the assurance in paragraph (b)(12)(i) of this section, if the State requests in its annual progress report or first or second extension application, as applicable, that the Secretary annually reserve, from the funds made available for a development or extension grant, an amount calculated in accordance with section 102(f)(4) of the Act, in order for the Secretary to make a grant to or enter into a contract with a system to support protection and advocacy services.

(13) An assurance that the State—

(i) Will develop and implement strategies for including personnel training regarding assistive technology within existing Federal- and State-funded training initiatives, in order to enhance assistive technology skills and competencies; and

(ii) Will document the training;

(14) An assurance that the percentage of the funds received under the grant that is used for indirect costs (as defined in OMB Circular A-87 incorporated by reference in 34 CFR 80.22(b)) shall not exceed 10 percent of the total amount of the grant; and

(15) An assurance that the lead agency will coordinate the activities funded through a development or extension grant under this part with the activities carried out by councils within the State, including—

(i) Any council or commission specified in the assurance provided by the State in accordance with section 101(a)(36) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(36));


(iii) The advisory panel established under section 613(a)(12) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(12));

(iv) The State Intergency Coordinating Council established under section 682 of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(12));

(v) The State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (20 U.S.C. 6024);

(vi) The State mental health planning council established under section 1914 of the Public Health Service Act (42 U.S.C. 300x-3); and

(vii) Any council established under section 204, 204(g)(2)(A), or 712(a)(3)(H) of the Older Americans Act of 1965 (42 U.S.C. 3015, 3017(g)(2)(A), or 3058(g)(a)(3)(H)).

(16) An assurance that there will be coordination between the activities funded through the grant and other related systems change and advocacy activities funded by either Federal or State sources.

(c) Applicants for development grants shall provide any other related information and assurances that the Secretary may reasonably require.

Authority: 29 U.S.C. 2212(e); section 102(e) of the Act

345.31 What is the content of an application for an extension grant?

A State that seeks an extension grant shall include the following in an application:

(a) The information and assurances described in §345.30, except the preliminary needs assessment described in §345.30(a)(4).

(b) A description of the following:

(1) The needs relating to technology-related assistance of individuals with disabilities (including individuals from underrepresented populations or rural populations) and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals within the State.

(2) Any problems or gaps that remain with the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance in the State.

(3) The strategies that the State will pursue during the grant period to remedy the problems or gaps with the development and implementation of a program.

(4) Outreach activities to be conducted by the State, including dissemination of information to eligible populations, with special attention to underrepresented populations and rural populations.

(5)(i) The specific systems change and advocacy activities described in §345.20 (including the activities described in
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§ 345.30(b)(1)) carried out under the development grant received by the State, or, in the case of an application for a second extension grant, under an initial extension grant received by the State under this section, including—

(A) A description of systems change and advocacy activities that were undertaken to produce change on a permanent basis for individuals with disabilities of all ages;

(B) A description of activities undertaken to improve the involvement of individuals with disabilities in the program, including training and technical assistance efforts to improve individual access to assistive technology devices and assistive technology services as mandated under other laws and regulations in effect on the date of the application, and including actions undertaken to improve the participation of underrepresented populations and rural populations, such as outreach efforts; and

(C) An evaluation of the impact and results of the activities described in paragraph (b)(5)(i)(A) and (B) of this section.

(ii) The relationship of systems change and advocacy activities to the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(iii) The progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6)(i) In the case of an application for an initial extension grant, a report on the hearing described in § 345.8(a)(2) or, in the case of an application for a second extension grant, a report on the hearing described in § 345.8(b)(2).

(ii) A description of State actions, other than a hearing, designed to determine the degree of satisfaction of individuals with disabilities, and their family members, guardians, advocates, or authorized representatives, public service providers and private service providers, educators and related service providers, technology experts (including engineers), employers, and other appropriate individuals and entities with—

(A) The degree of their ongoing involvement in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance;

(B) The specific systems change and advocacy activities described in § 345.20 (including the activities described in § 345.30(b)(1)) carried out by the State under the development grant or the initial extension grant;

(C) Progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance; and

(D) The ability of the lead agency to carry out the activities described in § 345.6(b).

(c) A summary of any comments received concerning the issues described in paragraph (b)(6) of this section and response of the State to such comments, solicited through a public hearing or through other means, from individuals affected by the consumer-responsive comprehensive statewide program of technology-related assistance, including—

(1) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(2) Public service providers and private service providers;

(3) Educators and related services personnel;

(4) Technology experts (including engineers);

(5) Employers; and

(6) Other appropriate individuals and entities.

(d) An assurance that the State, any recipient, and any subrecipient of funds made available to the State under the Act will comply with guidelines established under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e)(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an
Subpart D—How Does the Secretary Make a Grant?

§ 345.40 How does the Secretary evaluate an application for a development grant under this program?

The Secretary evaluates each application using the selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 2212(a); section 102(a) of the Act)

§ 345.41 What other factors does the Secretary take into consideration in making development grant awards under this program?

In making development grants under this program, the Secretary takes into consideration, to the extent feasible—
(a) Achieving a balance among States that have differing levels of development of consumer-responsive comprehensive statewide programs of technology-related assistance; and
(b) Achieving a geographically equitable distribution of the grants.

(Authority: 29 U.S.C. 2212(c); section 102(c) of the Act)

§ 345.42 What is the review process for an application for an extension grant?

(a) The Secretary may award an initial extension grant to any State that—
(1) Provides the evidence described in §345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;
(2) Demonstrates that the State has made significant progress, and has carried out systems change and advocacy activities that have resulted in significant progress, toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, consistent with this part; and
(3) Holds a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.
(b) The Secretary may award a second extension grant to any State that—
(1) Provides the evidence described in §345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;
(2) Describes the steps the State has taken or will take to continue on a permanent basis the consumer-responsive comprehensive statewide program of technology-related assistance with the ability to maintain, at a minimum, the outcomes achieved by the systems change and advocacy activities;
(3) Identifies future funding options and commitments for the program from the public and private sector and the key individuals, agencies, and organizations to be involved in, and to direct future efforts of, the program; and
(4) Holds a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.
(c) In making any award to a State for a second extension grant, the Secretary makes an award contingent on a determination, based on the on-site visit in §345.53, that the State is making significant progress toward development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, except where the Secretary determines that the on-site visit is unnecessary. If the Secretary determines that the State is not making significant progress, the Secretary may take an action described in §345.61.

(Authority: 29 U.S.C. 2213 (b) and (e) and 2215(a)(2); sections 103(b) and (e) and 105(a)(2) of the Act)

§ 345.43 What priorities does the Secretary establish?

(a) The Secretary gives, in each of the 2 fiscal years succeeding the fiscal year in which amounts are first appropriated for carrying out development grants, priority for funding to States that received development grants
§ 345.50 What are the reporting requirements for the recipients of development and extension grants?

(a) States receiving development and extension grants shall submit annually to the Secretary a report that documents significant progress in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance documenting the following:

(1) The progress the State has made, as determined in the State’s annual assessment (consistent with the guidelines established by the Secretary under §345.51) in achieving the State’s goals, objectives, and outcomes as identified in the State’s application, and areas of need that require attention in the next year, including unanticipated problems with the achievement of the goals, objectives, and outcomes described in the application, and the activities the State has undertaken to rectify these problems.

(2) The systems change and advocacy activities carried out by the State including—

(i) An analysis of the laws, regulations, policies, practices, procedures, and organizational structure that the State has changed, has attempted to change, or will attempt to change during the next year, to facilitate and increase timely access to, provision of, or funding for, assistive technology devices and assistive technology services; and

(ii) A description of any written policies and procedures that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices and assistive technology services, particularly policies and procedures regarding access to, provision of, and funding for, such devices and services under education (including special education), vocational rehabilitation, and medical assistance programs.

(3) The degree of involvement of various State agencies, including the State insurance department, in the development, implementation, and evaluation of the program, including any interagency agreements that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices and assistive technology services such as agreements that identify available resources for, assistive technology devices and assistive technology services and the responsibility of each agency for paying for such devices and services.

(4) The activities undertaken to collect and disseminate information about the documents or activities analyzed or described in paragraphs (a) (1) through (3) of this section, including outreach activities to underrepresented populations and rural populations and efforts to disseminate information by means of electronic communication.

(5) The involvement of individuals with disabilities who represent a variety of ages and types of disabilities in the planning, development, implementation, and assessment of the consumer-responsive comprehensive statewide program of technology-related assistance, including activities undertaken to improve such involvement, such as consumer training and outreach activities to underrepresented populations and rural populations.

(6) The degree of consumer satisfaction with the program, including satisfaction by underrepresented populations and rural populations.

(7) Efforts to train personnel as well as consumers.

(8) Efforts to reduce the service delivery time for receiving assistive technology devices and assistive technology services.

(9) Significant progress in the provision of protection and advocacy services, in each of the areas described in §345.55(c)(1)(ii).
(b) The State shall make these reports readily available to the public at no extra cost.

(c) The State shall submit on an annual basis—

(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an entity to provide protection and advocacy services, pursuant to §345.30(b)(12)(ii).

(Authority: 29 U.S.C. 2212(e)(16)(A) and 2214(b); sections 102(e)(16)(A) and 104(b) of the Act)

§345.51 When is a State making significant progress?

A State is making significant progress when it carries out—

(a) The systems change and advocacy activities listed in §345.30(b)(1)(ii)(A) through (F); or

(b) Other systems change and advocacy activities, if the State demonstrates through the progress reports developed by the Secretary and required to be submitted by a State in §345.50 that it has accomplished the purposes of the program listed in §345.2(a).

(Authority: 29 U.S.C. 2212(e)(7) and 2214(a); sections 102(e)(7) and 104(a) of the Act)

§345.52 Who retains title to devices provided under this program?

Title to devices purchased with grant funds under this part, either directly or through any contract or subgrant, must be held by a public agency or by an individual with a disability who is the beneficiary of the device. If the disabled individual does not have legal status to hold title, the title may be retained by a parent or legal guardian.

(Authority: 29 U.S.C. 2212(e)(12)(B); section 102(e)(12)(B) of the Act)

§345.53 What are the requirements for grantee participation in the Secretary's progress assessments?

Recipients of development grants shall participate in the Secretary's assessment of the extent to which States are making significant progress by—

(a) Participating in the on-site monitoring visits that will be made to each grantee during the final year of the development grant;

(b) Participating in an on-site monitoring visit, that is in addition to the visit in paragraph (a), if the State applies for a second extension grant and whose initial on-site visit occurred prior to the date of the enactment of the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994, unless the Secretary determines that the visit is not necessary.

(c) Providing written evaluations of the State's progress toward fulfilling its goals and the objectives of the project, and such other documents as the Secretary may reasonably require to complete the required assessment.

(Authority: 29 U.S.C. 2215(a); section 105(a) of the Act)

§345.54 How may grant funds be used under this program?

(a) States receiving funds under this part shall comply with the assurances provided under §§345.30 and 345.31.

(b) A State receiving a grant may make contracts or subgrants to the eligible entities in §345.6, provided that—

(1) A designated public agency maintains fiscal responsibility and accountability; and

(2) All appropriate provisions related to data collection, recordkeeping, and cooperation with the Secretary's evaluation and program monitoring efforts are applied to all subcontractors and subgrantees as well as to the agency receiving the grant.

(Authority: 29 U.S.C. 2212(e), 2213(d), and 2215(a)(5); sections 102(e), 103(d), and 105(a)(5) of the Act; section 437 of the General Education Provisions Act; 20 U.S.C. 1232f)

§345.55 What are the responsibilities of a State in carrying out protection and advocacy services?

(a)(1) A State is eligible to receive funding to provide protection and advocacy services if—

(i) The State, as of June 30, 1993, has provided for protection and advocacy services through an entity that is capable of performing the functions that
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would otherwise be performed under §345.30(b)(12) by the system described in that section; and

(ii) The entity referred to in §345.30(b)(12)(i) is not a system described in that section.

(b) A State that meets both of the descriptions in paragraph (a)(1) of this section also shall comply with the same requirements of this part as a system that receives funding under §345.30(b)(12).

(c)(1) A system that receives funds under §345.30(b)(12)(i) to carry out the protection and advocacy services described in §345.30(b)(12)(i) in a State, or an entity described in paragraph (a)(1) of this section, shall prepare reports that contain the information required by the Secretary, including the following:

(i) A description of the activities carried out by the system or entity with the funds;

(ii) Documentation of significant progress, in providing protection and advocacy services, in each of the following areas:

(A) Conducting activities that are consumer-responsive, including activities that will lead to increased access to funding for assistive technology devices and assistive technology services.

(B) Executing legal, administrative, and other appropriate means of representation to implement systems change and advocacy activities.

(C) Developing and implementing strategies designed to enhance the long-term abilities of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to successfully advocate for assistive technology devices and assistive technology services to which the individuals with disabilities are entitled under law other than this Act.

(D) Coordinating activities with protection and advocacy services funded through sources other than this Act, and coordinating activities with the systems change and advocacy activities carried out by the State lead agency.

(2) The system or entity shall submit the reports to the lead agency in the State not less often than every 6 months.

(3) The system or entity shall provide monthly updates to the lead agency concerning the activities and information described in paragraph (c) of this section.

(d) Before making a grant or entering into a contract under §345.30(b)(12)(ii) to support the protection and advocacy services described in §345.30(b)(12)(ii) in a State, the Secretary shall solicit and consider the opinions of the lead agency in the State with respect to the terms of the grant or contract.

(e)(1) In each fiscal year, the Secretary specifies for each State receiving a development or an extension grant the minimum amount that the State shall use to provide protection and advocacy services.

(2)(i) Except as provided for in paragraphs (e)(3) and (4), the Secretary calculates this minimum amount based on the size of the grant, the needs of individuals with disabilities within the State, the population of the State, and the geographic size of the State.

(ii) The Secretary establishes a minimum amount for each State that ranges from at least $40,000 up to $100,000.

(3) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fourth year (if any) of the grant period that equals 75 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(4) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fifth year (if any) of the grant period that equals 50 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(5) After the fifth year (if any) of the grant period, no Federal funds may be made available under this title by the State to a system described in §345.30(b)(12) or an entity described in paragraph (a) of this section.

(Authority: 29 U.S.C. 2212(f); section 102(f) of the Act)
Subpart F—What Compliance Procedures May the Secretary Use?

§ 345.60 Who is subject to a corrective action plan?
(a) Any State that fails to comply with the requirements of this part is subject to a corrective action plan.
(b) A State may appeal a finding that it is subject to corrective action within 30 days of being notified in writing by the Secretary of the finding.
(Authority: 29 U.S.C. 2215(b)(1); section 105(b)(1) of the Act)

§ 345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?
A State that fails to comply with the requirements of this part may be subject to corrective actions such as—
(a) Partial or complete termination of funds;
(b) Ineligibility to participate in the grant program in the following year;
(c) Reduction in funding for the following year; or
(d) Required redesignation of the lead agency.
(Authority: 29 U.S.C. 2215(b)(2); section 105(b)(2) of the Act)

§ 345.62 How does a State redesignate the lead agency when it is subject to corrective action?
(a) Once a State becomes subject to a corrective action plan under §345.60, the Governor of the State, subject to approval by the Secretary, shall appoint, within 30 days after the submission of the plan to the Secretary, a monitoring panel consisting of the following representatives:
   (1) The head of the lead agency designated by the Governor;
   (2) Two representatives from different public or private nonprofit organizations that represent the interests of individuals with disabilities;
   (3) Two consumers who are users of assistive technology devices and assistive technology services and who are not—
      (i) Members of the advisory council, if any, of the consumer-responsive comprehensive statewide program of technology-related assistance; or
      (ii) Employees of the State lead agency; and
   (4) Two service providers with knowledge and expertise in assistive technology devices and assistive technology services.
(b) The monitoring panel must be ethnically diverse. The panel shall select a chairperson from among the members of the panel.
(c) The panel shall receive periodic reports from the State regarding progress in implementing the corrective action plan and shall have the authority to request additional information necessary to determine compliance.
(d) The meetings of the panel to determine compliance shall be open to the public (subject to confidentiality concerns) and held at locations that are accessible to individuals with disabilities.
(e) The panel shall carry out the duties of the panel for the entire period of the corrective action plan, as determined by the Secretary.
(f) A failure by a Governor of a State to comply with the requirements of paragraphs (a) through (e) of this section results in the termination of funding for the State under this part.
(g) Based on its findings, a monitoring panel may determine that a lead agency designated by a Governor has not accomplished the purposes described in §345.2(a) and that there is good cause for redesignation of the agency and the temporary loss of funds by the State under this part.
(h) For the purposes of this section, “good cause” includes the following:
   (1) Lack of progress with employment of qualified staff;
   (2) Lack of consumer-responsive activities;
   (3) Lack of resource allocation to systems change and advocacy activities;
   (4) Lack of progress with meeting the assurances in §345.30(b); or
   (5) Inadequate fiscal management.
(i) If a monitoring panel determines that the lead agency should be redesignated, the panel shall recommend to the Secretary that further remedial action be taken or that the Secretary order the Governor to redesignate the lead agency within 90 days or lose funds under this part. The Secretary,
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based on the findings and recommendations of the monitoring panel, and after providing to the public notice and opportunity for comment, shall make a final determination regarding whether to order the Governor to redesignate the lead agency. The Governor shall make any redesignation in accordance with the requirements that apply to redesignations under §345.6.

(Authority: 29 U.S.C. 2215(c); section 105(c) of the Act)

§ 345.63 How does a State change the entity responsible for providing protection and advocacy services?

(a) The Governor of a State, based on input from individuals with disabilities and their family members, guardians, advocates, or authorized representatives, may determine that the entity providing protection and advocacy services has not met the protection and advocacy service needs of the individuals with disabilities and their family members, guardians, advocates, or authorized representatives, for securing funding for and access to assistive technology devices and assistive technology services, and that there is good cause to provide the protection and advocacy services for the State through a contract with a second entity.

(b) On making the determination in paragraph (a) of this section, the Governor may not enter into a contract with a second entity to provide the protection and advocacy services unless good cause exists and unless—

(1) The Governor has given the first entity 30 days notice of the intention to enter into the contract, including specification of good cause, and an opportunity to respond to the assertion that good cause has been shown;

(2) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives, have timely notice of the determination and opportunity for public comment; and

(3) The first entity has the opportunity to appeal the determination to the Secretary within 30 days of the determination on the basis that there is not good cause to enter into the contract.

(c)(1) When the Governor of a State determines that there is good cause to enter into a contract with a second entity to provide the protection and advocacy services, the Governor shall hold an open competition within the State and issue a request for proposals by entities desiring to provide the services.

(2) The Governor shall not issue a request for proposals by entities desiring to provide protection and advocacy services until the first entity has been given notice and an opportunity to respond. If the first entity appeals the determination to the Secretary, the Governor shall issue such request only if the Secretary decides not to overturn the determination of the Governor. The Governor shall issue such request within 30 days after the end of the period during which the first entity has the opportunity to respond, or after the decision of the Secretary, as appropriate.

(3) The competition shall be open to entities with the same expertise and ability to provide legal services as a system in §345.30(b)(12). The competition shall ensure public involvement, including a public hearing and adequate opportunity for public comment.

(Authority: 29 U.S.C. 2215(d); section 105(d) of the Act)
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350.14 What must a grantee do in carrying out a training activity?
350.15 What must a grantee do in carrying out a demonstration activity?
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350.17 What must a grantee do in carrying out a utilization activity?
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Subpart G—What Conditions Must Be Met After an Award?

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350.66 What must a grantee include in a patent application?

AUTHORITY: Sec. 204; 29 U.S.C. 761-762, unless otherwise noted.
SOURCE: 62 FR 5713, Feb. 6, 1997, unless otherwise noted.
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(2) Rehabilitation Engineering Research Centers.

(Authority: Sec. 204; 29 U.S.C. 762)

§ 350.2 What is the purpose of the Disability and Rehabilitation Research Project and Centers Program?

The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to—

(a) Develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

(Authority: Secs. 204(a) and (b)(6); 29 U.S.C. 762(a) and (b)(6))

§ 350.3 Who is eligible for an award?

The following entities are eligible for an award under this program:

(a) States.

(b) Public or private agencies, including for-profit agencies.

(c) Public or private organizations, including for-profit organizations.

(d) Institutions of higher education.

(e) Indian tribes and tribal organizations.

(Authority: Sec. 204(a); 29 U.S.C. 762(a))

§ 350.4 What regulations apply?

The following regulations apply to the Disability and Rehabilitation Research Projects and Centers Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(b) The following definitions also apply to this part.

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c)(1) Subject to the additional requirement in paragraph (c)(2) of this section, 34 CFR part 97 (Protection of Human Subjects).

(2) If an institutional review board (IRB) reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must have at least one member who is primarily concerned with the welfare of these research subjects.

(Authority: 29 U.S.C. 761a, 762, 42 U.S.C. 300v–1(b))

§ 350.5 What definitions apply?

(a) The following definitions in 34 CFR part 77 apply to this part—

Applicant

Application

Award

Budget

Department

EDGAR

Equipment

Facilities

Grant

Grantee

Nonprofit

Private

Project

Project period

Public

Recipient

Secretary

Supplies

State

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. (Authority: Sec. 7(23); 29 U.S.C. 706(23))

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, including—
(1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual’s customary environment;
(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;
(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
(5) Training or technical assistance for individuals with disabilities, or, if appropriate, their family members, guardians, advocates, or authorized representatives; and
(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of, individuals with disabilities. (Authority: Sec. 7(24); 29 U.S.C. 706(24))

Disability means a physical or mental impairment that substantially limits one or more major life activities. (Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

Individual with a disability means any individual who:
(1) Has a physical or mental impairment that substantially limits one or more of the individual’s major life activities;
(2) Has a record of this impairment; or
(3) Is regarded as having this impairment. (Authority: Sec. 7(8)(B); 29 U.S.C. 706(8)(B))

Individual with a severe disability means—
(1)(i) An individual with a disability who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord impairments, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment of rehabilitation needs to cause comparable substantial functional limitation; or
(2) An individual with a severe mental or physical impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment, respectively. (Authority: Sec. 7(15)(C); 29 U.S.C. 706(15)(C))
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_**Personal assistance services**_ means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities, on and off the job, that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual’s control in life and ability to perform everyday activities on and off the job.

(Authority: Sec. 12(c); 29 U.S.C. 711(c))

_Rehabilitation technology_ means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in such areas as education, rehabilitation, employment, transportation, independent living, and recreation, and includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Sec. 7(13); 29 U.S.C. 706(13))

_Research_ is classified on a continuum from basic to applied:

(1) **Basic research** is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) **Applied research** is research in which the investigator is primarily interested in developing new knowledge, information or understanding which can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research.

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

_State rehabilitation agency_ means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Authority: Sec. 101(a)(1); 29 U.S.C. 721(a)(1)(A))

_Target population_ means the group of individuals, organizations, or other entities expected to be affected by the project. More than one group may be involved since a project may affect those who receive services, provide services, or administer services.

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—What Projects Does the Secretary Assist?

§ 350.10 What are the general requirements for Disability and Rehabilitation Research Projects?

Disability and Rehabilitation Research Projects must meet the following requirements:

(a) Carry out one or more of the following types of activities, as specified in §§ 350.13–350.19:

(1) Research.
(2) Development.
(3) Demonstration.
(4) Training.
(5) Dissemination.
(6) Utilization.
(7) Technical assistance.

(b) Further one or more of the purposes listed in §350.2.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.11 What are the general requirements for a Field-Initiated Project?

A Field-Initiated Project must—

(a) Further one or more of the purposes in §350.2; and

(b) Carry out one of the following types of activities:

(1) Research.
(2) Development.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.12 What are the general requirements for an Advanced Rehabilitation Research Training Project?

An Advanced Rehabilitation Research Training Project must—

(a) Provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience;

(b) Further one or more of the purposes in §350.2; and

(c) Carry out all of the following activities:

(1) Recruitment and selection of candidates for advanced research training.
(2) Provision of a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific methodology, and may involve collaboration among institutions.

(3) Provision of research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum that involve each individual in clinical research and in practical activities with organizations representing individuals with disabilities.

(4) Provision of academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions.

(5) Provision of opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings as appropriate for the individual’s field of study and level of experience.

(Authority: Sec. 202(k); 29 U.S.C. 761a(k))

§ 350.13 What must a grantee do in carrying out a research activity?

In carrying out a research activity under this program, a grantee shall—
(a) Identify one or more hypotheses; and
(b) Based on the hypotheses identified, perform an intensive systematic study directed toward—
(1) New or full scientific knowledge; or
(2) Understanding of the subject or problem studied.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.14 What must a grantee do in carrying out a training activity?

In carrying out a training activity under this program, a grantee shall conduct a planned and systematic sequence of supervised instruction that is designed to impart predetermined skills and knowledge.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.15 What must a grantee do in carrying out a demonstration activity?

In carrying out a demonstration activity under this program, a grantee shall apply results derived from previous research, testing, or practice to determine the effectiveness of a new strategy or approach.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.16 What must a grantee do in carrying out a development activity?

In carrying out a development activity under this program, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.17 What must a grantee do in carrying out a utilization activity?

In carrying out a utilization activity under this program, a grantee must relate research findings to practical applications in planning, policy making, program administration, and delivery of services to individuals with disabilities.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.18 What must a grantee do in carrying out a dissemination activity?

In carrying out a dissemination activity under this program, a grantee must systematically distribute information or knowledge through a variety of ways to potential users or beneficiaries.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.19 What must a grantee do in carrying out a technical assistance activity?

In carrying out a technical assistance activity under this program, a
Subpart C—What Rehabilitation Research and Training Centers Does the Secretary Assist?

§ 350.20 What general requirements must a Rehabilitation Research and Training Center meet?

A Rehabilitation Research and Training Center shall—
(a) Plan and conduct activities that further one or more of the purposes listed in §350.2;
(b) Serve as a center of national excellence and as a national or regional resource for providers and individuals with disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals;
(c) Be of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner consistent with appropriate State and Federal law; and
(d) Be able to carry out training activities either directly or through another entity that can provide such training.

(Authority: Secs. 204(b) and (b)(2)(K); 29 U.S.C. 762(b) and (b)(2)(K))

§ 350.21 What collaboration must a Rehabilitation Research and Training Center engage in?

A Rehabilitation Research and Training Center must be operated by or in collaboration with—
(a) One or more institutions of higher education; or
(b) One or more providers of rehabilitation or other appropriate services.

(Authority: Sec. 204(b)(2); 29 U.S.C. 762(b)(2))

§ 350.22 What activities must a Rehabilitation Research and Training Center conduct?

A Rehabilitation Research and Training Center shall—
(a) Carry out research activities by conducting coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge that will—

(1) Improve rehabilitation methodology and service delivery systems;
(2) Alleviate or stabilize disabling conditions; and
(3) Promote maximum social and economic independence of individuals with disabilities;
(b) Conduct training activities by providing training (including graduate, pre-service, and in-service training) to assist—
(1) Rehabilitation personnel and other individuals to more effectively provide rehabilitation services; and
(2) Rehabilitation research personnel and other rehabilitation personnel to improve their capacity to conduct research; and
(c) Conduct technical assistance activities by serving as an informational and technical assistance resource for providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals with disabilities, through conferences, workshops, public education programs, in-service training programs, and similar activities.

§ 350.23 What restriction exists on Rehabilitation Research and Training Centers regarding indirect costs?

A host institution with which a Rehabilitation Research and Training Center is affiliated may not collect more than fifteen percent of the total grant award as indirect cost charges, notwithstanding the provisions in 34 CFR 75.562.

(Authority: Sec. 204(b)(2)(O); 29 U.S.C. 762(b)(2)(O))

Subpart D—What Rehabilitation Engineering Research Centers Does the Secretary Assist?

§ 350.30 What requirements must a Rehabilitation Engineering Research Center meet?

A Rehabilitation Engineering Research Center shall plan and conduct activities that—
(a) Further one or more of the purposes listed in §350.2; and
(b) Lead to the development of methods, procedures, and devices that
will benefit individuals with disabilities, especially those with the most severe disabilities; or
(2) Involve rehabilitation technology and enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives.

(Authority: Sec. 204(b)(3); 29 U.S.C. 762(b)(3))

§ 350.31 What collaboration must a Rehabilitation Engineering Research Center engage in?

A Rehabilitation Engineering Research Center must be operated by or in collaboration with—
(a) One or more institutions of higher education; or
(b) One or more nonprofit organizations.

(Authority: Sec. 204(b)(3); 29 U.S.C. 762(b)(3))

§ 350.32 What activities must a Rehabilitation Engineering Research Center conduct?

A Rehabilitation Engineering Research Center shall—
(a) Conduct research or demonstration activities by using one or more of the following strategies:
(1) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers through—
(i) Planning and conducting research, including cooperative research with public or private agencies and organizations, designed to produce new scientific knowledge and new or improved methods, equipment, or devices; and
(ii) Studying and evaluating new or emerging technologies, products, or environments and their effectiveness and benefits.
(2) Demonstrating and disseminating—
(i) Innovative models for the delivery to rural and urban areas of cost-effective rehabilitation technology services that will promote the use of assistive technology services; and
(ii) Other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities.
(3) Conducting research and demonstration activities that facilitate service delivery systems change by demonstrating, evaluating, documenting, and disseminating—
(i) Consumer-responsive and individual and family-centered innovative models for the delivery, to both rural and urban areas, of innovative, cost-effective rehabilitation technology services that promote use of rehabilitation technology; and
(ii) Other scientific research to assist in meeting the employment and independent living needs of, and addressing the barriers confronted by individuals with disabilities, including individuals with severe disabilities;
(b) To the extent consistent with the nature and type of research or demonstration activities described in paragraph (a) of this section, carry out research, training, and information dissemination activities by—
(1) Providing training opportunities to individuals, including individuals with disabilities, to enable them to become rehabilitation technology researchers and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations; and
(2) Responding, through research or demonstration activities, to the needs of individuals with all types of disabilities who may benefit from the application of technology within the subject area of focus of the Center.
(c) Conduct orientation seminars for rehabilitation service personnel to improve the application of rehabilitation technology;
(d) Conduct activities that specifically demonstrate means for utilizing rehabilitation technology; and
(e) Provide technical assistance and consultation that are responsive to concerns of service providers and consumers.

(Authority: Sec. 204(b)(3); 29 U.S.C. 762(b)(3))

§ 350.33 What cooperation requirements must a Rehabilitation Engineering Research Center meet?

A Rehabilitation Engineering Research Center—
(a) Shall cooperate with State agencies and other local, State, regional,
and national programs and organizations developing or delivering rehabilitation technology, including State programs funded under the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2201 et seq.); and

(b) To the extent consistent with the nature and type of research or demonstration activities described in §350.32(a), shall cooperate with the entities described in paragraph (a) of this section to provide information to individuals with disabilities and their parents, family members, guardians, advocates, or authorized representatives, to—

(1) Increase awareness and understanding of how rehabilitation technology can address their needs; and

(2) Increase awareness and understanding of the range of options, programs, services, and resources available, including financing options for the technology and services covered by the subject area of focus of the Center.

(Authority: Sec. 204(b)(3) and (c); 29 U.S.C. 762(b)(3) and (c))

§ 350.34 Which Rehabilitation Engineering Research Centers must have an advisory committee?

A Rehabilitation Engineering Research Center conducting research or demonstration activities that facilitate service delivery systems change must have an advisory committee.

(Authority: Sec. 204 (b)(3)(D); 29 U.S.C. 762(b)(3)(D))

§ 350.35 What are the requirements for the composition of an advisory committee?

The majority of a Rehabilitation Engineering Research Center advisory committee’s members must be comprised of individuals with disabilities who are users of rehabilitation technology, or their parents, family members, guardians, advocates, or authorized representatives.

(Authority: Sec. 204(b)(3)(D); 29 U.S.C. 762(b)(3)(D))

§ 350.40 What is required of each applicant regarding the needs of individuals with disabilities from minority backgrounds?

(a) Unless the Secretary indicates otherwise in a notice published in the Federal Register, an applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

(b) The approaches an applicant may take to meet this requirement may include one or more of the following:

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Sec. 21(b)(6); 29 U.S.C. 718b(b)(6))

§ 350.41 What State agency review must an applicant under the Disability and Rehabilitation Research Projects and Centers Program obtain?

(a) An applicant that proposes to conduct research, demonstrations, or
related activities that will either involve clients of the State vocational rehabilitation agency as research subjects or study vocational rehabilitation services or techniques under this program, shall follow the requirements in 34 CFR 75.155 through 75.159.

(b) For the purposes of this Program, State as used in 34 CFR 75.155 through 75.159 means the State rehabilitation agency or agencies in the primary State or States to be affected by the proposed activities.

(Authority: Secs. 204(c) and 306(i); 29 U.S.C. 762(c) and 766(a))

Subpart F—How Does the Secretary Make an Award?

§ 350.50 What is the peer review process for this Program?

(a) The Secretary refers each application for a grant governed by those regulations in this part to a peer review panel established by the Secretary.

(b) Peer review panels review applications on the basis of the applicable selection criteria in §350.54.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

§ 350.51 What is the purpose of peer review?

The purpose of peer review is to insure that—

(a) Those activities supported by the National Institute on Disability and Rehabilitation Research (NIDRR) are of the highest scientific, administrative, and technical quality; and

(b) Activity results may be widely applied to appropriate target populations and rehabilitation problems.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

§ 350.52 What is the composition of a peer review panel?

(a) The Secretary selects as members of a peer review panel scientists and other experts in rehabilitation or related fields who are qualified, on the basis of training, knowledge, or experience, to give expert advice on the merit of the applications under review.

(b) Applications for awards of $60,000 or more, except those for the purposes of evaluation, dissemination of information, or conferences, must be reviewed by a peer review panel that consists of a majority of non-Federal members.

(c) In selecting members to serve on a peer review panel, the Secretary takes into account all of the following factors:

(1) The level of formal scientific or technical education completed by potential panel members.

(2)(i) The extent to which potential panel members have engaged in scientific, technical, or administrative activities appropriate to the category of applications that the panel will consider;

(ii) The roles of potential panel members in those activities; and

(iii) The quality of those activities.

(3) The recognition received by potential panel members as reflected by awards and other honors from scientific and professional agencies and organizations outside the Department.

(4) Whether the panel includes knowledgeable individuals with disabilities, or parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities.

(5) Whether the panel includes individuals from diverse populations.

(Authority: Secs. 18 and 202(e); 29 U.S.C. 717 and 761a(e))

§ 350.53 How does the Secretary evaluate an application?

(a)(1)(i) The Secretary selects one or more of the selection criteria in §350.54 to evaluate an application; (ii) The Secretary establishes selection criteria based on statutory provisions that apply to the Program which may include, but are not limited to—

(A) Specific statutory selection criteria;

(B) Allowable activities;

(C) Application content requirements; or

(D) Other pre-award and post-award conditions; or

(iii) The Secretary uses a combination of selection criteria established under paragraph (a)(1)(ii) of this section and selection criteria in §350.54.

(2) For Field-Initiated Projects, the Secretary does not consider §350.54(b) (Responsiveness to the Absolute or Competitive Priority) in evaluating an application.
§ 350.54 What selection criteria does the Secretary use in evaluating an application?

In addition to criteria established under §350.53(a)(1)(ii), the Secretary may select one or more of the following criteria in evaluating an application:

(a) Importance of the problem.
   (1) The Secretary considers the importance of the problem.
   (2) In determining the importance of the problem, the Secretary considers one or more of the following factors:
      (i) The extent to which the applicant clearly describes the need and target population.
      (ii) The extent to which the proposed activities further the purposes of the Act.
      (iii) The extent to which the proposed activities address a significant need of one or more disabled populations.
      (iv) The extent to which the proposed activities address a significant need of rehabilitation service providers.
   (v) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities.
   (vi) The extent to which the applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to a trainee population in which there is a need for more qualified researchers.
   (vii) The extent to which the proposed project will have beneficial impact on the target population.

(b) Responsiveness to an absolute or competitive priority.
   (1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the Federal Register.
   (2) In determining the application’s responsiveness to the absolute or competitive priority, the Secretary considers one or more of the following factors:
      (i) The extent to which the applicant addresses all requirements of the absolute or competitive priority.
      (ii) The extent to which the applicant’s proposed activities are likely to achieve the purposes of the absolute or competitive priority.

(c) Design of research activities.
   (1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.
   (2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:
      (i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art.
      (ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—
         (A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art;
         (B) Each research hypothesis is theoretically sound and based on current knowledge;
(C) Each sample population is appropriate and of sufficient size;

(D) The data collection and measurement techniques are appropriate and likely to be effective; and

(E) The data analysis methods are appropriate.

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable.

(d) Design of development activities. (1) The Secretary considers the extent to which the design of development activities is likely to be effective in accomplishing the objectives of the project.

(2)(i) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(II) The extent to which the plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products or techniques, including consideration of the extent to which—

(A) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(B) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(C) The new device or technique will be developed and tested in an appropriate environment;

(D) The new device or technique is likely to be cost-effective and useful;

(E) The new device or technique has the potential for commercial or private manufacture, marketing, and distribution of the product; and

(F) The proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(e) Design of demonstration activities. (1) The Secretary considers the extent to which the design of demonstration activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the proposed demonstration activities build on previous research, testing, or practices.

(ii) The extent to which the proposed demonstration activities include the use of proper methodological tools and theoretically sound procedures to determine the effectiveness of the strategy or approach.

(iii) The extent to which the proposed demonstration activities include innovative and effective strategies or approaches.

(iv) The extent to which the proposed demonstration activities are likely to contribute to current knowledge and practice and be a substantial addition to the state-of-the-art.

(v) The extent to which the proposed demonstration activities can be applied and replicated in other settings.

(f) Design of training activities. (1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(I) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety.

(II) The extent to which the proposed training methods are of sufficient quality, intensity, and duration.

(III) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter; and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project.

(iv) The extent to which the proposed training materials and methods are accessible to individuals with disabilities.
§ 350.54

(vi) The extent to which the applicant’s proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities,

(vii) The extent to which the applicant is able to carry out the training activities, either directly or through another entity,

(viii) The extent to which the proposed didactic and classroom training programs emphasize scientific methodology and are likely to develop highly qualified researchers,

(ix) The extent to which the quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to develop highly qualified researchers,

(x) The extent to which the type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers.

(xi) The extent to which the opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(g) Design of dissemination activities. (1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter; and

(B) Is based on new knowledge derived from research activities of the project.

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format.

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration.

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter.

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities.

(h) Design of utilization activities. (1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices.

(ii) The extent to which the utilization strategies are likely to be effective.

(iii) The extent to which the information or technology is likely to be of use in other settings.

(i) Design of technical assistance activities. (1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration.

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter.

(iii) The extent to which the technical assistance is appropriate to the
target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information.

(iv) The extent to which the technical assistance is accessible to individuals with disabilities.

(j) Plan of operation. (1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers one or more of the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks.

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective.

(k) Collaboration. (1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant’s proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project.

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant.

(iii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities.

(1) Adequacy and reasonableness of the budget. (1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers one or more of the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities.

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities.

(iii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner.

(m) Plan of evaluation. (1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers one or more of the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation; and

(B) Achieving the project’s intended outcomes and expected impacts.

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments.

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project’s progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population; and

(B) Are objective, and quantifiable or qualitative, as appropriate.

(n) Project staff. (1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers one or more of the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities.

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project.
§ 350.55 What are the additional considerations for selecting Field-Initiated Project applications for funding?

(a) The Secretary reserves funds to support some or all of the Field-Initiated Project applications that have been awarded points totaling 80% or more of the maximum possible points under the procedures described in §350.53.

(b) In making a final selection of applications to support as Field-Initiated Projects, the Secretary considers the extent to which applications that have been awarded a rating of 80% or more of the maximum possible points and meet one or more of the following conditions:

(1) The proposed project represents a unique opportunity to advance rehabilitation knowledge to improve the lives of individuals with disabilities.

(2) The proposed project complements research already planned or funded by the NIDRR through annual priorities published in the Federal Register or addresses the research in a new and promising way.

(Authority: Secs. 202 (g) and (i)(1); 29 U.S.C. 761a(g) and 761a(i)(1))

§ 350.60 How must a grantee conduct activities?

A grantee must—

(a) Conduct all activities in a manner that is accessible to and usable by individuals with disabilities; and

(b) If a grantee carries out more than one activity, carry out integrated activities.

(Authority: Secs. 202(b)(2); 29 U.S.C. 761a and 762(b))

§ 350.61 What evaluation requirements must a grantee meet?

(a) A grantee must establish performance measures for use in its evaluation that—

(1) Are clearly related to the—

(i) Intended outcomes of the project; and

(ii) Expected impacts on the target population; and

(2) To the extent possible are quantifiable, or are objective and qualitative.

(b) A grantee must make periodic assessments of progress that will provide the grantee with performance feedback related to—

(1) Progress in implementing the plan of operation; and

(2) Progress in achieving the intended outcomes and expected impacts as assessed by the established performance measures.

(Authority: Secs. 202 and 204; 29 U.S.C. 761a and 762)
§ 350.62 What are the matching requirements?

(a)(1) The Secretary may make grants to pay for part of the costs of research and demonstration projects that bear directly on the development of procedures, methods, and devices to assist the provision of vocational and other rehabilitation services, and research training and career development projects.

(2) Each grantee must participate in the costs of those projects.

(b) The specific amount of cost sharing to be borne by each grantee—

(i) Is negotiated at the time of the award; and

(ii) Is not considered in the selection process.

(2) The Secretary may make grants to pay for part or all of the costs of—

(i) Establishment and support of Rehabilitation Research and Training Centers and Rehabilitation Engineering Research Centers; and

(ii) Specialized research or demonstration activities described in section 204(b)(2)–(16) of the Act.

(b)(1) The Secretary determines at the time of the award whether the grantee must pay a portion of the project or center costs.

(Authority: Sec. 202–204; 29 U.S.C. 760–762)

§ 350.64 What is the required duration of the training in an Advanced Rehabilitation Research Training Project?

A grantee for an Advanced Rehabilitation Research Training Project shall provide training to individuals that is at least one academic year, unless a longer training period is necessary to ensure that each trainee is qualified to conduct independent research upon completion of the course of training.


§ 350.65 What level of participation is required of trainees in an Advanced Rehabilitation Research Training Project?

Individuals who are receiving training under an Advanced Rehabilitation Research Training Project shall devote at least eighty percent of their time to the activities of the training program during the training period.


§ 350.66 What must a grantee include in a patent application?

Any patent application filed by a grantee for an invention made under a grant must include the following statement in the first paragraph:

The invention described in this application was made under a grant from the Department of Education.

(Authority: 20 U.S.C. 1221e–3)
§ 356.1 What is the Research Fellowships Program?

The purpose of this program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984, as amended at 58 FR 49419, Sept. 22, 1993]

34 CFR Ch. III (7–1–01 Edition)

§ 356.2 Who is eligible for assistance under this program?

(a) Only individuals are eligible to be recipients of Fellowships.
(b) Any individual is eligible for assistance under this program who has training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities.
(c) This program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships.
   (1) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.
   (2) The Secretary awards Merit Fellowships to individuals in earlier stages of their careers in research. To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.
   (d) An applicant for a fellowship under this program must be eligible under 34 CFR 75.60.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984, as amended at 57 FR 30343, July 8, 1992; 58 FR 49419, Sept. 22, 1993]

§ 356.3 What regulations apply to this program?

The following regulations apply to this program:
   (a) The peer review requirements contained in 34 CFR 350.31–350.32.
   (b) The regulations in this part—34 CFR part 356;
   (c)(1) Subject to the additional requirement in paragraph (c)(2) of this section, 34 CFR part 97, Protection of Human Subjects.
   (2) When an IRB reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must include at least one person primarily concerned with the welfare of these research subjects.
(d) The regulations in 34 CFR 75.60–75.61 (regarding the ineligibility of certain individuals to receive assistance).

(Authority: 29 U.S.C. 761a(d), 42 U.S.C. 300v–1(b))


§ 356.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 356.10 What types of activities are authorized?

(a) Fellows may conduct original research in any area authorized by section 204 of the Act.

(b) Each year the Secretary may determine that research is needed in certain areas authorized under section 204 of the Act and may set aside funds to provide fellowship assistance for research in these specific areas. The Secretary publishes the selected priorities, if any, in a notice in the FEDERAL REGISTER.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.11 What types of problems may be researched under the fellowship program?

Problems encountered by individuals with disabilities in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research may be addressed under this program.

(Authority: Secs. 202(d), 202(g)(1), 204; 29 U.S.C. 761a(d), 761a(g)(1), 762)

[58 FR 49419, Sept. 22, 1993]

Subpart C—How Does One Apply for Assistance Under This Program?

§ 356.20 What are the application procedures under this part?

From time to time the Secretary will publish in the FEDERAL REGISTER an Application Notice that announces the availability of fellowship assistance under this part.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.21 What is the fellowship review process?

The Secretary reviews applications for Fellowships in accordance with the peer review requirements governing grants in 34 CFR 350.31 and 350.32 and the selection criteria contained in §356.30.

(Approved by the Office of Management and Budget under control number 1800–0027)

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

Subpart D—How Does the Secretary Select a Fellow?

§ 356.30 What selection criteria are used for this program?

The Secretary evaluates an application for a Fellowship on the basis of—

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant’s ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of the Institute.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support.
§ 356.31 How does the Secretary evaluate an application under this part?

The Secretary awards the following points for each application based on how well the applicant addresses the two criteria in §356.30: Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); Poor (1).

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.32 What are the special considerations in selecting applications for funding under this part?

(a) The Secretary reserves funds to support some or all of the applications which have been awarded a rating of superior or better (4–5 points) under §356.31.

(b) In making a final selection of applicants to support under this program, the Secretary considers the extent to which applicants rated outstanding or superior present a unique opportunity to effect a major advance in knowledge, address critical problems in innovative ways, present proposals which are consistent with the Institute’s Long-Range Plan, build research capacity within the field, or complement and significantly increases the potential value of already planned research and related activities.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

Subpart E—What Conditions Have To Be Met by a Fellow?

§ 356.40 What is the length of a Fellowship award?

The Secretary awards Fellowships for a period of 12 months. Under exceptional circumstances, the Secretary may extend the period of a Fellowship; such an extension may not exceed 12 months.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.41 What are the employment limitations during a fellowship period?

The Secretary may require a research fellow to work full time on authorized fellowship activities.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.42 What acknowledgement of support is required?

Publication, distribution, and disposition of all manuscripts and other materials resulting from a fellowship awarded under this part must acknowledge that assistance was received from the Department and the Institute. Three copies of these publications or other materials must be furnished to the Secretary.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

Subpart F—What are the Administrative Responsibilities of a Fellow?

§ 356.50 What kinds of payments are allowed under this program?

A Fellowship award in either the Distinguished or Merit category includes a fixed stipend and a flat rate allowance for research and research-related expenses including travel expenses.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.51 What reports are required?

Fellows shall submit final reports. Each report must contain at a minimum an analysis of the significance of the project and an assessment of the degree to which the objectives of the project have been achieved.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.52 Are there other requirements?

The Secretary may require fellows to attend one or more meetings in connection with Fellowship activities.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]
§ 359.1 What is the Special Projects and Demonstrations for Spinal Cord Injuries Program?

This program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.

(Authority: Sec. 204(b)(4); 29 U.S.C. 762(b)(4))
and long-term community follow up and health maintenance. The system must be established on an appropriate geographical basis that reflects patterns of patient flow, and must be administered in close coordination with similar programs of the Veterans Administration, the National Institutes of Health, and other public and private agencies and institutions where appropriate;

(b) Demonstrate and evaluate both the service and cost benefits of a regional service system to those individuals with spinal cord injuries who might be served within that system;

(c) Establish within the system a rehabilitation research environment for the achievement of new knowledge leading to the reduction and treatment of complications arising from spinal cord injury and the development of new techniques of medical management and rehabilitation;

(d) Demonstrate and evaluate the development and application of improved methods and equipment essential to the care, management, and rehabilitation of individuals with spinal cord injury;

(e) Demonstrate methods of community outreach and education for individuals with spinal cord injury in areas such as housing, transportation, recreation, employment, and other community activities; and

(f) Address the needs of individuals with spinal cord injuries from minority backgrounds;

(g) Participate as directed by the Secretary in national studies of the benefits of a spinal cord injury service system by contributing to a national database and by other means as required by the Secretary.

(Authority: Secs. 21(b)(6) and 204(b)(4); 29 U.S.C. 718b and 762(b)(4))


§§ 359.12—359.19 [Reserved]

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 359.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32, using the selection criteria in §359.31.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

§ 359.31 What selection criteria does the Secretary use in reviewing applications under this program?

The Secretary uses the criteria in this section to evaluate applications under this program. The maximum score for all the criteria is 100 points.

(a) Project design (20 points). The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The research hypotheses are sound; and

(6) The research methodology is sound in the sample design and selection, the data collection plan, the measurement instruments, and the data analysis plan.

(b) Service comprehensiveness (20 points). The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope, and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to severely handicapped individuals within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.
(c) Plan of operation (15 points). The Secretary reviews each application to determine to what degree—
(1) There is an effective plan of operation that ensures proper and efficient administration of the project;
(2) The applicant’s planned use of its resources and personnel is likely to achieve each objective;
(3) Collaboration between institutions, if proposed, is likely to be effective; and
(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—
(i) Members of racial or ethnic minority groups;
(ii) Women;
(iii) Individuals with disabilities; and
(iv) The elderly.
(d) Quality of key personnel (10 points). The Secretary reviews each application to determine to what degree—
(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;
(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;
(3) All the disciplines necessary to establish the multidisciplinary system described in §359.11(a) are effectively represented;
(4) Commitments of staff time are adequate for the project; and
(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—
(i) Members of racial or ethnic minority groups;
(ii) Women;
(iii) Individuals with disabilities; and
(iv) The elderly.
(e) Adequacy of resources (10 points). The Secretary reviews each application to determine to what degree—
(1) The facilities planned for use are adequate; and
(2) The equipment and supplies planned for use are adequate; and
(3) The commitment of the applicant to provide administrative and other necessary support is evident.
(f) Budget/cost effectiveness (10 points). The Secretary reviews each application to determine to what degree—
(1) The budget for the project is adequate to support the activities;
(2) The costs are reasonable in relation to the objectives of the project; and
(3) The budget for subcontracts (if required) is detailed and appropriate.
(g) Dissemination/utilization (5 points). The Secretary reviews each application to determine to what degree—
(1) There is a clearly defined plan for dissemination and utilization of project findings;
(2) The research results are likely to become available to others working in the field;
(3) The means to disseminate and promote utilization by others are defined; and
(4) The utilization approach is likely to address the defined need.
(h) Evaluation plan (10 points). The Secretary reviews each application to determine to what degree—
(1) There is a mechanism to evaluate plans, progress and results;
(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and
(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

Authority: Secs. 202(e) and 204(b)(4); 29 U.S.C. 761a(e) and 762(b)(4)

§359.32 What additional factors does the Secretary consider in making a grant under this program?

In determining which applicants to fund under this program, the Secretary also considers the proposed location of any project in order to achieve, to the extent possible, a geographic distribution of projects.

Authority: Sec. 204(b)(4)(C); 29 U.S.C. 762(b)(4)(C)
[52 FR 30066, Aug. 12, 1987]
PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

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PROVISION AND SCOPE OF SERVICES

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Subpart C—Financing of State Vocational Rehabilitation Programs

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Subpart E—Evaluation Standards and Performance Indicators

361.80 Purpose.
§ 361.1 Purpose.
Under the State Vocational Rehabilitation Services Program (Program), the Secretary provides grants to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable programs, each of which is—
(a) An integral part of a statewide workforce investment system; and
(b) Designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Section 100(a)(2) of the Act; 29 U.S.C. 720(a)(2))

§ 361.2 Eligibility for a grant.
Any State that submits to the Secretary a State plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this Program.

(Authority: Section 101(a) of the Act; 29 U.S.C. 721(a))

§ 361.3 Authorized activities.
The Secretary makes payments to a State to assist in—
(a) The costs of providing vocational rehabilitation services under the State plan; and
(b) Administrative costs under the State plan.

(Authority: Section 111(a)(1) of the Act; 29 U.S.C. 731(a)(1))

§ 361.4 Applicable regulations.
The following regulations apply to this Program:
(a) The Education Department General Administrative Regulations (EDGAR) as follows:
   (1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations), with respect to subgrants to entities that are not State or local governments or Indian tribal organizations.
   (2) 34 CFR part 76 (State-Administered Programs).
   (3) 34 CFR part 77 (Definitions that Apply to Department Regulations).
   (4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
   (5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except for §80.24(a)(2).
   (6) 34 CFR part 81 (General Education Provisions Act—Enforcement).
   (7) 34 CFR part 82 (New Restrictions on Lobbying).
   (8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
   (9) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).
   (b) The regulations in this part 361.
   (c) 20 CFR part 662 (Description of One-Stop Service Delivery System under Title I of the Workforce Investment Act of 1998).
   (d) 29 CFR part 37, to the extent programs and activities are being conducted as part of the One-Stop service delivery system under section 121(b) of the Workforce Investment Act of 1998.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

§ 361.5 Applicable definitions.
(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:
Department
EDGAR
Fiscal year
Nonprofit
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Private
Public Secretary

(b) Other definitions. The following definitions also apply to this part:


(2) Administrative costs under the State plan means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under this part, including expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, expenses for—

(i) Quality assurance;
(ii) Budgeting, accounting, financial management, information systems, and related data processing;
(iii) Providing information about the program to the public;
(iv) Technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in §361.49(a)(4);
(v) The State Rehabilitation Council and other advisory committees;
(vi) Professional organization membership dues for designated State unit employees;
(vii) The removal of architectural barriers in State vocational rehabilitation agency offices and State-operated rehabilitation facilities;
(viii) Operating and maintaining designated State unit facilities, equipment, and grounds;
(ix) Supplies;
(x) Administration of the comprehensive system of personnel development described in §361.18, including personnel administration, administration of affirmative action plans, and training and staff development;
(xi) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;
(xii) Travel costs related to carrying out the program, other than travel costs related to the provision of services;
(xiii) Costs incurred in conducting reviews of determinations made by personnel of the designated State unit, including costs associated with mediation and impartial due process hearings under §361.57; and
(xiv) Legal expenses required in the administration of the program.

(Authority: Section 7(1) of the Act; 29 U.S.C. 706(1))

(3) American Indian means an individual who is a member of an Indian tribe.

(Authority: Section 7(19)(A) of the Act; 29 U.S.C. 705(19)(A))

(4) Applicant means an individual who submits an application for vocational rehabilitation services in accordance with §361.41(b)(2).

(Authority: Section 12(c) of the Act; 29 U.S.C. 706(c))

(5) Appropriate modes of communication means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

(Authority: Section 12(c) of the Act; 29 U.S.C. 706(c))

(6) Assessment for determining eligibility and vocational rehabilitation needs means, as appropriate in each case—

(i)(A) A review of existing data—
(1) To determine if an individual is eligible for vocational rehabilitation services; and
(2) To assign priority for an order of selection described in §361.36 in the States that use an order of selection; and
(B) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;
(ii) To the extent additional data are necessary to make a determination of
the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment—

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan of employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(1) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in §361.36 for the individual; and

(2) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(iv) An exploration of the individual’s abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences in which the individual is provided appropriate supports and training.

(Authority: Section 7(2) of the Act; 29 U.S.C. 705(2))

(7) Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(Authority: Section 7(3) of the Act; 29 U.S.C. 705(3))

(8) 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, including—

(i) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who
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provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(Authority: Sections 7(4) and 12(c) of the Act; 29 U.S.C. 705(4) and 709(c))

(9) **Community rehabilitation program.**
(i) **Community rehabilitation program** means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:
(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.
(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.
(C) Recreational therapy.
(D) Physical and occupational therapy.
(E) Speech, language, and hearing therapy.
(F) Psychiatric, psychological, and social services, including positive behavior management.
(G) Assessment for determining eligibility and vocational rehabilitation needs.
(H) Rehabilitation technology.
(I) Job development, placement, and retention services.
(J) Evaluation or control of specific disabilities.
(K) Orientation and mobility services for individuals who are blind.
(L) Extended employment.
(M) Psychosocial rehabilitation services.
(N) Supported employment services and extended services.
(O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.
(P) Personal assistance services.
(Q) Services similar to the services described in paragraphs (A) through (P) of this definition.

(ii) For the purposes of this definition, the word **program** means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(10) **Comparable services and benefits means—**

(i) Services and benefits that are—
(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;
(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual’s individualized plan for employment in accordance with §361.53; and
(C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency.

(ii) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 709(c) and 721(a)(8))

(11) **Competitive employment means work—**

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(Authority: Sections 7(11) and 12(c) of the Act; 29 U.S.C. 705(11) and 709(c))

(12) **Construction of a facility for a public or nonprofit community rehabilitation program means—**

(i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;
(ii) The construction of new buildings;
(iii) The acquisition of existing buildings;
(iv) The expansion, remodeling, alteration, or renovation of existing buildings;

(v) Architect’s fees, site surveys, and soil investigation, if necessary, in connection with the construction project;

(vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and

(vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

(Authority: Sections 7(6) and 12(c) of the Act; 29 U.S.C. 705(6) and 709(c))

(13) Designated State agency or State agency means the sole State agency, designated in accordance with §361.13(a), to administer, or supervise the local administration of, the State plan for vocational rehabilitation services. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sections 7(8)(A) and 101(a)(2)(A) of the Act; 29 U.S.C. 705(8)(A) and 721(a)(2)(A))

(14) Designated State unit or State unit means either—

(i) The State vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under §361.13(b); or

(ii) The State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(Authority: Sections 7(8)(B) and 101(a)(2)(B) of the Act; 29 U.S.C. 705(8)(B) and 721(a)(2)(B))

(15) Eligible individual means an applicant for vocational rehabilitation services who meets the eligibility requirements of §361.42(a).

(Authority: Sections 7(20)(A) and 102(a)(1) of the Act; 29 U.S.C. 705(20)(A) and 722(a)(1))

(16) Employment outcome means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in §361.5(b)(11), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, interests, and informed choice.

(Authority: Sections 7(11), 12(c), 100(a)(2), and 102(b)(3)(A) of the Act; 29 U.S.C. 705(11), 709(c), 720(a)(2), and 722(b)(3)(A))

(17) Establishment, development, or improvement of a public or nonprofit community rehabilitation program means—

(i) The establishment of a facility for a public or nonprofit community rehabilitation program as defined in paragraph (b)(18) of this section to provide vocational rehabilitation services to applicants or eligible individuals;

(ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of 4 years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

(A) 100 percent of staffing costs for the first year.

(B) 75 percent of staffing costs for the second year.

(C) 60 percent of staffing costs for the third year.

(D) 45 percent of staffing costs for the fourth year; and

(iii) Other expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness in providing vocational rehabilitation services to applicants or eligible individuals, but are
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not ongoing operating expenses of the program.

(Authority: Sections 7(12) and 12(c) of the Act; 29 U.S.C. 705(12) and 709(c))

(18) Establishment of a facility for a public or nonprofit community rehabilitation program means—

(i) The acquisition of an existing building and, if necessary, the land in connection with the acquisition, if the building has been completed in all respects for at least 1 year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than $300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect’s fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

(Authority: Sections 7(12) and 12(c) of the Act; 29 U.S.C. 705(12) and 709(c))

(19) Extended employment means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(20) Extended services means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part and 34 CFR part 363 after an individual with a most significant disability has made the transition from support provided by the designated State unit.

(Authority: Sections 7(13) and 623 of the Act; 29 U.S.C. 705(13) and 796i)

(21) Extreme medical risk means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Sections 12(c) and 101(a)(8)(A)(i)(III) of the Act; 29 U.S.C. 709(c) and 721(a)(8)(A)(i)(III))

(22) Fair hearing board means a committee, body, or group of persons established by a State prior to January 1, 1985 that—

(i) Is authorized under State law to review determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services; and

(ii) Carries out the responsibilities of the impartial hearing officer in accordance with the requirements in §361.57(j).

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(23) Family member, for purposes of receiving vocational rehabilitation services in accordance with §361.49(i), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;
(ii) Who has a substantial interest in the well-being of that individual; and
(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(17) of the Act; 29 U.S.C. 709(c) and 723(a)(17))

(24) Governor means a chief executive officer of a State.

(Authority: Section 7(15) of the Act; 29 U.S.C. 705(15))

(25) Impartial hearing officer.

(i) Impartial hearing officer means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(ii) An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Section 7(16) of the Act; 29 U.S.C. 705(16))

(26) Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Section 7(19)(B) of the Act; 29 U.S.C. 705(19)(B))

(27) Individual who is blind means a person who is blind within the meaning of applicable State law. (Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(28) Individual with a disability, except as provided in §361.5(b)(29), means an individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(20)(A) of the Act; 29 U.S.C. 705(20)(A))

(29) Individual with a disability, for purposes of §§361.5(b)(14), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(5), and 361.51(b), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Section 7(20)(B) of the Act; 29 U.S.C. 705(20)(B))

(30) Individual with a most significant disability means an individual with a significant disability who meets the designated State unit’s criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in §361.36(d)(1) and (2).

(Authority: Sections 7(21)(E)(i) and 101(a)(5)(C) of the Act; 29 U.S.C. 705(21)(E)(i) and 721(a)(5)(C))

(31) Individual with a significant disability means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
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(iii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and  
(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.  

(Authority: Sections 7(21)(A) of the Act; 29 U.S.C. 705(21)(A))

(32) Individual’s representative means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual’s representative.  

(Authority: Sections 7(22) and 12(c) of the Act; 29 U.S.C. 705(22) and 709(c))

(33) Integrated setting,—  
(i) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;  
(ii) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.  

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(34) Local workforce investment board means a local workforce investment board established under section 117 of the Workforce Investment Act of 1998.  

(Authority: Section 7(25) of the Act; 29 U.S.C. 709(c))

(35) Maintenance means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual’s participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual’s receipt of vocational rehabilitation services under an individualized plan for employment.  

(Authority: Sections 12(c) and 103(a)(7) of the Act; 29 U.S.C. 709(c) and 723(a)(7))

(36) Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under
the program must be conducted in accordance with the requirements in §361.57(d) by a qualified and impartial mediator as defined in §361.5(b)(43). (Authority: Section 12(c) of the Act; 29 U.S.C. 708(c))

(37) Nonprofit, with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986. (Authority: Section 7(26) of the Act; 29 U.S.C. 705(26))

(38) Ongoing support services, as used in the definition of “Supported employment”:

(i) Means services that are—

(A) Needed to support and maintain an individual with a most significant disability in supported employment;

(B) Identified based on a determination by the designated State unit of the individual’s need as specified in an individualized plan for employment; and

(C) Furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual’s term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(ii) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(iii) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (b)(6)(ii) of this section;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in §361.48; or

(I) Any service similar to the foregoing services. (Authority: Sections 7(27) and 12(c) of the Act; 29 U.S.C. 705(27) and 708(c))

(39) Personal assistance services means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual’s control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services. (Authority: Sections 7(26), 102(b)(3)(B)(i)(I), and 103(a)(9) of the Act; 29 U.S.C. 705(26), 722(b)(3)(B)(i)(I), and 723(a)(9))
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(40) *Physical and mental restoration services* means—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic and orthotic devices;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.

(41) *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, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, 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.

(42) *Post-employment services* means one or more of the services identified in §361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(43) *Qualified and impartial mediator.* (i) Qualified and impartial mediator means an individual who—
(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(E) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

(1) An individual serving as a mediator is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator.

(44) Rehabilitation engineering means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(45) Rehabilitation technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(46) Reservation means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(47) Sole local agency means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the State plan.

(48) State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(49) State workforce investment board means a State workforce investment board established under section 111 of the Workforce Investment Act of 1998.

(50) Statewide workforce investment system means a system described in section 111(d)(2) of the Workforce Investment Act of 1998.
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(51) State plan means the State plan for vocational rehabilitation services submitted under §361.10.

(Authority: Sections 12(c) and 101 of the Act; 29 U.S.C. 709(c) and 721)

(52) Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communicative, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual’s abilities and capabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Act; 29 U.S.C. 705(20)(A) and 709(c))

(53) Supported employment means—

(i) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities—

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition as described in paragraph (b)(54) of this section to perform this work; or

(ii) Transitional employment, as defined in paragraph (b)(54) of this section, for individuals with the most significant disabilities due to mental illness.

(Authority: Section 7(35) of the Act; 29 U.S.C. 705(35))

(54) Supported employment services means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the designated State unit—

(i) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(ii) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(36) and 12(c) of the Act; 29 U.S.C. 705(36) and 709(c))

(55) Transition services means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student’s needs, taking into account the student’s preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student’s individualized plan for employment.

(Authority: Section 7(37) and 103(a)(15) of the Act; 29 U.S.C. 705(37) and 723(a)(15))

(56) Transitional employment, as used in the definition of “Supported employment,” means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing
support services must include continuing sequential job placements until job permanency is achieved.

(Authority: Sections 7(35)(B) and 12(c) of the Act; 29 U.S.C. 705(35)(B) and 709(c))

(57) Transportation means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(Authority: 103(a)(8) of the Act; 29 U.S.C. 723(a)(8))

(i) Examples: The following are examples of expenses that would meet the definition of transportation. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

Example 1: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

Example 2: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

Example 3: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual’s current residence.

(ii) [Reserved]

(58) Vocational rehabilitation services—

(i) If provided to an individual, means those services listed in §361.48; and

(ii) If provided for the benefit of groups of individuals, also means those services listed in §361.49.

(Authority: Sections 7(38) and 103(a) and (b) of the Act; 29 U.S.C. 705(38), 723(a) and (b))

EFFECTIVE DATE NOTE: At 66 FR 7252, Jan. 22, 2001, §361.5 was amended by revising paragraphs (b)(16) and (b)(19), effective Oct. 1, 2001. For the convenience of the user, the superseded text is set forth below.

§361.5 Applicable definitions.

* * * * *

(b) Employment outcome means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment, including self-employment, telecommuting, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

* * * * *

(18) Extended employment means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

Subpart B—State Plan and Other Requirements for Vocational Rehabilitation Services

§361.10 Submission, approval, and disapproval of the State plan.

(a) Purpose. For a State to receive a grant under this part, the designated State agency must submit to the Secretary, and obtain approval of, a State plan that contains a description of the State’s vocational rehabilitation services program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary, in accordance with the requirements of this part.

(b) Separate part relating to the vocational rehabilitation of individuals who are blind. If a separate State agency administers or supervises the administration of a separate part of the State plan relating to the vocational rehabilitation of individuals who are blind, that part of the State plan must separately conform to all requirements under this part that are applicable to a State plan.

(c) State unified plan. The State may choose to submit the State plan for vocational rehabilitation services as part of the State unified plan under section 501 of the Workforce Investment Act of 1998. The portion of the State unified plan that includes the State plan for vocational rehabilitation services must
meet the State plan requirements in this part.

(d) Public participation. Prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the State plan, including making any substantive amendment to those policies and procedures, the designated State agency must conduct public meetings throughout the State, in accordance with the requirements of §361.20.

(e) Duration. The State plan remains in effect subject to the submission of modifications the State determines to be necessary or the Secretary may require based on a change in State policy, a change in Federal law, including regulations, an interpretation of the Act by a Federal court or the highest court of the State, or a finding by the Secretary of State noncompliance with the requirements of the Act or this part.

(f) Submission of the State plan. The State must submit the State plan for approval—

(1) To the Secretary on the same date that the State submits a State plan relating to the statewide workforce investment system under section 112 of the Workforce Investment Act of 1998;

(2) As part of the State unified plan submitted under section 501 of that Act; or

(3) To the Secretary on the same date that the State submits a State unified plan under section 501 of that Act that does not include the State plan under this part.

(g) Annual submission. (1) The State must submit to the Secretary for approval revisions to the State plan in accordance with paragraph (e) of this section and 34 CFR 76.140.

(2) The State must submit to the Secretary reports containing annual updates of the information required under §§361.18, 361.29, and 361.35 and any other updates of the information required under this part that are requested by the Secretary.

(3) The State is not required to submit policies, procedures, or descriptions required under this part that have been previously submitted to the Secretary and that demonstrate that the State meets the requirements of this part, including any policies, procedures, or descriptions submitted under this part that are in effect on August 6, 1998.

(h) Approval. The Secretary approves any State plan and any revisions to the State plan that conform to the requirements of this part and section 101(a) of the Act.

(1) Disapproval. The Secretary disapproves any State plan that does not conform to the requirements of this part and section 101(a) of the Act, in accordance with the following procedures:

(1) Informal resolution. Prior to disapproving any State plan, the Secretary attempts to resolve disputes informally with State officials.

(2) Notice. If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to disapprove the State plan and of the opportunity for a hearing.

(3) State plan hearing. If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this Program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(4) Initial decision. The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(5) Petition for review of an initial decision. The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR part 81.

(6) Review by the Secretary. The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(7) Final decision of the Department. The final decision of the Department is made in accordance with 34 CFR 81.44.

(8) Judicial review. A State may appeal the Secretary's decision to disapprove the State plan by filing a petition for review with the United States Court of Appeals for the circuit in

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which the State is located, in accordance with section 107(d) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0500.)

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(Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, § 361.10 was amended by adding "(Approved by the Office of Management and Budget under control number 1820–0500)", effective Oct. 1, 2001.)

§ 361.11 Withholding of funds.

(a) Basis for withholding. The Secretary may withhold or limit payments under section 111 or 622(a) of the Act, as provided by section 107(c) and (d) of the Act, if the Secretary determines that—

(1) The State plan, including the supported employment supplement, has been so changed that it no longer conforms with the requirements of this part or 34 CFR part 363; or

(2) In the administration of the State plan, there has been a failure to comply substantially with any provision of that plan or a program improvement plan established in accordance with section 106(b)(2) of the Act.

(b) Informal resolution. Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

(c) Notice. If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) Withholding hearing. If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this Program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) Initial decision. The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) Petition for review of an initial decision. The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) Review by the Secretary. The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) Final decision of the Department. The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) Judicial review. A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Approval by Sections 101(b), 107(c), and 107(d) of the Act; 29 U.S.C. 721(b), 727(c)(1) and (2), and 727(d))

ADMINISTRATION

§ 361.12 Methods of administration.

The State plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Approved by the Office of Management and Budget under control number 1820-0500.)

(Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, § 361.12 was amended by adding "(Approved by the Office of Management and Budget under control number 1820–0500)", effective Oct. 1, 2001.)

§ 361.13 State agency for administration.

(a) Designation of State agency. The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) General. Except as provided in paragraphs (a)(2) and (3) of this section, the State plan must provide that the designated State agency is one of the following types of agencies:
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(i) A State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities; or

(ii) A State agency that includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(2) American Samoa. In the case of American Samoa, the State plan must designate the Governor.

(3) Designated State agency for individuals who are blind. If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the State plan may designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(b) Designation of State unit.

(1) If the designated State agency is not of the type specified in paragraph (a)(1)(i) of this section or if the designated State agency specified in paragraph (a)(3) of this section is not primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the State plan must designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) Responsibility for administration.

(1) At a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:

(i) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services.

(ii) The allocation and expenditure of vocational rehabilitation funds.

(iii) Participation as a partner in the One-Stop service delivery system under Title I of the Workforce Investment Act of 1998, in accordance with 20 CFR part 662.

(2) The responsibility for the functions described in paragraph (c)(1) of this section may not be delegated to any other agency or individual.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Section 101(a)(2) of the Act; 29 U.S.C. 721(a)(2))

§ 361.16 Establishment of an independent commission or a state rehabilitation council.

(a) General requirement. Except as provided in paragraph (b) of this section, the State plan must contain one of the following two assurances:

(1) An assurance that the designated State agency is an independent State commission that—

(i) Is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State and is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with § 361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

(A) Are individuals with physical or mental impairments that substantially limit major life activities; and

(B) Represent individuals with a broad range of disabilities, unless the designated State unit under the direction of the commission is the State agency for individuals who are blind;

(iii) Includes family members, advocates, or other representatives of individuals with mental impairments; and

(iv) Conducts the functions identified in § 361.17(h)(4).

(2) An assurance that—

(i) The State has established a State Rehabilitation Council (Council) that meets the requirements of § 361.17;

(ii) The designated State unit, in accordance with § 361.29, jointly develops, agrees to, and reviews annually State goals and priorities and jointly submits to the Secretary annual reports of progress with the Council;

(iii) The designated State unit regularly consults with the Council regarding the development, implementation,
§ 361.17 Requirements for a state rehabilitation council.

If the State has established a Council under §361.16(a)(2) or (b), the Council must meet the following requirements:

(a) Appointment.
   (1) The members of the Council must be appointed by the Governor or, in the case of a State that, under State law, vests authority for the administration of the activities carried out under this part in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity.

   (b) Composition.
      (1) General. Except as provided in paragraph (b)(3) of this section, the Council must be composed of at least 15 members, including—
         (i) At least one representative of the Statewide Independent Living Council, who must be the chairperson or other designee of the Statewide Independent Living Council;
         (ii) At least one representative of a parent training and information center established pursuant to section 682(a) of the Individuals with Disabilities Education Act;
         (iii) At least one representative of the Client Assistance Program established pursuant to section 34 of the Individuals with Disabilities Education Act; and
         (iv) At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the Council if employed by the designated State agency;

      (2) The appointing authority must select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the Council.

      (3) Exception for separate State agency for individuals who are blind. In the case of a State that designates a separate State agency under §361.13(a)(3) to administer the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind, the State must either establish a separate State Rehabilitation Council for each agency that does not meet the requirements in paragraph (a)(1) of this section or establish one State Rehabilitation Council for both agencies if neither agency meets the requirements of paragraph (a)(1) of this section.

(Approved by the Office of Management and Budget under control number 1820-0500.)

(Authority: Sections 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

(vi) Four representatives of business, industry, and labor;

(vii) Representatives of disability groups that include a cross section of—

(A) Individuals with physical, cognitive, sensory, and mental disabilities; and

(B) Representatives of individuals with disabilities who have difficulty representing themselves or are unable due to their disabilities to represent themselves;

(viii) Current or former applicants for, or recipients of, vocational rehabilitation services;

(ix) In a State in which one or more projects are carried out under section 121 of the Act (American Indian Vocational Rehabilitation Services), at least one representative of the directors of the projects;

(x) At least one representative of the State educational agency responsible for the public education of students with disabilities who are eligible to receive services under this part and part B of the Individuals with Disabilities Education Act;

(xi) At least one representative of the State workforce investment board; and

(xii) The director of the designated State unit as an ex officio, nonvoting member of the Council.

(2) Employees of the designated State agency. Employees of the designated State agency may serve only as nonvoting members of the Council. This provision does not apply to the representative appointed pursuant to paragraph (b)(1)(iii) of this section.

(3) Composition of a separate Council for a separate State agency for individuals who are blind. Except as provided in paragraph (b)(4) of this section, if the State establishes a separate Council for a separate State agency for individuals who are blind, that Council must—

(i) Conform with all of the composition requirements for a Council under paragraph (b)(1) of this section, except the requirements in paragraph (b)(1)(vii), unless the exception in paragraph (b)(4) of this section applies; and

(ii) Include—

(A) At least one representative of a disability advocacy group representing individuals who are blind; and

(B) At least one representative of an individual who is blind, has multiple disabilities, and has difficulty representing himself or herself or is unable due to disabilities to represent himself or herself.

(4) Exception. If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 15 members, the separate Council is in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) Majority.

(1) A majority of the Council members must be individuals with disabilities who meet the requirements of §361.5(b)(29) and are not employed by the designated State unit.

(2) In the case of a separate Council established under §361.16(b), a majority of the Council members must be individuals who are blind and are not employed by the designated State unit.

(d) Chairperson. The chairperson must be—

(1) Selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) In States in which the Governor does not have veto power pursuant to State law, the appointing authority described in paragraph (a)(1) of this section must designate a member of the Council to serve as the chairperson of the Council or must require the Council to designate a member to serve as chairperson.

(e) Terms of appointment.

(1) Each member of the Council must be appointed for a term of no more than 3 years, and each member of the Council, other than a representative identified in paragraph (b)(1)(iii) or (ix) of this section, may serve for no more than two consecutive full terms.

(2) A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed must be appointed for the remainder of the predecessor’s term.

(3) The terms of service of the members initially appointed must be, as specified by the appointing authority as described in paragraph (a)(1) of this
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section, for varied numbers of years to ensure that terms expire on a staggered basis.

(f) Vacancies.

(1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment, except the appointing authority as described in paragraph (a)(1) of this section may delegate the authority to fill that vacancy to the remaining members of the Council after making the original appointment.

(2) No vacancy affects the power of the remaining members to execute the duties of the Council.

(g) Conflict of interest. No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or the member’s organization or otherwise give the appearance of a conflict of interest under State law.

(h) Functions. The Council must, after consulting with the State workforce investment board—

(1) Review, analyze, and advise the designated State unit regarding the performance of the State unit’s responsibilities under this part, particularly responsibilities related to—

(i) Eligibility, including order of selection;

(ii) The extent, scope, and effectiveness of services provided; and

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment outcomes under this part;

(2) In partnership with the designated State unit—

(i) Develop, agree to, and review State goals and priorities in accordance with §361.29(c); and

(ii) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary in accordance with §361.29(e);

(3) Advise the designated State agency and the designated State unit regarding activities carried out under this part and assist in the preparation of the State plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by this part;

(4) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(i) The functions performed by the designated State agency;

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and

(iii) The employment outcomes achieved by eligible individuals receiving services under this part, including the availability of health and other employment benefits in connection with those employment outcomes;

(5) Prepare and submit to the Governor and to the Secretary no later than 90 days after the end of the Federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the State and make the report available to the public through appropriate modes of communication;

(6) To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the State, including the Statewide Independent Living Council established under 34 CFR part 364, the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, the State Developmental Disabilities Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, the State mental health planning council established under section 1914(a) of the Public Health Service Act, and the State workforce investment board;

(7) Provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(8) Perform other comparable functions, consistent with the purpose of this part, as the Council determines to be appropriate, that are comparable to the other functions performed by the Council.

(i) Resources.
(1) The Council, in conjunction with the designated State unit, must prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the Council to carry out its functions under this part.

(2) The resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary to carry out the functions of the Council must be resolved by the Governor, consistent with paragraphs (i)(1) and (2) of this section.

(4) The Council must, consistent with State law, supervise and evaluate the staff and personnel that are necessary to carry out its functions.

(5) Those staff and personnel that are assisting the Council in carrying out its functions may not be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest.

(j) Meetings. The Council must—

(1) Convene at least four meetings a year in locations determined by the Council to be necessary to conduct Council business. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session; and

(2) Conduct forums or hearings, as appropriate, that are publicly announced, open, and accessible to the public, including individuals with disabilities.

(k) Compensation. Funds appropriated under Title I of the Act, except funds to carry out sections 112 and 121 of the Act, may be used to compensate and reimburse the expenses of Council members in accordance with section 109(g) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0500.)


§361.18 Comprehensive system of personnel development.

The State plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Council, this description must, at a minimum, specify that the Council has an opportunity to review and comment on the development of plans, policies, and procedures necessary to meet the requirements of paragraphs (b) through (d) of this section. This description must also conform with the following requirements:

(a) Data system on personnel and personnel development. The State plan must describe the development and maintenance of a system by the State agency for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

(i) The number of personnel who are employed by the State agency in the provision of vocational rehabilitation services in relation to the number of individuals served, broken down by personnel category;

(ii) The number of personnel currently needed by the State agency to provide vocational rehabilitation services, broken down by personnel category; and

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in 5 years based on projections of the number of individuals to be served, including individuals with significant disabilities, the number of personnel expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—
§361.18

(i) A list of the institutions of higher education in the State that are preparing vocational rehabilitation professionals, by type of program;

(ii) The number of students enrolled at each of those institutions, broken down by type of program; and

(iii) The number of students who graduated during the prior year from each of those institutions with certification or licensure, or with the credentials for certification or licensure, broken down by the personnel category for which they have received, or have the credentials to receive, certification or licensure.

(b) Plan for recruitment, preparation, and retention of qualified personnel. The State plan must describe the development, updating, and implementation of a plan to address the current and projected needs for personnel who are qualified in accordance with paragraph (c) of this section. The plan must identify the personnel needs based on the data collection and analysis system described in paragraph (a) of this section and must provide for the coordination and facilitation of efforts between the designated State unit and institutions of higher education and professional associations to recruit, prepare, and retain personnel who are qualified in accordance with paragraph (c) of this section, including personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) Personnel standards.

(1) The State plan must include the State agency’s policies and describe the procedures the State agency will undertake to establish and maintain standards to ensure that all professional and paraprofessional personnel needed within the designated State unit to carry out this part are appropriately and adequately prepared and trained, including—

(i) Standards that are consistent with any national or State-approved or -recognized certification, licensing, or registration requirements, or, in the absence of these requirements, other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services; and

(ii) To the extent that existing standards are not based on the highest requirements in the State, the steps the State is currently taking and the steps the State plans to take to retrain or hire personnel to meet standards that are based on the highest requirements in the State, including measures to notify State unit personnel, the institutions of higher education identified under paragraph (a)(2)(i) of this section, and other public agencies of these steps and the timelines for taking each step. The steps taken by the State unit under this paragraph must be described in a written plan that includes—

(A) Specific strategies for retraining, recruiting, and hiring personnel;

(B) The specific time period by which all State unit personnel will meet the standards described in paragraph (c)(1)(i) of this section;

(C) Procedures for evaluating the State unit’s progress in hiring or retraining personnel to meet applicable personnel standards within the time period established under paragraph (c)(1)(ii)(B) of this section; and

(D) In instances in which the State unit is unable to immediately hire new personnel who meet the requirements in paragraph (c)(1)(i) of this section, the initial minimum qualifications that the designated State unit will require of newly hired personnel and a plan for training those individuals to meet applicable requirements within the time period established under paragraph (c)(1)(ii)(B) of this section.

(2) As used in this section—

(i) Highest requirements in the State applicable to that profession or discipline means the highest entry-level academic degree needed for any national or State-approved or -recognized certification, licensing, registration, or, in the absence of these requirements, other comparable requirements that apply to that profession or discipline. The current requirements of all State statutes and regulations of other agencies in the State applicable to that profession or discipline must be considered and must be kept on file by the designated State unit and available to the public.
(ii) Profession or discipline means a specific occupational category, including any paraprofessional occupational category, that—
(A) Provides rehabilitation services to individuals with disabilities;
(B) Has been established or designated by the State unit; and
(C) Has a specified scope of responsibility.
(d) Staff development.
(1) The State plan must include the State agency’s policies and describe the procedures and activities the State agency will undertake to ensure that all personnel employed by the State unit receive appropriate and adequate training, including a description of—
(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to assessment, vocational counseling, job placement, and rehabilitation technology; and
(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources.
(2) The specific training areas for staff development must be based on the needs of each State unit and may include, but are not limited to—
(i) Training regarding the Workforce Investment Act of 1998 and the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1998;
(ii) Training with respect to the requirements of the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Social Security work incentive programs, including programs under the Ticket to Work and Work Incentives Improvement Act of 1999, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations; and
(iii) Activities related to—
(A) Recruitment and retention of qualified rehabilitation personnel;
(B) Succession planning; and
(C) Leadership development and capacity building.
(e) Personnel to address individual communication needs. The State plan must describe how the State unit—
(1) Includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and
(2) Includes among its personnel, or obtains the services of, individuals able to communicate with applicants and eligible individuals in appropriate modes of communication.
(f) Coordination with personnel development under the Individuals with Disabilities Education Act. The State plan must describe the procedures and activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under the Individuals with Disabilities Education Act.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.18 was amended by adding “(Approved by the Office of Management and Budget under control number 1820–0500),” effective Oct. 1, 2001.

§361.19 Affirmative action for individuals with disabilities.

The State plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 of the Act.

(Approved by the Office of Management and Budget under control number 1820–0500.)


§361.20 Public participation requirements.

(a) Conduct of public meetings. The State plan must assure that prior to
the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the State plan, including making any substantive amendments to the policies and procedures, the designated State agency conducts public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures.

(b) Notice requirements. The State plan must assure that the designated State agency, prior to conducting the public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(1) State law governing public meetings;

(2) In the absence of State law governing public meetings, procedures developed by the designated State agency in consultation with the State Rehabilitation Council.

(c) Summary of input of the State Rehabilitation Council. The State plan must provide a summary of the input of the State Rehabilitation Council, if the State agency has a Council, into the State plan and any amendment to the plan, in accordance with §361.16(a)(2)(v).

(d) Special consultation requirements. The State plan must assure that the State agency actively consults with the director of the Client Assistance Program, the State Rehabilitation Council, if the State agency has a Council, and, as appropriate, Indian tribes, tribal organizations, and native Hawaiian organizations on its policies and procedures governing the provision of vocational rehabilitation services under the State plan.

(e) Appropriate modes of communication. The State unit must provide to the public, through appropriate modes of communication, notices of the public meetings, any materials furnished prior to or during the public meetings, and the policies and procedures governing the provision of vocational rehabilitation services under the State plan.

(Approved by the Office of Management and Budget under control number 1820–0500.)


§361.21 Consultations regarding the administration of the state plan.

The State plan must assure that, in connection with matters of general policy arising in the administration of the State plan, the designated State agency takes into account the views of—

(a) Individuals and groups of individuals who are recipients of vocational rehabilitation services or, as appropriate, the individuals’ representatives;

(b) Personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;

(c) Providers of vocational rehabilitation services to individuals with disabilities;

(d) The director of the Client Assistance Program; and

(e) The State Rehabilitation Council, if the State has a Council.

(Approved by the Office of Management and Budget under control number 1820–0500.)


§361.22 Coordination with education officials.

(a) Plans, policies, and procedures. (1) The State plan must contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities that are designed to facilitate the transition of students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under the responsibility of the designated State agency.

(2) These plans, policies, and procedures in paragraph (a)(1) of this section must provide for the development and approval of an individualized plan for employment in accordance with §361.45.
as early as possible during the transition planning process but, at the latest, by the time each student determined to be eligible for vocational rehabilitation services leaves the school setting or, if the designated State unit is operating under an order of selection, before each eligible student able to be served under the order leaves the school setting.

(b) Formal interagency agreement. The State plan must include information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—

(1) Consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;

(3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and

(4) Procedures for outreach to and identification of students with disabilities who are in need of transition services. Outreach to these students should occur as early as possible during the transition planning process and must include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals.

(Approved by the Office of Management and Budget under control number 1820-0500.)

(Effective date notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.22 was amended by adding “(Approved by the Office of Management and Budget under control number 1820-0500)”, effective Oct. 1, 2001.)

§361.23 Requirements related to the statewide workforce investment system.

(a) Responsibilities as a partner of the One-Stop service delivery system. As a required partner in the One-Stop service delivery system (which is part of the statewide workforce investment system under Title I of the Workforce Investment Act of 1998), the designated State unit must carry out the following functions consistent with the Act, this part, Title I of the Workforce Investment Act of 1998, and the regulations in 20 CFR part 662:

(1) Make available to participants through the One-Stop service delivery system the core services (as described in 20 CFR 662.240) that are applicable to the Program administered by the designated State unit under this part.

(2) Use a portion of funds made available to the Program administered by the designated State unit under this part, consistent with the Act and this part, to—

(i) Create and maintain the One-Stop service delivery system; and

(ii) Provide core services (as described in 20 CFR 662.240).

(3) Enter into a memorandum of understanding (MOU) with the Local Workforce Investment Board under section 117 of the Workforce Investment Act of 1998 relating to the operation of the One-Stop service delivery system that meets the requirements of section 121(c) of the Workforce Investment Act and 20 CFR 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals.

(4) Participate in the operation of the One-Stop service delivery system consistent with the terms of the MOU and the requirements of the Act and this part.


(b) Cooperative agreements with One-Stop partners. (1) The State plan must assure that the designated State unit or the designated State agency enters into cooperative agreements with the other entities that are partners under the One-Stop service delivery system.
§ 361.24 Cooperation and coordination with other entities.

(a) Interagency cooperation. The State plan must describe the designated State agency’s cooperation with and use of the services and facilities of Federal, State, and local agencies and programs, including programs carried out by the Under Secretary for Rural Development of the Department of Agriculture and State use contracting programs, to the extent that those agencies and programs are not carrying out activities through the statewide workforce investment system.

(b) Coordination with the Statewide Independent Living Council and independent living centers. The State plan must assure that the designated State unit, the Statewide Independent Living Council established under 34 CFR part 364, and the independent living centers established under 34 CFR part 366 have developed working relationships and coordinate their activities.

(c) Cooperative agreement with recipients of grants for services to American Indians.

(1) General. In applicable cases, the State plan must assure that the designated State agency has entered into a formal cooperative agreement with each grant recipient in the State that receives funds under part C of the Act (American Indian Vocational Rehabilitation Services).

(2) Contents of formal cooperative agreement. The agreement required...
under paragraph (a)(1) of this section must describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including—

(i) Strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;

(ii) Procedures for ensuring that American Indians who are individuals with disabilities and are living near a reservation or tribal service area are provided vocational rehabilitation services; and

(iii) Provisions for sharing resources in cooperative studies and assessments, joint training activities, and other collaborative activities designed to improve the provision of services to American Indians who are individuals with disabilities.

(d) Reciprocal referral services between two designated State units in the same State. If there is a separate designated State unit for individuals who are blind, the two designated State units must establish reciprocal referral services, use each other’s services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services, including, if appropriate, entering into a written cooperative agreement.

§ 361.25 Statewideness.

The State plan must assure that services provided under the State plan will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved in accordance with §361.26.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))


§ 361.26 Waiver of statewideness.

(a) Availability. The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the State plan if—

(1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;

(2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and

(3) For purposes other than those specified in §361.60(b)(3)(i) and consistent with the requirements in §361.60(b)(3)(ii), the State includes in its State plan, and the Secretary approves, a waiver of the statewideness requirement, in accordance with the requirements of paragraph (b) of this section.

(b) Request for waiver. The request for a waiver of statewideness must—

(1) Identify the types of services to be provided;

(2) Contain a written assurance from the local public agency that it will make available to the State unit the non-Federal share of funds;

(3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and

(4) Be submitted no later than the date on which the State plan is submitted to the Secretary for approval.

(5) The request for a waiver of statewideness must be in writing and must contain the following:

(Authority: Sections 12(c) and 101(a)(11)(C), (E), and (F) of the Act; 29 U.S.C. 709(c) and 721(a)(11)(C), (E), and (F))

§ 361.27
(4) Contain a written assurance that all other State plan requirements, including a State’s order of selection requirements, will apply to all services approved under the waiver.

(Approved by the Office of Management and Budget under control number 1820-0500.)

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.26 was amended by adding "(Approved by the Office of Management and Budget under control number 1820-0500)"., effective Oct. 1, 2001.

§ 361.27 Shared funding and administration of joint programs.

(a) If the State plan provides for the designated State agency to share funding and administrative responsibility with another State agency or local public agency to carry out a joint program to provide services to individuals with disabilities, the State must submit to the Secretary for approval a plan that describes its shared funding and administrative arrangement.

(b) The plan under paragraph (a) of this section must include—

(1) A description of the nature and scope of the joint program;

(2) The services to be provided under the joint program;

(3) The respective roles of each participating agency in the administration and provision of services; and

(4) The share of the costs to be assumed by each agency.

(c) If a proposed joint program does not comply with the statewideness requirement in §361.25, the State unit must obtain a waiver of statewideness, in accordance with §361.26.

(Approved by the Office of Management and Budget under control number 1820-0500.)


Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.27 was amended by adding "(Approved by the Office of Management and Budget under control number 1820-0500)"., effective Oct. 1, 2001.

§ 361.28 Third-party cooperative arrangements involving funds from other public agencies.

(a) The designated State unit may enter into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another State agency or a local public agency that is furnishing part or all of the non-Federal share, if the designated State unit ensures that—

(1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;

(2) The services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit;

(3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and

(4) All State plan requirements, including a State’s order of selection, will apply to all services provided under the cooperative program.

(b) If a third party cooperative agreement does not comply with the statewideness requirement in §361.25, the State unit must obtain a waiver of statewideness, in accordance with §361.26.

(Approved by the Office of Management and Budget under control number 1820-0500.)

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.28 was amended by adding "(Approved by the Office of Management and Budget under control number 1820-0500)"., effective Oct. 1, 2001.

§ 361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.

(a) Comprehensive statewide assessment.

(i) The State plan must include—

(1) The results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State unit has a Council) every 3 years describing the rehabilitation needs of individuals with disabilities residing within the State, particularly
the vocational rehabilitation services needs of—

(A) Individuals with the most significant disabilities, including their need for supported employment services;

(B) Individuals with disabilities who are minorities and individuals with disabilities who have been underserved by the vocational rehabilitation program carried out under this part; and

(C) Individuals with disabilities served through other components of the statewide workforce investment system as identified by those individuals and personnel assisting those individuals through the components of the system; and

(ii) An assessment of the need to establish, develop, or improve community rehabilitation programs within the State.

(2) The State plan must assure that the State will submit to the Secretary a report containing information regarding updates to the assessments under paragraph (a) of this section for any year in which the State updates the assessments.

(b) Annual estimates. The State plan must include, and must assure that the State will annually submit a report to the Secretary that includes, State estimates of—

(1) The number of individuals in the State who are eligible for services under this part;

(2) The number of eligible individuals who will receive services provided with funds provided under part B of Title I of the Act and under part B of Title VI of the Act, including, if the designated State agency uses an order of selection in accordance with §361.36, estimates of the number of individuals to be served under each priority category within the order; and

(3) The costs of the services described in paragraph (b)(1) of this section, including, if the designated State agency uses an order of selection, the service costs for each priority category within the order.

(c) Goals and priorities.

(1) In general. The State plan must identify the goals and priorities of the State in carrying out the program.

(2) Council. The goals and priorities must be jointly developed, agreed to, reviewed annually, and, as necessary, revised by the designated State unit and the State Rehabilitation Council, if the State unit has a Council.

(3) Submission. The State plan must assure that the State will submit to the Secretary a report containing information regarding revisions in the goals and priorities for any year in which the State revises the goals and priorities.

(4) Basis for goals and priorities. The State goals and priorities must be based on an analysis of—

(i) The comprehensive statewide assessment described in paragraph (a) of this section, including any updates to the assessment;

(ii) The performance of the State on the standards and indicators established under section 106 of the Act; and

(iii) Other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council under §361.17(h) and the findings and recommendations from monitoring activities conducted under section 107 of the Act.

(5) Service and outcome goals for categories in order of selection. If the designated State agency uses an order of selection in accordance with §361.36, the State plan must identify the State’s service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(d) Strategies. The State plan must describe the strategies the State will use to address the needs identified in the assessment conducted under paragraph (a) of this section and achieve the goals and priorities identified in paragraph (c) of this section, including—

(1) The methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to those individuals at each stage of the rehabilitation process and how those services and devices will be provided to individuals with disabilities on a statewide basis;

(2) Outreach procedures to identify and serve individuals with disabilities who are minorities and individuals
§ 361.30 Services to American Indians.

The State plan must assure that the designated State agency provides vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides vocational rehabilitation services to other significant populations of individuals with disabilities residing in the State.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Sections 101(a)(13) and 121(b)(3) of the Act; 29 U.S.C. 721(a)(13) and 741(b)(3))


§ 361.31 Cooperative agreements with private nonprofit organizations.

The State plan must describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Sections 101(a)(24)(B); 29 U.S.C. 721(a)(24)(B))


§ 361.32 Use of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the designated State agency has the authority to enter into contracts with for-profit organizations for the purpose of providing, as vocational rehabilitation services, on-the-job training and related programs for individuals with disabilities under the Projects With Industry program, 34 CFR part 379, if the
designated State agency has determined that for-profit agencies are better qualified to provide needed vocational rehabilitation services than non-profit agencies and organizations.

(Approved by the Office of Management and Budget under control number 1820–0500.)


Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.32 was amended by adding "(Approved by the Office of Management and Budget under control number 1820–0500)", effective Oct. 1, 2001.

§ 361.33 [Reserved]

§ 361.34 Supported employment State plan supplement.

(a) The State plan must assure that the State has an acceptable plan under 34 CFR part 363 that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including any needed annual revisions, must be submitted as a supplement to the State plan submitted under this part.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Sections 101(a)(18) and 625(a) of the Act; 29 U.S.C. 721(a)(18))

Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.34 was amended by adding "(Approved by the Office of Management and Budget under control number 1820–0500)", effective Oct. 1, 2001.

§ 361.35 Innovation and expansion activities.

(a) The State plan must assure that the State will reserve and use a portion of the funds allotted to the State under section 110 of the Act—

(1) For the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities, particularly individuals with the most significant disabilities, consistent with the findings of the comprehensive, statewide assessment of the rehabilitation needs of individuals with disabilities under §361.29(c) and the State’s goals and priorities under §361.29(c); and

(2) To support the funding of—

(i) The State Rehabilitation Council, if the State has a Council, consistent with the resource plan identified in §361.17(1); and

(ii) The Statewide Independent Living Council, consistent with the plan prepared under 34 CFR 364.21(i).

(b) The State plan must—

(1) Describe how the reserved funds will be used; and

(2) Include, on an annual basis, a report describing how the reserved funds were used during the preceding year.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Section 101(a)(22) and 625(a) of the Act; 29 U.S.C. 721(a)(22) and 795(k))

Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.35 was amended by adding "(Approved by the Office of Management and Budget under control number 1820–0500)", effective Oct. 1, 2001.

§ 361.36 Ability to serve all eligible individuals; order of selection for services.

(a) General provisions.

(1) The designated State unit either must be able to provide the full range of services listed in section 103(a) of the Act and §361.48, as appropriate, to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals, the State must include in the State plan the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(2) The ability of the designated State unit to provide the full range of vocational rehabilitation services to all eligible individuals must be supported by a determination that satisfies the requirements of paragraph (b) or (c) of this section and a determination that, on the basis of the designated State unit’s projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within the State, it can—

(i) Continue to provide services to all individuals currently receiving services;

(ii) Provide assessment services to all individuals expected to apply for services in the next fiscal year;
(iii) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(iv) Meet all program requirements.

(3) If the designated State unit is unable to provide the full range vocational rehabilitation services to all eligible individuals in the State who apply for the services, the State plan must—

(i) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(ii) Provide a justification for the order of selection;

(iii) Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under §361.29(c)(5); and

(iv) Assure that—

(A) In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(B) Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under §361.37.

(b) Basis for assurance that services can be provided to all eligible individuals.

(1) For a designated State unit that determined, for the current fiscal year and the preceding fiscal year, that it is able to provide the full range of services, as appropriate, to all eligible individuals, the State unit, during the current fiscal and preceding fiscal year, must have in fact—

(i) Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;

(ii) Made referral forms widely available throughout the State;

(iii) Conducted outreach efforts to identify and serve individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system; and

(iv) Not delayed, through waiting lists or other means, determinations of eligibility, the development of individualized plans for employment for individuals determined eligible for vocational rehabilitation services, or the provision of services for eligible individuals for whom individualized plans for employment have been developed.

(2) For a designated State unit that was unable to provide the full range of services to all eligible individuals during the current or preceding fiscal year or that has not met the requirements in paragraph (b)(1) of this section, the determination that the designated State unit is able to provide the full range of vocational rehabilitation services to all eligible individuals in the next fiscal year must be based on—

(i) Circumstances that have changed that will allow the designated State unit to meet the requirements of paragraph (a)(2) of this section in the next fiscal year, including—

(A) An estimate of the number of and projected costs of serving, in the next fiscal year, individuals with existing individualized plans for employment;

(B) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;

(C) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and

(D) The projected revenues and projected number of qualified personnel for the program in the next fiscal year;

(ii) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs (b)(2)(i)(A) through (C) of this section and the resources identified in paragraph (b)(2)(i)(D) of this section and an explanation of any projected increases or decreases in these costs and resources; and

(iii) A determination that the projected revenues and the projected number of qualified personnel for the program in the next fiscal year are adequate to cover the costs identified in paragraphs (b)(2)(i)(A) through (C) of this section to ensure the provision of the full range of services, as appropriate, to all eligible individuals.
(c) Determining need for establishing and implementing an order of selection.

(1) The designated State unit must determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

(2) If the designated State unit determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the course of a fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals, as described in paragraph (a)(2) of this section.

(3) If a DSU establishes an order of selection, but determines that it does not need to implement that order at the beginning of the fiscal year, it must continue to meet the requirements of paragraph (a)(2) of this section, or it must implement the order of selection by closing one or more priority categories.

(d) Establishing an order of selection.

(1) Basis for order of selection. An order of selection must be based on a refinement of the three criteria in the definition of “individual with a significant disability” in section 7(21)(A) of the Act and §361.5(b)(31).

(2) Factors that cannot be used in determining order of selection of eligible individuals. An order of selection may not be based on any other factors, including—

(i) Any duration of residency requirement, provided the individual is present in the State;

(ii) Type of disability;

(iii) Age, gender, race, color, or national origin;

(iv) Source of referral;

(v) Type of expected employment outcome;

(vi) The need for specific services or anticipated cost of services required by an individual; or

(vii) The income level of an individual or an individual’s family.

(e) Administrative requirements. In administering the order of selection, the designated State unit must—

(1) Implement the order of selection on a statewide basis;

(2) Notify all eligible individuals of the priority categories in a State’s order of selection, their assignment to a particular category, and their right to appeal their category assignment;

(3) Continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual’s disability; and

(4) Ensure that its funding arrangements for providing services under the State plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit must renegotiate these funding arrangements so that they are consistent with the order of selection.

(1) State Rehabilitation Council. The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the—

(1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section;

(2) Priority categories of the particular order of selection;

(3) Criteria for determining individuals with the most significant disabilities; and

(4) Administration of the order of selection.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Sections 12(d); 101(a)(5); 101(a)(12); 101(a)(15)(A), (B) and (C); 101(a)(21)(A)(ii); and 504(a) of the Act; 29 U.S.C. 709(d), 721(a)(5), 721(a)(12), 721(a)(15)(A), (B) and (C); 721(a)(21)(A)(ii); and 794(a))

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system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the agency’s order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment; and

(2) The designated State agency will refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce investment system.

(b) The State unit must refer to local extended employment providers an individual with a disability who makes an informed choice to pursue extended employment as the individual’s employment goal. Before making the referral required by this paragraph, the State unit must—

(1) Consistent with §361.42(a)(4)(i) of this part, explain to the individual that the purpose of the vocational rehabilitation program is to assist individuals to achieve an employment outcome as defined in §361.5(b)(16) (i.e., employment in an integrated setting);

(2) Consistent with §361.52 of this part, provide the individual with information concerning the availability of employment options, and of vocational rehabilitation services, in integrated settings;

(3) Inform the individual that services under the vocational rehabilitation program can be provided to eligible individuals in an extended employment setting if necessary for purposes of training or otherwise preparing for employment in an integrated setting;

(4) Inform the individual that, if he or she initially chooses not to pursue employment in an integrated setting, he or she can seek services from the designated State unit at a later date if, at that time, he or she chooses to pursue employment in an integrated setting; and

(5) Refer the individual, as appropriate, to the Social Security Administration in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the Social Security Administration.

(c) Criteria for appropriate referrals. In making the referrals identified in paragraph (a)(2) of this section, the designated State unit must—

(1) Refer the individual to Federal or State programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of an individual with a disability; and

(2) Provide the individual who is being referred—

(i) A notice of the referral by the designated State agency to the agency carrying out the program;

(ii) Information identifying a specific point of contact within the agency to which the individual is being referred; and

(iii) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

(d) Order of selection. In providing the information and referral services under this section to eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State’s order of selection, the State unit must identify, as part of its reporting under section 101(a)(10) of the Act and §361.40, the number of eligible individuals who did not meet the agency’s order of selection criteria for receiving vocational rehabilitation services and did receive information and referral services under this section.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Sections 7(11), 12(c), 101(a)(5)(D), 101(a)(10)(C)(ii), and 101(a)(20) of the Act; 29 U.S.C. 709(c), 721(a)(5)(D), 721(a)(10)(C)(i)(I), and 721(a)(20))


2. At 66 FR 7252, Jan. 22, 2001, §361.37 was amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively, by adding a new paragraph (b), and by revising the authority citation following the section, effective Oct. 1, 2001. For the convenience of
the user, the superseded text is set forth as follows.

§ 361.37 Information and referral programs.

* * * * *

§ 361.38 Protection, use, and release of personal information.

(a) General provisions.

(i) The State agency and the State unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(ii) Specific safeguards are established to protect current and stored personal information;

(iii) All applicants or their representatives are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(b) State program use. All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) Release to applicants and eligible individuals.

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.
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(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or eligible individual who believes that information in the individual’s record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services, consistent with §361.47(a)(12).

(d) Release for audit, evaluation, and research. Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual’s representative.

(e) Release to other programs or authorities.

(1) Upon receiving the informed written consent of the individual or, if appropriate, the individual’s representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual’s representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit must release personal information if required by Federal law or regulations.

(4) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Approved by the Office of Management and Budget under control number 1820–0500.

Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 709(c) and 721(a)(6)(A).


§361.39 State-imposed requirements.

The designated State unit must, upon request, identify those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulations, or guideline.

Authority: Section 17 of the Act; 29 U.S.C. 714.

§361.40 Reports.

(a) The State plan must assure that the designated State agency will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act—

(1) In the form and level of detail and at the time required by the Secretary regarding applicants for and eligible
individuals receiving services under this part; and
(2) In a manner that provides a complete count (other than the information obtained through sampling consistent with section 101(a)(10)(E) of the Act) of the applicants and eligible individuals to—
(i) Permit the greatest possible cross-classification of data; and
(ii) Protect the confidentiality of the identity of each individual.
(b) The designated State agency must comply with any requirements necessary to ensure the accuracy and verification of those reports.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Section 101(a)(10)(A) and (F) of the Act; 29 U.S.C. 721(a)(10)(A) and (F))


PROVISION AND SCOPE OF SERVICES

§ 361.41 Processing referrals and applications.
(a) Referrals. The designated State unit must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the One-Stop service delivery systems established under section 121 of the Workforce Investment Act of 1998. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.
(b) Applications.
(1) Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in One-Stop centers established under section 121 of the Workforce Investment Act of 1998, an eligibility determination must be made within 60 days, unless—
(i) Exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or
(ii) An exploration of the individual’s abilities, capabilities, and capacity to perform in work situations is carried out in accordance with §361.42(e) or, if appropriate, an extended evaluation is carried out in accordance with §361.42(f).
(2) An individual is considered to have submitted an application when the individual or the individual’s representative, as appropriate—
(A) Has completed and signed an agency application form;
(B) Has completed a common intake application form in a One-Stop center requesting vocational rehabilitation services; or
(C) Has otherwise requested services from the designated State unit;
(ii) Has provided to the designated State unit information necessary to initiate an assessment to determine eligibility and priority for services; and
(iii) Is available to complete the assessment process.
(3) The designated State unit must ensure that its application forms are widely available throughout the State, particularly in the One-Stop centers established under section 121 of the Workforce Investment Act of 1998.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Sections 101(a)(6)(A) and 102(a)(6) of the Act; 29 U.S.C. 721(a)(6)(A) and 722(a)(6))


§ 361.42 Assessment for determining eligibility and priority for services.

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual’s priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit must conduct an assessment for determining eligibility and priority for services. The assessment must be
conducted in the most integrated setting possible, consistent with the individual’s needs and informed choice, and in accordance with the following provisions:

(a) Eligibility requirements.
   (1) Basic requirements. The designated State unit’s determination of an applicant’s eligibility for vocational rehabilitation services must be based on the following requirements:
      (i) A determination by qualified personnel that the applicant has a physical or mental impairment.
      (ii) A determination by qualified personnel that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.
      (iii) A determination by a qualified vocational rehabilitation counselor employed by the designated State unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
      (iv) A presumption, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.
   (2) Presumption of benefit. The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome unless it demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant’s disability.
   (3) Presumption of eligibility for Social Security recipients and beneficiaries.
      (i) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act is—
         (A) Presumed eligible for vocational rehabilitation services under paragraphs (a)(1) and (2) of this section; and
         (B) Considered an individual with a significant disability as defined in §361.5(b)(31).
      (ii) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under Title II or Title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under paragraph (a)(3)(i)(A) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the State unit must verify the applicant’s eligibility under Title II or Title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to determine the applicant’s eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with §361.41(b)(2).
   (4) Achievement of an employment outcome. Any eligible rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
      (i) The State unit is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.
      (ii) The applicant’s completion of the application process for vocational rehabilitation services is sufficient evidence of the individual’s intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying paragraph (a)(4) of this section.
   (5) Interpretation. Nothing in this section, including paragraph (a)(3)(i), is to be construed to create an entitlement to any vocational rehabilitation service.
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(1) The designated State unit may initiate the provision of vocational rehabilitation services for an applicant on the basis of an interim determination of eligibility prior to the 60-day period described in §361.41(b)(2).

(2) If a State chooses to make interim determinations of eligibility, the designated State unit must—
   (i) Establish criteria and conditions for making those determinations;
   (ii) Develop and implement procedures for making the determinations; and
   (iii) Determine the scope of services that may be provided pending the final determination of eligibility.

(3) If a State elects to use an interim eligibility determination, the designated State unit must make a final determination of eligibility within 60 days of the individual submitting an application for services in accordance with §361.41(b)(2).

(c) Prohibited factors.

(1) The State plan must assure that the State unit will not impose, as part of determining eligibility under this section, a duration of residence requirement that excludes from services any applicant who is present in the State.

(2) In making a determination of eligibility under this section, the designated State unit also must ensure that—
   (i) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and
   (ii) The eligibility requirements are applied without regard to the—
         (A) Age, gender, race, color, or national origin of the applicant;
         (B) Type of expected employment outcome;
         (C) Source of referral for vocational rehabilitation services; and
         (D) Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant’s family.

(d) Review and assessment of data for eligibility determination. Except as provided in paragraph (e) of this section, the designated State unit—

   (1) Must base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—
      (i) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual’s family, particularly information used by education officials, and determinations made by officials of other agencies; and
      (ii) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible; and

   (2) Must base its presumption under paragraph (a)(3)(i) of this section that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in paragraph (a) of this section on determinations made by the Social Security Administration.

(e) Trial work experiences for individuals with significant disabilities.

   (1) Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual’s disability, the designated State unit must conduct an exploration of the individual’s abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.

   (2)(i) The designated State unit must develop a written plan to assess periodically the individual’s abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences, which must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.
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(g) Data for determination of priority for services under an order of selection. If the designated State unit is operating under an order of selection for services, as provided in §361.36, the State unit must base its priority assignments on—

(1) A review of the data that was developed under paragraphs (d) and (e) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.


Note to §361.42: Clear and convincing evidence means that the designated State unit shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The “clear and convincing” standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term clear means unequivocal. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual’s needs due to the severity of the individual’s disability. The demonstration of “clear and convincing evidence” must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d Sess. 37–38 (1992))

§361.43 Procedures for ineligibility determination.

If the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the State unit must—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as
appropriate, with the individual’s representative;

(b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of State unit personnel determinations in accordance with §361.57;

(c) Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program;

(d) Refer the individual—

(1) To other programs that are part of the One-Stop service delivery system under the Workforce Investment Act that can address the individual’s training or employment-related needs; or

(2) To local extended employment providers if the ineligibility determination is based on a finding that the individual is incapable of achieving an employment outcome.

(e) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual’s representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome as defined in §361.5(b)(16).

(f) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual’s representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual’s whereabouts are unknown, or the individual’s medical condition is rapidly progressive or terminal.

(Authority: Sections 12(c), 102(a)(5), and 102(c) of the Act; 29 U.S.C. 709(c), 722(a)(5), and 722(c))

Effective Date Note: At 66 FR 7253, Jan. 22, 2001, §361.43 was amended by revising paragraph (d) and the authority citation following the section, effective Oct. 1, 2001. For the convenience of the user, the superseded text is set forth as follows.

§361.43 Procedures for ineligibility determination.

* * * * *

(d) Refer the individual to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act; and

* * * * *

(Authority: Sections 102(a)(5) and 102(c) of the Act; 29 U.S.C. 722(a)(5) and 722(c))

§361.44 Closure without eligibility determination.

The designated State unit may not close an applicant’s record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant’s representative to encourage the applicant’s participation.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

§361.45 Development of the individualized plan for employment.

(a) General requirements. The State plan must assure that—

(1) An individualized plan for employment (IPE) meeting the requirements of this section and §361.46 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection in accordance with §361.36, for each eligible individual to whom the State unit is able to provide services; and

(2) Services will be provided in accordance with the provisions of the IPE.

(b) Purpose.

(1) The designated State unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State unit is able to provide services. The purpose of this
assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the IPE.

(2) The IPE must be designed to achieve a specific employment outcome, as defined in §361.5(b)(16), that is selected by the individual consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) Required information. The State unit must provide the following information to each eligible individual or, as appropriate, the individual’s representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual’s representative:

(1) Options for developing an IPE. Information on the available options for developing the IPE, including the option that an eligible individual or, as appropriate, the individual’s representative may develop all or part of the IPE—
   (i) Without assistance from the State unit or other entity; or
   (ii) With assistance from—
       (A) A qualified vocational rehabilitation counselor employed by the State unit;
       (B) A qualified vocational rehabilitation counselor who is not employed by the State unit; or
       (C) Resources other than those in paragraph (A) or (B) of this section.

(2) Additional information. Additional information to assist the eligible individual or, as appropriate, the individual’s representative in developing the IPE, including—
   (i) Information describing the full range of components that must be included in an IPE;
   (ii) As appropriate to each eligible individual—
       (A) An explanation of agency guidelines and criteria for determining an eligible individual’s financial commitments under an IPE;
       (B) Information on the availability of assistance in completing State unit forms required as part of the IPE; and
       (C) Additional information that the eligible individual requests or the State unit determines to be necessary to the development of the IPE;
   (iii) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in §361.57; and
   (iv) A description of the availability of a client assistance program established under 34 CFR part 370 and information on how to contact the client assistance program.

(d) Mandatory procedures. The designated State unit must ensure that—
(1) The IPE is a written document prepared on forms provided by the State unit;
(2) The IPE is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with §361.52, in selecting—
   (i) The employment outcome, including the employment setting;
   (ii) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;
   (iii) The entity or entities that will provide the vocational rehabilitation services; and
   (iv) The methods available for procuring the services;
(3) The IPE is—
   (i) Agreed to and signed by the eligible individual or, as appropriate, the individual’s representative; and
   (ii) Approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit;
(4) A copy of the IPE and a copy of any amendments to the IPE are provided to the eligible individual or, as appropriate, to the individual’s representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual’s representative;
(5) The IPE is reviewed at least annually by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual’s representative to assess the eligible individual’s progress in achieving the identified employment outcome;
(6) The IPE is amended, as necessary, by the individual or, as appropriate, the individual’s representative, in collaboration with a representative of the
§ 361.46 Content of the individualized plan for employment.

(a) Mandatory components. Regardless of the approach in §361.45(c)(1) that an eligible individual selects for purposes of developing the IPE, each IPE must include—

(1) A description of the specific employment outcome, as defined in §361.5(b)(16), that is chosen by the eligible individual and is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, and informed choice; and

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the IPE, including—

(A) Information available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Information provided by the individual and the individual’s family; and

(C) Information obtained under the assessment for determining the individual’s eligibility and vocational rehabilitation needs.

(2) The IPE must—

(i) Be designed to achieve the specific employment outcome that is selected by the individual consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, and informed choice; and

(ii) To the maximum extent appropriate, result in employment in an integrated setting.

§ 361.46 Content of the individualized plan for employment.

(a) Mandatory components. Regardless of the approach in §361.45(c)(1) that an eligible individual selects for purposes of developing the IPE, each IPE must include—

(1) A description of the specific employment outcome, as defined in §361.5(b)(16), that is chosen by the eligible individual and is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, and informed choice; and

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the IPE, including—

(A) Information available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Information provided by the individual and the individual’s family; and

(C) Information obtained under the assessment for determining the individual’s eligibility and vocational rehabilitation needs.

(2) The IPE must—

(i) Be designed to achieve the specific employment outcome that is selected by the individual consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, and informed choice; and

(ii) To the maximum extent appropriate, result in employment in an integrated setting.

* * * * *

§ 361.46 Content of the individualized plan for employment.

(a) Mandatory components. Regardless of the approach in §361.45(c)(1) that an eligible individual selects for purposes of developing the IPE, each IPE must include—

(1) A description of the specific employment outcome, as defined in §361.5(b)(16), that is chosen by the eligible individual and is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, and informed choice; and

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the IPE, including—

(A) Information available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Information provided by the individual and the individual’s family; and

(C) Information obtained under the assessment for determining the individual’s eligibility and vocational rehabilitation needs.

(2) The IPE must—

(i) Be designed to achieve the specific employment outcome that is selected by the individual consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, and informed choice; and

(ii) To the maximum extent appropriate, result in employment in an integrated setting.

* * * * *
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(2) A description of the specific rehabilitation services under §361.48 that are—

(i) Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

(ii) Provided in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;

(3) Timelines for the achievement of the employment outcome and for the initiation of services;

(4) A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual’s representative that will provide the vocational rehabilitation services and the methods used to procure those services;

(5) A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(6) The terms and conditions of the IPE, including, as appropriate, information describing—

(i) The responsibilities of the designated State unit;

(ii) The responsibilities of the eligible individual, including—

(A) The responsibilities the individual will assume in relation to achieving the employment outcome;

(B) If applicable, the extent of the individual’s participation in paying for the cost of services; and

(C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in §361.53; and

(iii) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in §361.53.

(b) Supported employment requirements. An IPE for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must—

(1) Specify the supported employment services to be provided by the designated State unit;

(2) Specify the expected extended services needed, which may include natural supports;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;

(5) Provide for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

(c) Post-employment services. The IPE for each individual must contain, as determined to be necessary, statements concerning—

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

(3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in §361.53.

(d) Coordination of services for students with disabilities who are receiving special education services. The IPE for a student with a disability who is receiving
special education services must be co-ordinated with the IEP for that individual in terms of the goals, objectives, and services identified in the IEP.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Sections 101(a)(8), 101(a)(9), 102(b)(3), and 626(b)(6) of the Act; 29 U.S.C. 721(a)(8), 721(a)(9), 722(b)(3), and 796(k))


2. At 66 FR 7253, Jan. 22, 2001, §361.46 was amended by revising paragraph (a)(1), effective Oct. 1, 2001. For the convenience of the user, the superseded text is set forth as follows.

§361.46 Content of the individualized plan for employment.

(a) * * *

(1) A description of the specific employment outcome that is chosen by the eligible individual that—

(i) Is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice; and

(ii) To the maximum extent appropriate, results in employment in an integrated setting;

* * * * *

§361.47 Record of services.

(a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(1) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements under §361.42.

(2) If an applicant or eligible individual receiving services under an IPE has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under §361.43.

(3) Documentation that describes the justification for closing an applicant’s or eligible individual’s record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in §361.44.

(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.

(5) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration or, as appropriate, extended evaluation and documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, the extended evaluation, in accordance with the requirements under §361.42(e) and (f).

(6) The IPE, and any amendments to the IPE, consistent with the requirements under §361.46.

(7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the IPE with respect to the selection of the specific employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services.

(8) In the event that an individual’s IPE provides for vocational rehabilitation services in a non-integrated setting, a justification to support the need for the non-integrated setting.

(9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual’s wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with §361.5(b)(11)(ii).

(10) In the event an individual achieves an employment outcome in
§ 361.48 Scope of vocational rehabilitation services for individuals with disabilities.

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual’s informed choice, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

(a) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel order to meet the requirements in paragraph (a) of this section.

(Effective Oct. 1, 2001)


(Effective Oct. 1, 2001. For the convenience of the user, the superseded text is set forth as follows.

§ 361.47 Record of services.

(a) * * *

(8) In the event that the IPE provides for services or an employment outcome in a non-integrated setting, a justification to support the non-integrated setting.

* * * * *

(10) In the event that an individual obtains an employment outcome in an extended employment setting in a community rehabilitation program or any other employment investment system, documentation on the nature and scope of services provided by the designated State unit to the individual and on the referral itself, consistent with the requirements of § 361.37.

(14) In the event an individual’s record of service is closed under § 361.56, documentation that demonstrates the services provided under the individual’s IPE contributed to the achievement of the employment outcome.

(15) In the event an individual’s record of service is closed under § 361.56, documentation verifying that the provisions of § 361.56 have been satisfied.

(b) The State unit, in consultation with the State Rehabilitation Council if the State has a Council, must determine the type of documentation that the State unit must maintain for each applicant and eligible individual in
skilled in rehabilitation technology, in accordance with §361.42.

(b) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with §361.45.

(c) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with §361.52.

(d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, in accordance with §§361.22, 361.24, and 361.37, and to advise those individuals about client assistance programs established under 34 CFR part 370.

(e) In accordance with the definition in §361.5(b)(40), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in §361.5(b)(39)).

(f) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(g) Maintenance, in accordance with the definition of that term in §361.5(b)(35).

(h) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in §361.5(b)(37).

(i) Vocational rehabilitation services to family members, as defined in §361.5(b)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(j) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(k) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(l) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(m) Supported employment services in accordance with the definition of that term in §361.5(b)(54).

(n) Personal assistance services in accordance with the definition of that term in §361.5(b)(39).

(o) Post-employment services in accordance with the definition of that term in §361.5(b)(42).

(p) Occupational licenses, tools, equipment, initial stocks, and supplies.

(q) Rehabilitation technology in accordance with the definition of that term in §361.5(b)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(r) Transition services in accordance with the definition of that term in §361.5(b)(55).

(s) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(t) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Section 103(a) of the Act; 29 U.S.C. 723(a))

EFFECTIVE DATE NOTES: 1. At 66 FR 7253, Jan. 22, 2001, §361.48 was amended by adding "(Approved by the Office of Management and
§ 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.

(a) The designated State unit may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration and competitive employment, including, under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program. Examples of “special circumstances” include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the State unit along with the acquisition by the State unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) “Management services and supervision” includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. “Management services and supervision” may be provided throughout the operation of the small business enterprise.

(ii) “Initial stocks and supplies” includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed 6 months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed 6 months.

(iv) If the designated State unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the designated State unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual. Examples of those...
other services might include the purchase or lease of a bus to provide transportation to a group of applicants or eligible individuals or the purchase of equipment or instructional materials that would benefit a group of applicants or eligible individuals.

(7) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

(b) If the designated State unit provides for vocational rehabilitation services for groups of individuals, it must—

(1) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(2) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefiting from those services.

(Approved by the Office of Management and Budget under control number 1820–0500.)


§ 361.50 Written policies governing the provision of services for individuals with disabilities.

(a) Policies. The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in §361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual’s IPE and is consistent with the individual’s informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(b) Out-of-State services.

(1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual’s rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

(c) Payment for services.

(1) The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(d) Duration of services.

(1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual’s individualized plan for employment.

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§ 361.51 Authorization of services. The State unit must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Sections 12(c) and 101(a)(6) of the Act and 29 U.S.C. 709(c) and 721(a)(6))

Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.50 was amended by adding "(Approved by the Office of Management and Budget under control number 1820–0500)", effective Oct. 1, 2001.

§ 361.51 Standards for facilities and providers of services.

(a) Accessibility of facilities. The State plan must assure that any facility used in connection with the delivery of vocational rehabilitation services under this part meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(b) Affirmative action. The State plan must assure that community rehabilitation programs that receive assistance under part B of Title I of the Act take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.

(c) Special communication needs personnel. The designated State unit must ensure that providers of vocational rehabilitation services are able to communicate—

(1) In the native language of applicants and eligible individuals who have limited English speaking ability; and

(2) By using appropriate modes of communication used by applicants and eligible individuals.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Sections 12(c) and 101(a)(6)(B) and (C) of the Act; 29 U.S.C. 709(c) and 721(a)(6)(B) and (C))

Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.51 was amended by adding "(Approved by the Office of Management and Budget under control number 1820–0500)", effective Oct. 1, 2001.

§ 361.52 Informed choice.

(a) General provision. The State plan must assure that applicants and eligible individuals or, as appropriate, their representatives are provided information and support services to assist applicants and eligible individuals in exercising informed choice throughout the rehabilitation process consistent with the provisions of section 102(d) of the Act and the requirements of this section.

(b) Written policies and procedures. The designated State unit, in consultation with its State Rehabilitation Council, if it has a Council, must develop and implement written policies and procedures that enable an applicant or eligible individual to exercise informed choice throughout the vocational rehabilitation process. These policies and procedures must provide for—

(1) Informing each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assisting applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Developing and implementing flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) Assisting eligible individuals or, as appropriate, the individuals’ representatives in acquiring information that enables them to exercise informed choice in the development of their IPEs with respect to the selection of the—

(i) Employment outcome;
§ 361.53 Comparable services and benefits.

(a) Determination of availability. The State plan must assure that prior to providing any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual, or to members of the individual’s family, the State unit must determine whether comparable services and benefits, as defined in §361.5(b)(10), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

(1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;
(2) An immediate job placement; or
(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) Exempt services. The following vocational rehabilitation services described in §361.48(a) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

(1) Lists of services and service providers.
(2) Periodic consumer satisfaction surveys and reports.
(3) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.
(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.
(5) Opportunities for individuals to visit or experience various work and service provider settings.
§361.53

(1) Assessment for determining eligibility and vocational rehabilitation needs.

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment system, if those services are not available under this part.

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

(c) Provision of services.

(1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual’s IPE, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual’s IPE, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.

(d) Interagency coordination.

(1) The State plan must assure that the Governor, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity, including the State entity responsible for administering the State medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, to ensure the provision of vocational rehabilitation services (other than those services listed in paragraph (b) of this section) that are included in the IPE, including the provision of those vocational rehabilitation services during the pendency of any interagency dispute in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(2) The Governor may meet the requirements of paragraph (d)(1) of this section through—

(i) A State statute or regulation;

(ii) A signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity for the provision of the services; or

(iii) Another appropriate mechanism as determined by the designated State vocational rehabilitation unit.

(3) The interagency agreement or other mechanism for interagency coordination must include the following:

(i) Agency financial responsibility. An identification of, or description of a method for defining, the financial responsibility of the public entity for providing the vocational rehabilitation services other than those listed in paragraph (b) of this section and a provision stating the financial responsibility of the public entity for providing those services.

(ii) Conditions, terms, and procedures of reimbursement. Information specifying the conditions, terms, and procedures under which the designated State unit must be reimbursed by the other public entities for providing vocational rehabilitation services based on the terms of the interagency agreement or other mechanism for interagency coordination.

(iii) Interagency disputes. Information specifying procedures for resolving interagency disputes under the interagency agreement or other mechanism for interagency coordination, including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism.
(iv) Procedures for coordination of services. Information specifying policies and procedures for public entities to determine and identify interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services other than those listed in paragraph (b) of this section.

(e) Responsibilities under other law.

(1) If a public entity (other than the designated State unit) is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Investment Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this section, to provide or pay for any services considered to be vocational rehabilitation services (e.g., interpreter services under §361.48(j)), other than those services listed in paragraph (b) of this section, the public entity must fulfill that obligation or responsibility through—

(i) The terms of the interagency agreement or other requirements of this section;

(ii) Providing or paying for the service directly or by contract; or

(iii) Other arrangement.

(2) If a public entity other than the designated State unit fails to provide or pay for vocational rehabilitation services for an eligible individual as established under this section, the designated State unit must provide or claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must reimburse the designated State unit pursuant to the terms of the interagency agreement or other mechanism described in paragraph (d) of this section in accordance with the procedures established in the agreement or mechanism pursuant to paragraph (d)(3)(ii) of this section.

(Approved by the Office of Management and Budget under control number 1820–0500.)

§361.54 Participation of individuals in cost of services based on financial need.

(a) No Federal requirement. There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) State unit requirements.

(1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences under §361.42(e) or during an extended evaluation under §361.42(f) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It must maintain written policies—

(A) Explaining the method for determining the financial need of an eligible individual; and

(B) Specifying the types of vocational rehabilitation services for which the unit has established a financial needs test;

(ii) The policies must be applied uniformly to all individuals in similar circumstances;

(iii) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(iv) The policies must ensure that the level of an individual’s participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual’s financial need, including consideration of any disability-related expenses paid by the individual; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The designated State unit may not apply a financial needs test, or require the financial participation of the individual—

(i) As a condition for furnishing the following vocational rehabilitation services:
§ 361.55 Annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

(a) The State plan must assure that the designated State unit conducts an annual review and reevaluation in accordance with the requirements in paragraph (b) of this section for an individual with a disability served under this part—

(1) Who has achieved an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act; or

(2) Whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with §361.5(b)(16) or that the individual made an informed choice to remain in extended employment.

(b) For each individual with a disability who meets the criteria in paragraph (a) of this section, the designated State unit must—

(1) Annually review and reevaluate the status of each individual for 2 years after the individual’s record of services is closed (and thereafter if requested by the individual or, if appropriate, the individual’s representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;

(2) Enable the individual or, if appropriate, the individual’s representative to provide input into the review and reevaluation and must document that input in the record of services, consistent with §361.47(a)(10), with the individual’s or, as appropriate, the individual’s representative’s signed acknowledgment that the review and reevaluation have been conducted; and

(3) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive employment as defined in §361.5(b)(11).

(Authority: Sections 12(c) and 101(a)(14) of the Act; 29 U.S.C. 709(c))

EFFECTIVE DATE NOTE: At 66 FR 7253, Jan. 22, 2001, §361.55 was revised, effective Oct. 1, 2001. For the convenience of the user, the superseded text is set forth as follows.

§ 361.55 Annual review of individuals in extended employment or other employment under special certificate provisions of the Fair Labor Standards Act.

The State plan must assure that the designated State unit—
§ 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.

(a) Employment outcome achieved. The individual has achieved the employment outcome that is described in the individual’s IPE in accordance with §361.46(a)(1) and is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) Employment outcome maintained. The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(c) Satisfactory outcome. At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) Post-employment services. The individual is informed through appropriate modes of communication of the availability of post-employment services.

§ 361.57 Review of determinations made by designated State unit personnel.

(a) Procedures. The designated State unit must develop and implement procedures to ensure that an applicant or eligible individual who is dissatisfied with any determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual’s representative, a timely review of that determination. The procedures must be in accordance with paragraphs (b) through (k) of this section:

(b) General requirements.

(1) Notification. Procedures established by the State unit under this section must provide an applicant or eligible individual or, as appropriate, the individual’s representative notice of—
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(i) The right to obtain review of State unit determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under paragraph (e) of this section;

(ii) The right to pursue mediation under paragraph (d) of this section with respect to determinations made by designated State unit personnel that affect the provision of vocational rehabilitation services to an applicant or eligible individual;

(iii) The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(iv) The manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of paragraphs (d) and (f) of this section; and

(v) The availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings.

(2) Timing. Notice described in paragraph (b)(1) of this section must be provided in writing—

(i) At the time the individual applies for vocational rehabilitation services under this part;

(ii) At the time the individual is assigned to a category in the State’s order of selection, if the State has established an order of selection under § 361.36;

(iii) At the time the IPE is developed; and

(iv) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(3) Evidence and representation. Procedures established under this section must—

(i) Provide an applicant or eligible individual or, as appropriate, the individual’s representative with an opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant’s or eligible individual’s position; and

(ii) Allow an applicant or eligible individual to be represented during mediation sessions or due process hearings by counsel or other advocate selected by the applicant or eligible individual.

(4) Impact on provision of services. The State unit may not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official, or pending informal resolution under this section unless—

(i) The individual or, in appropriate cases, the individual’s representative requests a suspension, reduction, or termination of services; or

(ii) The State agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual’s representative.

(5) Ineligibility. Applicants who are found ineligible for vocational rehabilitation services and previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services pursuant to § 361.43 are permitted to challenge the determinations of ineligibility under the procedures described in this section.

(c) Informal dispute resolution. The State unit may develop an informal process for resolving a request for review without conducting mediation or a formal hearing. A State’s informal process must not be used to deny the right of an applicant or eligible individual to a hearing under paragraph (e) of this section or any other right provided under this part, including the right to pursue mediation under paragraph (d) of this section. If informal resolution under this paragraph or mediation under paragraph (d) of this section is not successful in resolving the dispute within the time period established under paragraph (e)(1) of this section, a formal hearing must be conducted within that same time period, unless the parties agree to a specific extension of time.

(d) Mediation.

(1) The State must establish and implement procedures, as required under paragraph (b)(1)(ii) of this section, to
allow an applicant or eligible individual and the State unit to resolve disputes involving State unit determinations that affect the provision of vocational rehabilitation services through a mediation process that must be made available, at a minimum, whenever an applicant or eligible individual or, as appropriate, the individual’s representative requests an impartial due process hearing under this section.

(2) Mediation procedures established by the State unit under paragraph (d) must ensure that—

(i) Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the State unit;

(ii) Use of the mediation process is not used to deny or delay the applicant’s or eligible individual’s right to pursue resolution of the dispute through an impartial hearing held within the time period specified in paragraph (e)(1) of this section or any other rights provided under this part. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing;

(iii) The mediation process is conducted by a qualified and impartial mediator, as defined in §361.5(b)(43), who must be selected from a list of qualified and impartial mediators maintained by the State—

(A) On a random basis;

(B) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual’s representative; or

(C) In accordance with a procedure established in the State for assigning mediators, provided this procedure ensures the neutrality of the mediator assigned; and

(iv) Mediation sessions are scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement must be sent to both parties.

(5) The costs of the mediation process must be paid by the State. The State is not required to pay for any costs related to the representation of an applicant or eligible individual authorized under paragraph (b)(3)(ii) of this section.

(e) Impartial due process hearings. The State unit must establish and implement formal review procedures, as required under paragraph (b)(1)(i) of this section, that provide that—

(1) A hearing conducted by an impartial hearing officer, selected in accordance with paragraph (f) of this section, must be held within 60 days of an applicant’s or eligible individual’s request for review of a determination made by personnel of the State unit that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time;

(2) In addition to the rights described in paragraph (b)(3) of this section, the applicant or eligible individual or, if appropriate, the individual’s representative must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;

(3) The impartial hearing officer must—

(i) Make a decision based on the provisions of the approved State plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements; and
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(iii) Provide to the individual or, if appropriate, the individual’s representative and to the State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; and

(iv) The hearing officer’s decision is final, except that a party may request an impartial review under paragraph (g)(1) of this section if the State has established procedures for that review, and a party involved in a hearing may bring a civil action under paragraph (i) of this section.

(f) Selection of impartial hearing officers. The impartial hearing officer for a particular case must be selected—

(1) From a list of qualified impartial hearing officers maintained by the State unit. Impartial hearing officers included on the list must be—

(i) Identified by the State unit if the State unit is an independent commission; or

(ii) Jointly identified by the State unit and the State Rehabilitation Council if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual’s representative.

(g) Administrative review of hearing officer’s decision. The State may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision under paragraph (e)(3) of this section in accordance with the following requirements:

(1) A request for administrative review under paragraph (g) of this section must be made within 20 days of the mailing of the impartial hearing officer’s decision.

(2) Administrative review of the hearing officer’s decision must be conducted by—

(i) The chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under §361.13(b); or

(ii) An official from the office of the Governor.

(3) The reviewing official described in paragraph (g)(2)(i) of this section—

(i) Provides both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review;

(ii) May not overturn or modify the hearing officer’s decision, or any part of that decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements;

(iii) Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision, to the applicant or eligible individual or, as appropriate, the individual’s representative and to the State unit within 30 days of the request for administrative review under paragraph (g)(1) of this section; and

(iv) May not delegate the responsibility for making the final decision under paragraph (g) of this section to any officer or employee of the designated State unit.

(4) The reviewing official’s decision under paragraph (g) of this section is final unless either party brings a civil action under paragraph (i) of this section.

(h) Implementation of final decisions. If a party brings a civil action under paragraph (h) of this section to challenge the final decision of a hearing officer under paragraph (e) of this section or to challenge the final decision of a State reviewing official under paragraph (g) of this section, the final decision of the hearing officer or State reviewing official must be implemented pending review by the court.

(i) Civil action.

(1) Any party who disagrees with the findings and decision of an impartial hearing officer under paragraph (e) of
this section in a State that has not established administrative review procedures under paragraph (g) of this section and any party who disagrees with the findings and decision under paragraph (g)(3)(iii) of this section have a right to bring a civil action with respect to the matter in dispute. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(2) In any action brought under paragraph (i) of this section, the court—

(i) Receives the records related to the impartial due process hearing and the records related to the administrative review process, if applicable; 

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(j) State fair hearing board. A fair hearing board as defined in §361.5(b)(22) is authorized to carry out the responsibilities of the impartial hearing officer under paragraph (e) of this section in accordance with the following criteria:

(1) The fair hearing board may conduct due process hearings either collectively or by assigning responsibility for conducting the hearing to one or more members of the fair hearing board.

(2) The final decision issued by the fair hearing board following a hearing under paragraph (j)(1) of this section must be made collectively by, or by a majority vote of, the fair hearing board.

(3) The provisions of paragraphs (b)(1), (2), and (3) of this section that relate to due process hearings and of paragraphs (e), (f), (g), and (h) of this section do not apply to fair hearing boards under this paragraph (j).

(k) Data collection.

(1) The director of the designated State unit must collect and submit, at a minimum, the following data to the Commissioner of the Rehabilitation Services Administration (RSA) for inclusion each year in the annual report to Congress under section 13 of the Act:

(a) A copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this section.

(ii) The number of mediations held, including the number of mediation agreements reached.

(iii) The number of hearings and reviews sought from impartial hearing officers and State reviewing officials, including the type of complaints and the issues involved.

(iv) The number of hearing officer decisions that were not reviewed by administrative reviewing officials.

(v) The number of hearing decisions that were reviewed by State reviewing officials and, based on these reviews, the number of hearing decisions that were—

(A) Sustained in favor of an applicant or eligible individual;

(B) Sustained in favor of the designated State unit;

(C) Reversed in whole or in part in favor of the applicant or eligible individual; and

(D) Reversed in whole or in part in favor of the State unit.

(2) The State unit director also must collect and submit to the Commissioner of RSA copies of all final decisions issued by impartial hearing officers under paragraph (e) of this section and by State review officials under paragraph (g) of this section.

(3) The confidentiality of records of applicants and eligible individuals maintained by the State unit may not preclude the access of the RSA Commissioner to those records for the purposes described in this section.

(Approved by the Office of Management and Budget under control number 1820–0500.)

(Authority: Section 102(c) of the Act; 29 U.S.C. 722(c))

Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.57 was amended by adding "(Approved by the Office of Management and Budget under control number 1820–0500)"., effective Oct. 1, 2001.
§ 361.61 Limitation on use of funds for construction expenditures.

Federal share for expenditures made by the State under the State plan, including expenditures for the provision of vocational rehabilitation services and the administration of the State plan, is 78.7 percent.

(2) Construction projects. The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(b) Non-Federal share.

(1) General. Except as provided in paragraph (b)(2) and (3) of this section, expenditures made under the State plan to meet the non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24.

(2) Third party in-kind contributions. Third party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.

(3) Contributions by private entities. Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local authority in accordance with State law that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for:

(i) Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(ii) Particular geographic areas within the State for any purpose under the State plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:

(A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.

(B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under §361.26.

(C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with §361.25, unless a waiver of statewideness is obtained under §361.26; and

(iii) Any other purpose under the State plan, provided the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(14), 101(a)(3), 101(a)(4) and 104 of the Act; 29 U.S.C. 706(14), 721(a)(3), 721(a)(4) and 724)

Example for paragraph (b)(3): Contributions may be earmarked in accordance with §361.60(b)(3)(iii) for providing particular services (e.g., rehabilitation technology services); serving individuals with certain types of disabilities (e.g., individuals who are blind), consistent with the State’s order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (e.g., students with disabilities who are receiving special education services), consistent with the State’s order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the State plan in accordance with the requirements in §361.60(b)(3)(i).

(Approved by the Office of Management and Budget under control number 1829-0500.)

Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.60 was amended by adding "(Approved by the Office of Management and Budget under control number 1829-0500)", effective Oct. 1, 2001.

§ 361.61 Limitation on use of funds for construction expenditures.

No more than 10 percent of a State’s allotment for any fiscal year under section 110 of the Act may be spent on the
§ 361.62 Maintenance of effort requirements.

(a) General requirements.

(1) The Secretary reduces the amount otherwise payable to a State for a fiscal year by the amount by which the total expenditures from non-Federal sources under the State plan for the previous fiscal year were less than the total of those expenditures for the fiscal year 2 years prior to the previous fiscal year.

Example: For fiscal year 2001, a State’s maintenance of effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1999. Thus, if the State’s non-Federal expenditures in 2001 are less than they were in 1999, the State has a maintenance of effort deficit, and the Secretary reduces the State’s allotment in 2002 by the amount of that deficit.

(2) If, at the time the Secretary makes a determination that a State has failed to meet its maintenance of effort requirements, it is too late for the Secretary to make a reduction in accordance with paragraph (a)(1) of this section, then the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(b) Specific requirements for construction of facilities. If the State provides for the construction of a facility for community rehabilitation program purposes, the amount of the State’s share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year. If a State fails to meet the requirements of this paragraph, the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(c) Separate State agency for vocational rehabilitation services for individuals who are blind. If there is a separate part of the State plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section are determined based on the total amount of a State’s non-Federal expenditures under both parts of the State plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for that fiscal year under each part of the plan in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan in the previous fiscal year were less than they were for that part of the plan for the fiscal year 2 years prior to the previous fiscal year.

(d) Waiver or modification.

(1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a)(1) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or

(ii) Require the State to make substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in §361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation
§ 361.63 Program income.

(a) Definition. For purposes of this section, program income means gross income received by the State that is directly generated by an activity supported under this part.

(b) Sources. Sources of program income include, but are not limited to, payments from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, payments received from workers’ compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

(c) Use of program income.

(1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services and the administration of the State plan. Program income is considered earned when it is received.

(2) Payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under part B of Title I of the Act (client assistance), part B of Title VI of the Act (supported employment), and Title VII of the Act (independent living).

(3) The State is authorized to treat program income as—

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2); or

(ii) A deduction from total allowable costs, in accordance with 34 CFR 80.25(g)(1).

(4) Program income cannot be used to meet the non-Federal share requirement under §361.60.

(Effective Date Notes: 1. At 66 FR 7253, Jan. 22, 2001, §361.62 was amended by adding ``(Approved by the Office of Management and Budget under control number 1820–0500)'', effective Oct. 1, 2001.)

§ 361.64 Obligation of Federal funds and program income.

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallocated funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year and any program income received during a fiscal year that is not obligated by the State by the beginning of the succeeding fiscal year remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Act; 29 U.S.C. 716)

§ 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

(a) Allotment.

(1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the State plan designates one State agency to administer, or supervise the administration of, the part of
the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State’s allotment is a matter for State determination.

(b) Reallotment.
(1) The Secretary determines not later than 45 days before the end of a fiscal year which States, if any, will not use their full allotment.
(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the current or subsequent fiscal year, provided the State can meet the matching requirement by obligating the non-Federal share of any reallocated funds in the fiscal year for which the funds were appropriated.
(3) Funds reallocated to another State are considered to be an increase in the recipient State’s allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 110 and 111 of the Act; 29 U.S.C. 730 and 731)

Subpart D—[Reserved]

Subpart E—Evaluation Standards and Performance Indicators

§ 361.80 Purpose.

The purpose of this subpart is to establish evaluation standards and performance indicators for the Program.

(Authority: 29 U.S.C. 726(a))

§ 361.81 Applicable definitions.

In addition to those definitions in §361.5(b), the following definitions apply to this subpart:

Average hourly earnings means the average per hour earnings in the week prior to exiting the vocational rehabilitation (VR) program of an eligible individual who has achieved a competitive employment outcome.

Business Enterprise Program (BEP) means an employment outcome in which an individual with a significant disability operates a vending facility or other small business under the management and supervision of a designated State unit (DSU). This term includes home industry, farming, and other enterprises.

Exit the VR program means that a DSU has closed the individual’s record of VR services in one of the following categories:
(1) Ineligible for VR services.
(2) Received services under an individualized plan for employment (IPE) and achieved an employment outcome.
(3) Received services under an IPE but did not achieve an employment outcome.
(4) Eligible for VR services but did not receive services under an IPE.

General or combined DSU means a DSU that does not serve exclusively individuals with visual impairments or blindness.

Individuals from a minority background means individuals who report their race and ethnicity in any of the following categories: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino.

Minimum wage means the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(a)(1), (i.e., the Federal minimum wage) or applicable State minimum wage law.

Non-minority individuals means individuals who report themselves exclusively as White, non-Hispanic.

Performance period is the reporting period during which a DSU’s performance is measured. For Evaluation Standards 1 and 2, performance data must be aggregated and reported for each fiscal year beginning with fiscal year 1999. However, DSUs that exclusively serve individuals with visual impairments or blindness must report each year the aggregated data for the 2 previous years for Performance Indicators 1.1 through 1.6; the second year must coincide with the performance period for general or combined DSUs.

Primary indicators means Performance Indicators 1.3, 1.4, and 1.5, which are specifically designed to measure—
(1) The achievement of competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher, particularly by individuals with significant disabilities; and
(2) The ratio between the average hourly earnings of individuals who exit
§ 361.82 Evaluation standards.

(a) The Secretary establishes two evaluation standards to evaluate the performance of each DSU that receives funds under this part. The evaluation standards assist the Secretary and each DSU to evaluate a DSU's performance in serving individuals with disabilities under the VR program.

(b) A DSU must achieve successful performance on both evaluation standards during each performance period.

(c) The evaluation standards for the VR program are—

(1) Evaluation Standard 1—Employment outcomes. A DSU must assist any eligible individual, including an individual with a significant disability, to obtain, maintain, or regain high-quality employment.

(2) Evaluation Standard 2—Equal access to services. A DSU must ensure that individuals from minority backgrounds have equal access to VR services. (Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(a))

§ 361.84 Performance indicators.

(a) The performance indicators establish what constitutes minimum compliance with the evaluation standards.

(b) The performance indicators require a DSU to provide information on a variety of factors to enable the Secretary to measure compliance with the evaluation standards.

(c) The performance indicators are as follows:

(i) Employment outcomes.

(ii) Performance Indicator 1.1. The number of individuals exiting the VR program who achieved an employment outcome during the current performance period compared to the number of individuals who exit the VR program after achieving an employment outcome during the previous performance period.

(iii) Performance Indicator 1.2. Of all individuals who exit the VR program after receiving services, the percentage who are determined to have achieved an employment outcome.

(iv) Performance Indicator 1.3. Of all individuals determined to have achieved an employment outcome, the percentage who exit the VR program in competitive, self-, or BEP employment, the percentage who are individuals with significant disabilities.

(v) Performance Indicator 1.4. Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the percentage who are individuals with significant disabilities.

(vi) Performance Indicator 1.5. The average hourly earnings of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed (as derived from the Bureau of Labor Statistics report “State Average Annual Pay” for the most recent available year).

(vii) Performance Indicator 1.6. Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the difference between the percentage who report their own income as the largest single source
of economic support at the time they exit the VR program and the percentage who report their own income as the largest single source of support at the time they apply for VR services.

(2) Equal access to services.

(i) Performance Indicator 2.1. The service rate for all individuals with disabilities from minority backgrounds as a ratio to the service rate for all non-minority individuals with disabilities.

(Approved by the Office of Management and Budget under control number 1820-0508.)

(Authority: 29 U.S.C. 726(a))

§ 361.86 Performance levels.

(a) General.

(1) Paragraph (b) of this section establishes performance levels for—

(i) General or combined DSUs; and

(ii) DSUs serving exclusively individuals who are visually impaired or blind.

(2) The Secretary may establish, by regulations, new performance levels.

(b) Performance levels for each performance indicator.

(i) The performance levels for Performance Indicators 1.1 through 1.6 are—
<table>
<thead>
<tr>
<th>Performance indicator</th>
<th>Performance level by type of DSU</th>
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</tbody>
</table>
(ii) To achieve successful performance on Evaluation Standard 1 (Employment outcomes), a DSU must meet or exceed the performance levels established for four of the six performance indicators in the evaluation standard, including meeting or exceeding the performance levels for two of the three primary indicators (Performance Indicators 1.3, 1.4, and 1.5).

(2)(i) The performance level for Performance Indicator 2.1 is—

<table>
<thead>
<tr>
<th>Performance indicator</th>
<th>Performance levels</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>80 (Ratio)</td>
</tr>
</tbody>
</table>

(ii) To achieve successful performance on Evaluation Standard 2 (Equal access), DSUs must meet or exceed the performance level established for Performance Indicator 2.1 or meet the performance requirement in paragraph (2)(iii) of this section.

(iii) If a DSU’s performance does not meet or exceed the performance level required for Performance Indicator 2.1, or if fewer than 100 individuals from a minority population have exited the VR program during the reporting period, the DSU must describe the policies it has adopted or will adopt and the steps it has taken or will take to ensure that individuals with disabilities from minority backgrounds have equal access to VR services.

§ 361.88 Reporting requirements.

(a) The Secretary requires that each DSU report within 60 days after the end of each fiscal year the extent to which the State is in compliance with the evaluation standards and performance indicators and include in this report the following RSA–911 data:

1. The number of individuals who exited the VR program in each closure category as specified in the definition of “Exit the VR program” under § 361.81.

2. The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

3. The number of individuals with significant disabilities who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

4. The weekly earnings and hours worked of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

5. The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at the time they applied for VR services was “personal income.”

6. The number of individuals who exited the VR program who are individuals from a minority background.

7. The number of non-minority individuals exiting the VR program after receiving services under an IPE.

8. The number of non-minority individuals exiting the VR program after receiving services under an IPE.

(b) In lieu of the report required in paragraph (a) of this section, a DSU may submit its RSA–911 data on tape, diskette, or any alternative electronic format that is compatible with RSA’s capability to process such an alternative, as long as the tape, diskette, or alternative electronic format includes the data that—

1. Are required by paragraph (a)(1) through (10) of this section; and

2. Meet the requirements of paragraph (c) of this section.

(c) Data reported by a DSU must be valid, accurate, and in a consistent format. If a DSU fails to submit data that are valid, accurate, and in a consistent format within the 60-day period, the DSU must develop a program improvement plan pursuant to § 361.89(a).

(Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(b))

§ 361.89 Enforcement procedures.

(a) If a DSU fails to meet the established performance levels on both evaluation standards as required by § 361.82(b), the Secretary and the DSU
must jointly develop a program improvement plan that outlines the specific actions to be taken by the DSU to improve program performance.

(b) In developing the program improvement plan, the Secretary considers all available data and information related to the DSU’s performance.

(c) When a program improvement plan is in effect, review of the plan is conducted on a biannual basis. If necessary, the Secretary may request that a DSU make further revisions to the plan to improve performance. If the Secretary establishes new performance levels under §361.86(a)(2), the Secretary and the DSU must jointly modify the program improvement plan based on the new performance levels. The Secretary continues reviews and requests revisions until the DSU sustains satisfactory performance based on the current performance levels over a period of more than 1 year.

(d) If the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of the program improvement plan, the Secretary, consistent with the procedures specified in §361.11, reduces or makes no further payments to the DSU under this program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

(Approved by the Office of Management and Budget under control number 1820-0508.)

(Authority: 29 U.S.C. 726(b) and (c))

APPENDIX A TO PART 361—QUESTIONS AND ANSWERS

The following questions and answers provide a summary of some of the most common and critical questions that we received regarding this part 361 and the applicable responses. As is evident from the responses, we maintain that redefining the term “employment outcome” for purposes of the VR program to mean outcomes that occur in integrated settings will promote the provision of opportunities for all VR-eligible individuals to pursue the types of jobs that generally are available to the public.

Is Extended Employment Still a Legitimate Employment Option?

Yes. Employment in a sheltered setting is a legitimate and valuable employment option for individuals with disabilities. Implementation of these regulations will not change that fact. Individuals still may choose to pursue long-term extended employment outside of the VR program, and these regulations ensure that those individuals’ needs are met by requiring the VR agency to make the necessary referral to local extended employment providers.

Do the Regulations Restrict Individual Choice?

No. We interpret the concept of individual choice in the Act as a choice among the employment outcomes under the VR program specified in the statute or by the Secretary in regulations.

Extended employment (i.e., sheltered or non-integrated employment) remains both an initial step toward achieving integrated employment under the VR program and a long-term employment option through sources of support other than the VR program. In recognizing that some individuals with disabilities may wish to work in an extended employment setting, these regulations require the VR agency to ensure that these individuals are afforded the opportunity to do so by referring them to local extended employment providers. Those providers currently support the vast majority of sheltered workers through non-VR program resources. Moreover, persons wishing to prepare for integrated employment by initially working in an extended employment setting also may do so. In these cases, the VR agency cannot discontinue VR services until the individual transitions to integrated work in the community.

Can State Agencies Refuse To Serve Those With the Most Significant Disabilities?

No. Both the Act and regulations guard against that result. Persons with disabilities may not be excluded from the VR program based on an assumption or belief that the individual is incapable of working in an integrated setting. Rather, State units are required to establish clear and convincing evidence that an individual is incapable of achieving an employment outcome, for purposes of the VR program, and must conduct a trial work assessment of the individual’s abilities before it can refuse services to any individual who it initially believes is incapable of working in an integrated job setting.

Are Homemaker and Unpaid Family Worker Considered Employment Outcomes for Purposes of the VR Program?

Yes. The chief purpose of the regulations is to ensure that individuals with disabilities participating in the VR program are able to
pursue the same type of employment opportunities that are available to the general public. Extended employment jobs, unlike homemakers and unpaid family workers, are primarily reserved for those with disabilities. Will the Regulations Serve To Close Down Sheltered Workshops?

No. Sheltered workshops are primarily supported by other State, local, and private resources and rely very little on VR program funds. Persons who prefer to work in extended employment on a long-term basis are assured access to local extended employment programs through the referral requirements in the regulations. Also, those participants in the VR program who can best prepare for integrated employment by working in an extended employment setting as part of a training and assessment program are able to follow that path as well. Thus, extended employment programs and sheltered workshops continue to serve essentially the same role that they currently serve.


PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

Subpart A—General

§ 363.1 What is the State Supported Employment Services Program?
Under the State Supported Employment Services Program, the Secretary provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide programs of supported employment services for individuals with the most severe disabilities who require supported employment services to enter or retain competitive employment.

(Authority: 29 U.S.C. 795j)

§ 363.2 Who is eligible for an award?
Any State is eligible for an award under this program.

(Authority: 29 U.S.C. 795n)

§ 363.3 Who is eligible for services?
A State may provide services under this program to any individual if—
(a) The individual has been determined eligible for vocational rehabilitation services in accordance with the criteria in section 102(a)(1) of the Act;
(b) The individual has been determined to be an individual with the most severe disabilities; and
(c) Supported employment has been identified as the appropriate rehabilitation objective for the individual on
§ 363.4 What are the authorized activities under a State Supported Employment Services grant?

Under this program, the following activities are authorized:

(a) Any particularized assessment that is needed to supplement the comprehensive assessment of rehabilitation needs done under 34 CFR part 361 and that is provided subsequent to the development of the individualized written rehabilitation program. The supplementary assessment may be provided in circumstances such as the following:

(1) A reassessment of the suitability of the placement is warranted.

(2) There is a change in the individual’s medical condition.

(b) Development of and placement in jobs for individuals with the most severe disabilities.

(c) Provision of supported employment services that are needed to support individuals with the most severe disabilities in employment, such as—

(1) Intensive on-the-job skills training and other training provided by skilled job trainers, co-workers, and other qualified individuals, and other services specified in section 103(a) of the Act in order to achieve and maintain job stability;

(2) Follow-up services, including regular contact with employers, trainees with the most severe disabilities, parents, guardians or other representatives of trainees, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; and

(3) Discrete post-employment services following transition that are unavailable from an extended services provider and that are necessary to maintain the job placement, such as job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

(Authority: 29 U.S.C. 795)

§ 363.5 What regulations apply?

The following regulations apply to the State Supported Employment Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (Drug-Free Schools and Campuses).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 363.

(c) The following regulations in 34 CFR part 361 (The State Vocational Rehabilitation Services Program): §§ 361.31; 361.32; 361.33; 361.34; 361.35; 361.39; 361.40; 361.41; 361.42; 361.47(a); 361.48; and 361.49.

Note: Many of the regulatory provisions cross-referenced in §363.5(c) are affected by statutory changes made by the Rehabilitation Act Amendments of 1992. If these provisions conflict with statutory language, they are superseded by the statutory language. Program regulations for part 361 are being amended to implement statutory changes. When final regulations for part 361 are published, these cross-references will be corrected, if necessary.

(Authority: 29 U.S.C. 795 and 711(c))

§ 363.6 What definitions apply?

(a) Definitions in 34 CFR part 361. The following terms used in this part are defined in 34 CFR 369.4(b):

Act
Designated State unit
Individual with disabilities
Individual with severe disabilities
State plan
(b) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

- Fiscal Year
- Nonprofit
- Private Secretary
- State

(c) Other definitions. The following definitions also apply to this part:

(1) Supported employment means—

(i) Competitive employment in an integrated setting with ongoing support services for individuals with the most severe disabilities—

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition in order to perform this work; or

(ii) Transitional employment for individuals with the most severe disabilities due to mental illness.

(2) As used in the definition of “Supported employment”—

(i) Competitive employment means work—

(A) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(B) For which an individual is compensated at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled.

(ii) Integrated setting means a setting typically found in the community in which an individual with the most severe disabilities interacts with non-disabled individuals, other than non-disabled individuals who are providing services to that individual, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(iii) Supported employment services means on-going support services provided by the designated State unit with funds under this part—

(A) For a period not to exceed 18 months, unless under special circumstances a longer period to achieve job stabilization has been jointly agreed to by the individual and the rehabilitation counselor and established in the individualized written rehabilitation program, before an individual with the most severe disabilities makes the transition to extended services; and

(B) As discrete post-employment services following transition in accordance with §363.4(c)(3);

(iv) Extended services means on-going support services and other appropriate services provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, part 381, part 376, or part 380, after an individual with the most severe disabilities has made the transition from State vocational rehabilitation agency support; and

(v) Transitional employment means a series of temporary job placements in competitive work in an integrated work setting with on-going support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of on-going support services must include continuing sequential job placements until job permanency is achieved.

(3) On-going support services means services that are—

(i) Needed to support and maintain an individual with the most severe disabilities in supported employment;

(ii) Based on a determination by the designated State unit of the individual’s needs as specified in an individualized written rehabilitation program; and

(iii) Furnished by the designated State unit from the time of job placement until transition to extended services, except as provided in §363.4(c)(3) and, following transition, by one or more extended services providers throughout the individual’s term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment. On-going support services must include, at a minimum, twice-monthly monitoring at the work site of each individual in supported employment to assess employment stability, unless
§ 306.10

Subpart B—How Does a State Apply for a Grant?

§ 306.11 What information and assurances must be included in the State plan supplement?

Each State plan supplement must include the following:

(a) Designated State agency. Designate the State unit or units for vocational rehabilitation services identified in the State plan submitted under 34 CFR part 361 as the State agency or agencies to administer this program.

(b) Results of needs assessment. Summarize the results of the needs assessment of individuals with severe disabilities conducted under title I of the Act with respect to the rehabilitation and career needs of individuals with severe disabilities and the need for supported employment services. The results of the needs assessment must address the coordination and use of information within the State relating to section 618(b)(1)(c) of the Individuals with Disabilities Education Act.

(c) Quality, scope, and extent of services. Describe the quality, scope, and extent of supported employment services to be provided to individuals with the most severe disabilities under this program. The description must address the timing of the transition to extended services referred to in §363.50(b)(2).

(d) Distribution of funds. Describe the State’s goals and plans with respect to the distribution of funds received under §363.20.

(e) Collaboration. Demonstrate evidence of the efforts of the designated State unit to identify and make arrangements, including entering into cooperative agreements, with—

(1) Other State agencies and other appropriate entities to assist in the provision of supported employment services; and

(2) Other public or non-profit agencies or organizations within the State, employers, natural supports, and other entities with respect to the provision of extended services.

(f) Minority outreach. Describe the designated State unit’s outreach procedures for identifying and serving individuals with the most severe disabilities who are minorities.

(g) Assurances. Provide assurances that—
(1) Funds made available under this part will only be used to provide supported employment services authorized under the Act to individuals who are eligible under this part to receive the services;
(2) The comprehensive assessments of individuals with severe disabilities conducted under section 102(b)(1)(A) and funded under title I of the Act will include consideration of supported employment as an appropriate rehabilitation objective;
(3) An individualized written rehabilitation program, as required by section 102 of the Act, will be developed and updated, using funds under title I, that—
   (i) Specifies the supported employment services to be provided to each individual served under this program, including a description of the expected extended services needed, which may include natural supports, and an identification of the State, Federal, or private programs or other resources that will provide the extended services, including a description of the basis for determining that extended services are available, or to the extent that it is not possible to identify the source of extended services at the time the individualized written rehabilitation program is developed, a statement describing the basis for concluding that there is a reasonable expectation that sources will become available;
   (ii) Provides for periodic monitoring to ensure that each individual with severe disabilities is making satisfactory progress toward meeting the weekly work requirement established in the individualized written rehabilitation program by the time of transition to extended services;
(4) The State will use funds provided under this part only to supplement, and not supplant, the funds provided under title I of the Act, in providing supported employment services specified in the individualized written rehabilitation program;
(5) Services provided under an individualized written rehabilitation program will be coordinated with services provided under other individualized plans established under other Federal or State programs;
(6) To the extent job skills training is provided, the training will be provided on-site;
(7) Supported employment services will include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, interests, concerns, abilities, and capabilities of individuals with the most severe disabilities;
(8) The designated State agency or agencies will expend no more than 5 percent of the State’s allotment under this part for administrative costs of carrying out this program; and
(9) The public participation requirements of section 101(a)(23) are met.

Subpart C—How Does the Secretary Make a Grant?

§ 363.20 How does the Secretary allocate funds?

The Secretary allocates funds under this program in accordance with section 632(a) of the Act.

(Authority: 29 U.S.C. 796k)

§ 363.21 How does the Secretary reallocate funds?

The Secretary reallocates funds in accordance with section 632(b) of the Act.

(Authority: 29 U.S.C. 796k)

Subparts D–E [Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

§ 363.50 What collaborative agreements must the State develop?

(a) A designated State unit must enter into one or more written cooperative agreements or memoranda of understanding with other appropriate
§ 363.51 What are the allowable administrative costs?

(a) Administrative costs—general. Expenditures are allowable for the following administrative costs:

(1) Administration of the State plan supplement for this program.

(2) Planning program development, and personnel development to implement a system of supported employment services.

(3) Monitoring, supervision, and evaluation of this program.

(4) Technical assistance to other State agencies, private nonprofit organizations, and businesses and industries.

(b) Limitation on administrative costs. Not more than five percent of a State’s allotment may be expended for administrative costs for carrying out this program.

(Authority: 29 U.S.C. 795n)

§ 363.52 What are the information collection and reporting requirements?

(a) A State shall collect and report information as required under section 13 of the Act for each individual with the most severe disabilities served under this program.

(b) The State shall collect and report separately information for

(1) Supported employment clients served under this program; and

(2) Supported employment clients served under 34 CFR part 361.

(Approved by the Office of Management and Budget under control number 1820–0551)

(Authority: 29 U.S.C. 712 and 795o)

§ 363.53 What special conditions apply to services and activities under this program?

Each grantee shall coordinate the services provided to an individual under this part and under 34 CFR part 361 to ensure that the services are complementary and not duplicative.

(Authority: 29 U.S.C. 711(c) and 795p)

§ 363.54 What requirements must a State meet before it provides for the transition of an individual to extended services?

A designated State unit must provide for the transition of an individual with the most severe disabilities to extended services no later than 18 months after placement in supported employment, unless a longer period is established in the individualized written rehabilitation program, and only if the individual has made substantial progress toward meeting the hours-per-week work goal provided for in the individualized written rehabilitation program, the individual is stabilized in the job, and extended services are available and can be provided without a hiatus in services.

(Authority: 29 U.S.C. 795n and 711(c))

§ 363.55 What are the requirements for successfully rehabilitating an individual in supported employment?

An individual with the most severe disabilities who is receiving supported employment services is considered to
be successfully rehabilitated if the individual maintains a supported employment placement for 60 days after making the transition to extended services.

(Authority: 29 U.S.C. 711(c))

§ 363.56 What notice requirements apply to this program?

Each grantee must advise applicants for or recipients of services under this part, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State’s Client Assistance Program, including information on seeking assistance from that program.

(Authority: 29 U.S.C. 718a)
§ 364.1 What programs are covered?
(a) This part includes general requirements applicable to the conduct of the following programs authorized under title VII of the Rehabilitation Act of 1973, as amended:
(1) The State Independent Living Services (SILS) program (34 CFR part 365).
(2) The Centers for Independent Living (CIL) program (34 CFR part 366).
(b) Some provisions in this part also are made specifically applicable to the Independent Living Services for Older Individuals Who Are Blind (OIB) program (34 CFR part 367).

Authority: 29 U.S.C. 711(c) and 796–796f-5.

§ 364.2 What is the purpose of the programs authorized by chapter I of title VII?
The purpose of the SILS and CIL programs authorized by chapter I of title VII of the Act is to promote a philosophy of independent living (IL), including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, to maximize the leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society by providing financial assistance to States—
(a) For providing, expanding, and improving the provision of IL services;
(b) To develop and support statewide networks of centers for independent living (centers); and
(c) For improving working relationships among—
(1) SILS programs;
(2) Centers;
(3) Statewide Independent Living Councils (SILCs) established under section 705 of the Act;
(4) State vocational rehabilitation (VR) programs receiving assistance under title I and under part C of title VI of the Act;
(5) Client assistance programs (CAPs) receiving assistance under section 112 of the Act;
(6) Programs funded under other titles of the Act;
(7) Programs funded under other Federal laws; and
(8) Programs funded through non-Federal sources.


§ 364.3 What regulations apply?
The following regulations apply to the SILS and CIL programs:
(a) The Education Department General Administrative Regulations (EDGAR) as follows:
(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to grants or subgrants to an eligible agency that is not a State or local government or Indian tribal organization.
(2) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subparts B and C of 34 CFR part 366.
(3) 34 CFR part 76 (State-Administered Programs), with respect to grants under 34 CFR part 365 and subpart D of 34 CFR part 366.
(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).
(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), with respect to grants to an eligible agency that is a State or local government or Indian tribal organization.
(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).
(8) 34 CFR part 82 (New Restrictions on Lobbying).
(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 364.

(c) The regulations in 34 CFR parts 365 and 366 as applicable.

(Authority: 29 U.S.C. 711(c))

§ 364.4 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part and in 34 CFR parts 365, 366, and 367 are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Nonprofit
Private
Project
Public
Secretary

(b) Other definitions. The following definitions also apply to this part and to 34 CFR parts 365, 366, and 367:

Act means the Rehabilitation Act of 1973, as amended.

Administrative support services means assistance to support IL programs and the activities of centers and may include financial and technical assistance in planning, budget development, and evaluation of center activities, and support for financial management (including audits), personnel development, and recordkeeping activities.

(Authority: 29 U.S.C. 796(c)(2))

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(1) Involve representing an individual—

(i) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(ii) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(2) Be on behalf of—

(i) A single individual, in which case it is individual advocacy;

(ii) A group or class of individuals, in which case it is systems (or systemic) advocacy; or

(iii) Oneself, in which case it is self advocacy.

Attendee care means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(Authority: 29 U.S.C. 706(30)(B)(vi))

Center for independent living means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that—

(1) Is designed and operated within a local community by individuals with disabilities; and

(2) Provides an array of IL services.

(Authority: 29 U.S.C. 796a(1))

Consumer control means, with respect to a center or eligible agency, that the center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services.

(Authority: 29 U.S.C. 796a(2))

Cross-disability means, with respect to a center, that a center provides IL services to individuals representing a range of significant disabilities and does not require the presence of one or more specific significant disabilities before determining that an individual is eligible for IL services.

(Authority: 29 U.S.C. 796a(1))

Designated State agency or State agency means the sole State agency designated to administer (or supervise local administration of) the State plan for VR services. The term includes the State agency for individuals who are blind, if that agency has been designated as the sole State agency with respect to that part of the State VR plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: 29 U.S.C. 706(3) and 721(a)(1)(A))

Designated State unit means either—
§ 364.4

(1) The State agency or the bureau, division, or other organizational unit within a State agency that is primarily concerned with the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities and that is responsible for the administration of the VR program of the State agency; or

(2) The independent State commission, board, or other agency that has the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities as its primary function.

(Authority: 29 U.S.C. 706(3) and 721(a)(2)(A))

Eligible agency means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency.

Authority: 29 U.S.C. 796f–5)

Independent living core services mean, for purposes of services that are supported under the SILS or CIL programs—

(1) Information and referral services;

(2) IL skills training;

(3) Peer counseling, including cross-disability peer counseling; and

(4) Individual and systems advocacy.

(Authority: 29 U.S.C. 796f(29))

Independent living services includes the independent living core services and—

(1) Counseling services, including psychological, psychotherapeutic, and related services;

(2) Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, individuals with significant disabilities;

(3) Rehabilitation technology;

(4) Mobility training;

(5) Services and training for individuals with cognitive and sensory disabilities, including life skills training and interpreter and reader services;

(6) Personal assistance services, including attendant care and the training of personnel providing these services;

(7) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(8) Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other individuals with significant disabilities who have traditionally been underserved or underserved by programs under the Act;

(9) Education and training necessary for living in a community and participating in community activities;

(10) Supported living;

(11) Transportation, including referral and assistance for transportation;

(12) Physical rehabilitation;

(13) Therapeutic treatment;

(14) Provision of needed prostheses and other appliances and devices;

(15) Individual and group social and recreational services;

(16) Training to develop skills specifically designed for youths who are individuals with significant disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(17) Services for children;

(18) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with significant disabilities;

(19) Appropriate preventive services to decrease the need of individuals with significant disabilities assisted under the Act for similar services in the future;

(20) Community awareness programs to enhance the understanding and integration into society of individuals with significant disabilities; and

(21) Any other services that may be necessary to improve the ability of an individual with a significant disability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Act.

(Authority: 29 U.S.C. 796e–2(1))
Individual with a disability means an individual who—
(1) Has a physical, mental, cognitive, or sensory impairment that substantially limits one or more of the individual’s major life activities;
(2) Has a record of such an impairment; or
(3) Is regarded as having such an impairment.
(Authority: 29 U.S.C. 706(8)(B))

Individual with a significant disability means an individual with a severe physical, mental, cognitive, or sensory impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of IL services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.
(Authority: 29 U.S.C. 706(15)(B))

Legally authorized advocate or representative means an individual who is authorized under State law to act or advocate on behalf of another individual. Under certain circumstances, State law permits only an attorney, legal guardian, or individual with a power of attorney to act or advocate on behalf of another individual. In other circumstances, State law may permit other individuals to act or advocate on behalf of another individual.
(Authority: 29 U.S.C. 706(11))

Minority group means Alaskan Natives, American Indians, Asian Americans, Blacks (African Americans), Hispanic Americans, Native Hawaiians, and Pacific Islanders.

Nonresidential means, with respect to a center, that the center, as of October 1, 1994, does not operate or manage housing or shelter for individuals as an IL service on either a temporary or long-term basis unless the housing or shelter is—
(1) Incidental to the overall operation of the center;
(2) Necessary so that the individual may receive an IL service; and
(3) Limited to a period not to exceed eight weeks during any six-month period.
(Authority: 29 U.S.C. 796a, 796f–1(c) and 796f–2(f))

Peer relationships mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

Peer role models means individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

Personal assistance services means a range of IL services, provided by one or more persons, designed to assist an individual with a significant disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. These IL services must be designed to increase the individual’s control in life and ability to perform everyday activities on or off the job.
(Authority: 29 U.S.C. 706(11))

Service provider means—
(1) A designated State unit (DSU) that directly provides IL services to individuals with significant disabilities;
(2) A center that receives financial assistance under part B or C of chapter 1 of title VII of the Act; or
(3) Any other entity or individual that meets the requirements of §364.43(e) and provides IL services under a grant or contract from the DSU pursuant to §364.43(b).
(Authority: 29 U.S.C. 711(c) and 796(e))

Significant disability means a severe physical, mental, cognitive, or sensory impairment that substantially limits an individual’s ability to function independently in the family or community or to obtain, maintain, or advance in employment.

State means, except for sections 711(a)(2)(A) and 721(c)(2)(A) and where otherwise specified in the Act, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands,
§ 364.5 Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

(Authority: 29 U.S.C. 706(16))

State plan means the State IL plan required under section 704 of title VII of the Act.

Transportation means travel and related expenses that are necessary to enable an individual with a significant disability to benefit from another IL service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an individual with a significant disability to benefit from that IL service.

(Authority: 29 U.S.C. 706(30)(B)(xi) and 711(c))

Unserved and underserved groups or populations, with respect to groups or populations of individuals with significant disabilities in a State, include, but are not limited to, groups or populations of individuals with significant disabilities who—

(1) Have cognitive and sensory impairments;

(2) Are members of racial and ethnic minority groups;

(3) Live in rural areas; or

(4) Have been identified by the eligible agency as unserved or underserved within a center's project area.

(Authority: 29 U.S.C. 706, 711(c), and 796f–796f–5)

§ 364.6 What requirements apply to the obligation of Federal funds and program income?

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallocated funds, that are appropriated for a fiscal year to carry out a program under 34 CFR part 365, 366, or 367 that are not obligated or expended by the DSU or center prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the DSU or center prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the DSU or center during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year under part B of chapter 1 and under chapter 2 of title VII of the Act remain available for obligation in the succeeding fiscal year only to the extent that the DSU complied with any matching requirement by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: 29 U.S.C. 718)

Subpart B—What Are the Application Requirements?

§ 364.10 What are the application requirements?

To receive a grant from a State’s allotment of funds under parts B and C of chapter 1 of title VII of the Act and 34 CFR parts 365 and 366, a State shall submit to the Secretary, and obtain approval of, a three-year State plan.
§ 364.11 When must the State plan be submitted for approval?
The designated State unit (DSU) shall submit to the Secretary for approval the three-year State plan no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

§ 364.12 How does the Secretary approve State plans?
(a) General. The Secretary approves a State plan that the Secretary determines meets the requirements of section 704 of the Act and subparts B through D of this part and disapproves a plan that does not meet these requirements.
(b) Informal resolution. If the Secretary intends to disapprove the State plan, the Secretary attempts to resolve disputed issues informally with State officials.
(c) Notice of formal hearing. If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU and the SILC of the intention to disapprove the State plan and of the opportunity for a hearing.
(d) Hearing. (1) If the DSU requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the Department’s administration of the programs authorized by title VII of the Act, to conduct a hearing.
(2) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.
(e) Judicial review. A State may appeal the Secretary’s decision to disapprove its State plan by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

§ 364.13 Under what circumstances may funds be withheld, reduced, limited, or terminated?
(a) When withheld, reduced, limited, or terminated. Payments to a State under chapter 1 of title VII of the Act may be withheld, reduced, limited, or terminated as provided by section 107(c) of the Act if the Secretary finds that—
(1) The State plan has been so changed that it no longer conforms with the requirements of section 704 of the Act; or
(2) In the administration of the State plan, there is a failure to comply substantially with any provision of the plan.
(b) Informal resolution. If the Secretary intends to withhold, reduce, limit, or terminate payment of funds to a State under title VII of the Act as provided by section 107(c) of the Act, the Secretary attempts to resolve disputed issues informally with State officials.
(c) Notice of formal hearing. If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU and SILC of the intention to withhold, reduce, limit, or terminate payment of funds under title VII of the Act and of the opportunity for a hearing.
(d) Hearing. If the DSU requests a hearing, the Secretary designates an administrative law judge (ALJ) in the Office of Administrative Law Judges to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.
(e) Initial decision. The ALJ issues an initial decision in accordance with 34 CFR 81.41.
(f) Petition for review of an initial decision. The DSU may seek the Secretary’s review of an ALJ’s initial decision in accordance with 34 CFR 81.42.
(g) Review by the Secretary. The Secretary reviews an ALJ’s initial decision in accordance with 34 CFR 81.43.
§ 364.20 What are the general requirements for a State plan?

(a) Form and content. The State plan must contain, in the form prescribed by the Secretary, the information required by this part and any other information requested by the Secretary.

(b) Duration. (1) The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in State law, organization, policy, or agency operations that affects the administration of the State plan.

(2) The Secretary may require a State to submit an interim State plan for a period of less than three years following a reauthorization of the Act and prior to the effective date of final regulations.

(c) Joint development—single agency. The State plan must be jointly—

(1) Developed by the DSU and the SILC; and

(2) Signed by the—

(i) Director of the DSU (Director); and

(ii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(d) Joint development—separate agency for individuals who are blind. If a separate State agency is authorized by State law as the sole State agency with authority to administer or supervise the administration of that part of the State plan relating to the vocational rehabilitation of individuals who are blind, the State plan must be jointly—

(1) Developed by the DSU, the SILC, and the separate State agency authorized to provide VR services for individuals who are blind; and

(2) Signed by the—

(i) Director; and

(ii) Director of the separate State agency authorized to provide VR services for individuals who are blind; and

(iii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(3) (Cross-reference: See §364.22(c).)

(e) The State plan must assure that, as appropriate, the DSU and SILC actively consult in the development of the State plan with the Director of the CAP authorized under section 112 of the Act.

(f) Periodic review and revision. The State plan must provide for the review and revision of the plan, at least once every three years, to ensure the existence of appropriate planning, financial support and coordination, and other assistance to appropriately address, on a statewide and comprehensive basis, the needs in the State for—

(1) Providing State IL services;

(2) Developing and supporting a statewide network of centers; and

(3) Working relationships between—

(i) Programs providing IL services and supporting or establishing centers; and

(ii) The VR program established under title I of the Act, and other programs providing services for individuals with disabilities.

(g) Public hearings. (1) The State plan must assure that the DSU and SILC conduct public meetings to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its submission to the Secretary and on any revisions to the approved State plan. The DSU and SILC may meet the public participation requirement by holding the public meetings before a preliminary draft State plan is prepared or by providing a preliminary draft State plan for comment at the public meetings.
§ 364.21 What are the requirements for the Statewide Independent Living Council (SILC)?

(a) Establishment. (1) To be eligible to receive assistance under chapter 1 of title VII of the Act, each State shall establish a SILC that meets the requirements of section 705 of the Act.

(2) The SILC may not be established as an entity within a State agency, including the designated State agency or DSU. The SILC shall be independent of the DSU and all other State agencies.

(b) Appointment and composition—(1) Appointment. Members of the SILC must be appointed by the Governor or the appropriate entity within the State responsible, in accordance with State law, for making appointments.

(2) Composition. (i) The SILC must include—

(A) At least one director of a center chosen by the directors of centers within the State; and

(B) As ex officio, nonvoting members, a representative from the DSU and representatives from other State agencies that provide services to individuals with disabilities.

(ii) The SILC may include—

(A) Other representatives from centers;

(B) Parents and legal guardians of individuals with disabilities;

(C) Advocates of and for individuals with disabilities;

(D) Representatives from private businesses;

(E) Representatives from organizations that provide services for individuals with disabilities; and

(F) Other appropriate individuals.

(iii) A majority of the members of the SILC must be individuals with disabilities, as defined in §364.4(b), and not employed by any State agency or center.

(c) Qualifications. The SILC must be composed of members—

(1) Who provide statewide representation;

(2) Who represent a broad range of individuals with disabilities; and

(3) Who are knowledgeable about centers and IL services.

(d) Voting members. A majority of the voting members of the SILC must be individuals with disabilities, as defined
§ 364.21  in §364.4(b), and not employed by any State agency or center.

(e) Chairperson—(1) In general. Except as provided in paragraph (e)(2) of this section, the SILC shall select a chairperson from among the voting membership of the SILC.

(2) Designation by Governor. In States in which the Governor does not have veto power pursuant to State law, the Governor shall designate a voting member of the SILC to serve as the chairperson of the SILC or shall require the SILC to so designate a voting member.

(f) Terms of appointment. Each member of the SILC shall serve for term of three years, except that—

(1) A member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed must be appointed for the remainder of that term;

(2) The terms of service of the members initially appointed must be (as specified by the appointing authority) for the fewer number of years as will provide for the expiration of terms on a staggered basis; and

(3) No member of the SILC may serve for more than two consecutive full terms.

(g) Duties, The SILC shall—

(1) Jointly develop and sign (in conjunction with the DSU) the State plan required by section 704 of the Act and §364.20;

(2) Monitor, review, and evaluate the implementation of the State plan;

(3) Coordinate activities with the State Rehabilitation Advisory Council established under section 105 of the Act and councils that address the needs of specific disability populations and issues under other Federal law;

(4) Ensure that all regularly scheduled meetings of the SILC are open to the public and sufficient advance notice is provided; and

(5) Submit to the Secretary all periodic reports as the Secretary may reasonably request and keep all records, and afford access to all records, as the Secretary finds necessary to verify the periodic reports.

(h) Hearings. The SILC is authorized to hold any hearings and forums that the SILC determines to be necessary to carry out its duties.

(i) Resource plan. (1) The SILC shall prepare, in conjunction with the DSU, a resource plan for the provision of resources, including staff and personnel, made available under parts B and C of chapter I of title VII of the Act, part C of title I of the Act, and from other public and private sources that may be necessary to carry out the functions of the SILC under this part.

(2) The SILC’s resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the State plan.

(3) No conditions or requirements may be included in the SILC’s resource plan that may compromise the independence of the SILC.

(4) The SILC is responsible for the proper expenditure of funds and use of resources that it receives under the resource plan.

(5) A description of the SILC’s resource plan required by paragraph (i)(1) of this section must be included in the State plan.

(j) Staff. (1) The SILC shall, consistent with State law, supervise and evaluate its staff and other personnel as may be necessary to carry out its functions under this section.

(2) While assisting the SILC in carrying out its duties, staff and other personnel made available to the SILC by the DSU may not be assigned duties by the designated State agency or DSU, or any other agency or office of the State, that would create a conflict of interest.

(k) Reimbursement and compensation. The SILC may use the resources described in paragraph (i) of this section to reimburse members of the SILC for reasonable and necessary expenses of attending SILC meetings and performing SILC duties (including child care and personal assistance services) and to pay compensation to a member of the SILC. If the member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing SILC duties.

(1) Conflict of interest. The code of conduct provisions in 34 CFR 74.162 and the conflict of interest provisions in 34 CFR 75.524 and 75.525 apply to members
§ 364.22 What is the State’s responsibility for administration of the programs authorized by chapter 1 of title VII?

(a) General. The State plan must identify the DSU as the entity that, on behalf of the State, shall—

(1) Receive, account for, and disburse funds received by the State under part B of chapter 1 and section 723 of title VII of the Act (and 34 CFR parts 365 and 366, as applicable) based on the plan;

(2) Provide, as applicable, administrative support services for the SILS and CIL programs under part B of chapter 1 and section 723 of title VII of the Act, respectively, and 34 CFR parts 365 and 366, respectively;

(3) Keep records and afford access to these records as the Secretary finds to be necessary with respect to the SILS and CIL programs; and

(4) Submit additional information or provide assurances as the Secretary may require with respect to the SILS and CIL programs.

(b) Provision of administrative support services. The State plan must describe the administrative support services to be provided by the DSU under paragraph (a)(2) of this section.

(c) Designation of State unit for individuals who are blind. The State plan may designate a State agency or the organizational unit of a State agency that is authorized under State law to provide VR services to individuals who are blind under a State VR plan as the DSU to administer that part of the State IL plan under which IL services are provided to individuals who are blind. However, a State agency designated pursuant to this paragraph may not submit a separate State plan.

§ 364.23 What are the staffing requirements?

(a) General staffing requirement. The State plan must assure that the staff of the service provider includes personnel who are specialists in the development and provision of IL services and in the development and support of centers.

(b) Alternative communication needs staffing. The State plan must also assure that, to the maximum extent feasible, the service provider makes available personnel able to communicate—

(1) With individuals with significant disabilities who rely on alternative modes of communication, such as manual communication, nonverbal communication devices, Braille, or audio tapes, and who apply for or receive IL services under title VII of the Act; and

(2) In the native languages of individuals with significant disabilities whose English proficiency is limited and who apply for or receive IL services under title VII of the Act.

§ 364.24 What assurances are required for staff development?

The State plan must assure that the service provider establishes and maintains a program of staff development for all classes of positions involved in providing IL services and, if appropriate, in administering the CIL program. The staff development program must emphasize improving the skills of staff directly responsible for the provision of IL services, including knowledge of and practice in the IL philosophy.

§ 364.25 What are the requirements for a statewide network of centers for independent living?

(a) The State plan must include a design for the establishment of a statewide network of centers that comply with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of 34 CFR part 366.

(b) The design required by paragraph (a) of this section must identify
§ 364.26 Unserved and underserved areas and must provide an order of priority for serving these areas.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c(g))

§ 364.26 What are the requirements for cooperation, coordination, and working relationships?

(a) The State plan must include steps that will be taken to maximize the cooperation, coordination, and working relationships among—

(1) The SILS program, the SILC, and centers; and

(2) The DSU, other State agencies represented on the SILC, other councils that address the needs of specific disability populations and issues, and other public and private entities determined to be appropriate by the SILC.

(b) The State plan must identify the entities to which the DSU and the SILC will relate in carrying out the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(i))

§ 364.27 What are the requirements for coordinating Independent Living (IL) services?

The State plan must describe how IL services funded under chapter 1 of title VII of the Act will be coordinated with, and complement, other services, to avoid unnecessary duplication with other Federal, State, and local programs, including the OIB program authorized by chapter 2 of title VII of the Act, that provide IL- or VR-related services. This description must include those services provided by State and local agencies administering the special education, vocational education, developmental disabilities services, public health, mental health, housing, transportation, and veterans’ programs, and the programs authorized under titles XVIII through XX of the Social Security Act within the State.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(j) and 752(1)(2)(C))

§ 364.28 What requirements relate to IL services for older individuals who are blind?

The State plan must include an assurance that the DSU will seek to incorporate into and describe in the State plan any new methods or approaches for the provision to older individuals who are blind of IL services that are developed under a project funded under chapter 2 of title VII of the Act and that the DSU determines to be effective.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c), 796c(j), and 796c(b))

§ 364.29 What are the requirements for coordinating Federal and State sources of funding?

(a) The State plan must describe efforts to coordinate Federal and State funding for centers and IL services.

(b) The State plan must identify the amounts, sources, and purposes of the funding to be coordinated under paragraph (a) of this section, including the amount of State funds earmarked for the general operation of centers.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(k))

§ 364.30 What notice must be given about the Client Assistance Program (CAP)?

The State plan must include satisfactory assurances that all service providers will use formats that are accessible to notify individuals seeking or receiving IL services under chapter 1 of title VII about—

(a) The availability of the CAP authorized by section 112 of the Act;

(b) The purposes of the services provided under the CAP; and

(c) How to contact the CAP.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 718(a) and 796c(m)(1))
§ 364.31 What are the affirmative action requirements?
The State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will take affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Act.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 796c(m)(2))

§ 364.32 What are the requirements for outreach?
(a) With respect to IL services and centers funded under chapter 1 of title VII of the Act, the State plan must include steps to be taken regarding outreach to populations in the State that are unserved or underserved by programs under title VII, including minority groups and urban and rural populations.

(b) The State plan must identify the populations to be designated for targeted outreach efforts under paragraph (a) of this section and the geographic areas (i.e., communities) in which they reside.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 796c(l))

§ 364.33 What is required to meet minority needs?
The State plan must demonstrate how the State will address the needs of individuals with significant disabilities from minority group backgrounds.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 711(e), 718(b), and 796c(l))

§ 364.34 What are the fiscal and accounting requirements?
In addition to complying with applicable EDGAR fiscal and accounting requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will adopt those fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for those funds.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 796c(m)(3))

§ 364.35 What records must be maintained?
In addition to complying with applicable EDGAR recordkeeping requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will maintain—

(a) Records that fully disclose and document—

(1) The amount and disposition by the recipient of that financial assistance;

(2) The total cost of the project or undertaking in connection with which the financial assistance is given or used;

(3) The amount of that portion of the cost of the project or undertaking supplied by other sources; and

(4) Compliance with the requirements of chapter 1 of title VII of the Act and this part; and

(b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 796c(m)(4))

§ 364.36 What are the reporting requirements?
With respect to the records that are required by §364.35, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will submit reports that the Secretary determines to be appropriate.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 796c(m)(4)(D))
§ 364.37 What access to records must be provided?
For the purpose of conducting audits, examinations, and compliance reviews, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 and chapter 2 of title VII of the Act will provide access to the Secretary and the Comptroller General, or any of their duly authorized representatives, to—

(a) The records maintained under § 364.35;
(b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under chapter 1 of title VII of the Act; and
(c) All individual case records or files or consumer service records of individuals served under 34 CFR part 365, 366, or 367, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 711(c) and 796c(m)(4)(c) and (d))

§ 364.38 What methods of evaluation must the State plan include?

The State plan must establish a method for the periodic evaluation of the effectiveness of the plan in meeting the objectives established in § 364.42, including evaluation of satisfaction by individuals with significant disabilities who have participated in the program.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 711(c) and 796c(m)(4)(c) and (d))

§ 364.39 What requirements apply to the administration of grants under the Centers for Independent Living program?

In States in which State funding for centers equals or exceeds the amount of funds allotted to the State under part C of title VII of the Act, as determined pursuant to 34 CFR 366.29 and 366.31, and in which the State elects to administer the CIL program as provided in section 723 of the Act, the State plan must include policies, practices, and procedures, including the order of priorities that the State may establish pursuant to 34 CFR 366.34(a), that are consistent with section 723 of the Act to govern the awarding of grants to centers and the oversight of these centers.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 706(15)(B) and 796b)

§ 364.40 Who is eligible to receive IL services?

The State plan must assure that—

(a) Any individual with a significant disability, as defined in § 364.4(b), is eligible for IL services under the SILS and CIL programs authorized under chapter 1 of title VII of the Act;
(b) Any individual may seek information about IL services under these programs and request referral to other services and programs for individuals with significant disabilities, as appropriate; and
(c) The determination of an individual’s eligibility for IL services under the SILS and CIL programs meets the requirements of § 364.51.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

§ 364.41 What assurances must be included regarding eligibility?

(a) The State plan must assure that the service provider applies eligibility requirements without regard to age, color, creed, gender, national origin, race, religion, or type of significant disability of the individual applying for IL services.
(b) The State plan must assure that the service provider does not impose any State or local residence requirement that excludes under the plan any individual who is present in the State and who is otherwise eligible for IL services from receiving IL services.

(Approved by the Office of Management and Budget under control number 1820–0527)
(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

§ 364.42 What objectives and information must be included in the State plan?

(a) The State plan must specifically describe—
§ 364.51 What requirements apply to the processing of referrals and applications?

The service provider shall apply the standards and procedures established by the DSU pursuant to 34 CFR 365.30 to ensure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

§ 364.51 What requirements apply to determinations of eligibility or ineligibility?

(a) Eligibility. (1) Before or at the same time as an applicant for IL services may begin receiving IL services funded under this part, the service provider shall determine the applicant’s eligibility and maintain documentation that the applicant has met the basic requirements specified in §364.40.

(2) The documentation must be dated and signed by an appropriate staff member of the service provider.

(1) An appropriate staff member of the service provider; and

(b) In developing the objectives required by paragraph (a) of this section, the DSU and the SILC shall consider, and incorporate if appropriate, the priorities and objectives established by centers pursuant to section 725(c)(4) of the Act.

(d) If the State provides the IL services that it is required to provide by paragraph (b) of this section through grants or contracts with third parties, the State plan must describe these arrangements.

(e) If the State contracts with or awards a grant to a center for the general operation of the center, the State shall delegate to the center the determination of an individual’s eligibility for services from that center. If the State contracts with or awards a grant to a third party to provide specific IL services, the State may choose to delegate to the IL service provider the determination of eligibility for these services and the development of an IL plan for individuals who receive these services.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c), 796–796f–4(b)(2))

Subpart D—What Conditions Must Be Met After an Award?

§ 364.50 What requirements apply to the provision of State IL services?

(a) The State plan must describe the extent and scope of IL services to be provided under title VII of the Act to meet the objectives stated in §364.42.

(b) The State plan must provide that the State directly, or through grants or contracts, will provide IL services with Federal, State, or other funds.

(c) Unless the individual signs a waiver stating that an IL plan is unnecessary, IL services provided to individuals with significant disabilities must be in accordance with an IL plan that meets the requirements of §364.52 and that is mutually agreed upon by—
§ 364.52  What are the requirements for an IL plan?

(a) General. (1) Unless the individual who is to be provided IL services under this part signs a waiver in accordance with paragraph (a)(2) of this section, the service provider, in collaboration with the individual with a significant disability, shall develop and periodically review an IL plan for the individual in accordance with the requirements in §364.43(c) and paragraphs (b) through (e) of this section.

(2) The requirements of this section with respect to an IL plan do not apply if the individual knowingly and voluntarily signs a waiver stating that an IL plan is unnecessary.

(b) Initiation and development of an IL plan. (1) Development of an individual’s IL plan must be initiated after documentation of eligibility under §364.51(a) and must indicate the goals or objectives established, the services to be provided, and the anticipated duration of the service program and each component service.

(2) The IL plan must be developed jointly and signed by the appropriate staff member of the service provider and the individual with a significant disability or, if consistent with State law and the individual chooses, the individual’s guardian, parent, or other legally authorized advocate or representative.

(c) Review of ineligibility determination. (1) If an individual has been found ineligible, the service provider shall review the individual’s ineligibility determination at least once within 12 months after the ineligibility determination has been made and whenever the service provider determines that the individual’s status has materially changed.

(2) The review need not be conducted in situations where the individual has refused the review, the individual is no longer present in the State, or the individual’s whereabouts are unknown.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796(e))
law and the individual chooses, the individual’s guardian, parent, or other legally authorized advocate or representative, must be given an opportunity to review the IL plan and, if necessary, jointly redevelop and agree by signature to its terms.

(d) Coordination with vocational rehabilitation, developmental disabilities, and special education programs. The development of the IL plan and the provision of IL services must be coordinated to the maximum extent possible with any individualized—

(1) Written rehabilitation program for VR services for that individual;
(2) Habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act; and
(3) Education program for the individual prepared under part B of the Individuals with Disabilities Education Act.

e) Termination of services. If the service provider intends to terminate services to an individual receiving IL services under an IL plan, the service provider shall follow the procedures in §364.51(b)(2)(ii) through (iv) and (c).

(Approved by the Office of Management and Budget under control number 1820–0527)

Authority: 29 U.S.C. 711(c) and 796c(m)(4)(B)

§ 364.53 What records must be maintained for the individual?

For each applicant for IL services (other than information and referral) and for each individual receiving IL services (other than information and referral), the service provider shall maintain a consumer service record that includes—

(a) Documentation concerning eligibility or ineligibility for services;
(b) The services requested by the consumer;
(c) Either the IL plan developed with the consumer or a waiver signed by the consumer stating that an IL plan is unnecessary;
(d) The services actually provided to the consumer; and
(e) The IL goals or objectives—

(1) Established with the consumer, whether or not in the consumer’s IL plan; and
(2) Achieved by the consumer.

(f) A consumer service record may be maintained either electronically or in written form, except that the IL plan and waiver must be in writing.

(Approved by the Office of Management and Budget under control number 1820–0527)

Authority: 29 U.S.C. 711(c), 712 and 796c(m)(4)(B)

§ 364.54 What are the durational limitations on IL services?

The service provider may not impose any uniform durational limitations on the provision of IL services, except as otherwise provided by Federal law or regulation.

Authority: 29 U.S.C. 711(c) and 796-796f-5

§ 364.55 What standards shall service providers meet?

In providing IL services to individuals with significant disabilities, service providers shall comply with—

(a) The written standards for IL service providers established by the DSU pursuant to 34 CFR 365.31; and
(b) All applicable State or Federal licensure or certification requirements.

Authority: 29 U.S.C. 711(c) and 796-796f-5

§ 364.56 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) General provisions. The State plan must assure that each service provider will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—

(1) Specific safeguards protect current and stored personal information;
(2) All applicants for, or recipients of, IL services and, as appropriate, those individuals’ legally authorized representatives, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for gaining access to and releasing this information;
(3) All applicants or their legally authorized representatives are informed about the service provider’s need to collect personal information and the policies governing its use, including—
§ 364.56  34 CFR Ch. III (7–1–01 Edition)

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the service provider intends to use or release the information;

(iii) Explanation of whether providing requested information to the service provider is mandatory or voluntary and the effects to the individual of not providing requested information;

(iv) Identification of those situations in which the service provider requires or does not require informed written consent of the individual or his or her legally authorized representative before information may be released; and

(v) Identification of other agencies to which information is routinely released;

(4) Persons who are unable to communicate in English or who rely on alternative modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) At least the same protections are provided to individuals with significant disabilities as provided by State laws and regulations; and

(6) Access to records is governed by rules established by the service provider and any fees charged for copies of records are reasonable and cover only extraordinary costs of duplication or making extensive searches.

(b) Service provider use. All personal information in the possession of the service provider may be used only for the purposes directly connected with the provision of IL services and the administration of the IL program under which IL services are provided. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for the provision of IL services or the administration of the IL program under which IL services are provided. In the provision of IL services or the administration of the IL program under which IL services are provided, the service provider may obtain personal information from other service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) Release to recipients of IL services. (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by a recipient of IL services, the service provider shall release all information in that individual’s record of services to the individual or the individual’s legally authorized representative in a timely manner.

(2) Medical, psychological, or other information that the service provider determines may be harmful to the individual may not be released directly to the individual, but must be provided through a qualified medical or psychological professional or the individual’s legally authorized representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) Release for audit, evaluation, and research. Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities only for purposes directly connected with the administration of an IL program, or for purposes that would significantly improve the quality of life for individuals with significant disabilities and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personally identifying information without the informed written consent of the involved individual or the individual’s legally authorized representative.

(e) Release to other programs or authorities. (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual’s legally authorized representative,
the service provider may release personal information to another agency or organization for the latter’s program purposes only to the extent that the information may be released to the involved individual and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.

(2) Medical or psychological information may be released pursuant to paragraph (e)(1) of this section if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The service provider shall release personal information if required by Federal laws or regulations.

(4) The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to judicial order.

(5) The service provider also may release personal information to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: 29 U.S.C. 711(c))

§ 364.59 May an individual’s ability to pay be considered in determining his or her participation in the costs of IL services?

(a) No Federal requirement or prohibition. (1) A State is neither required to allow nor prohibited from allowing service providers to charge consumers for the cost of IL services.

(2) If a State allows service providers to charge consumers for the cost of IL services, a State is neither required to allow nor prohibited from allowing service providers to consider the ability of individual consumers to pay for the cost of IL services in determining how much a particular consumer must contribute to the costs of a particular IL service.

(b) State plan requirements. If a State chooses to allow service providers to charge consumers for the cost of IL services or if a State chooses to allow service providers to consider the ability of individual consumers to pay for the cost of IL services, the State plan must—

(1) Specify the types of IL services for which costs may be charged and for which a financial need test may be applied; and

(2) Assure that any consideration of financial need is applied uniformly so that all individuals who are eligible for IL services are treated equally.

(c) Financial need. Consistent with paragraph (b) of this section, a service provider may choose to charge consumers for the cost of IL services or may choose to consider the financial need of an individual who is eligible for IL services.

(d) Written policies and documentation. If the service provider chooses to consider financial need—

(1) It shall maintain written policies covering the specific types of IL services for which a financial need test will be applied; and

(2) It shall document the individual’s participation in the cost of any IL
services, including the individual’s financial need.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 711(c))

PART 365—STATE INDEPENDENT LIVING SERVICES

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365.30 What are the standards for processing referrals and applications?
365.31 What are the standards for service providers?

AUTHORITY: 29 U.S.C. 796e–796e-2, unless otherwise noted.

SOURCE: 59 FR 41897, Aug. 15, 1994, unless otherwise noted.

365.1 What is the State Independent Living Services (SILS) program?

The Secretary provides financial assistance to States under the SILS program authorized by part B of chapter 1 of title VII of the Act to—

(a) Provide the resources described in the resource plan required by section 705(e) of the Act and 34 CFR 364.21(d) relating to the Statewide IL Council (SILC);

(b) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act;

(c) Demonstrate ways to expand and improve IL services;

(d) Support the operation of centers for independent living (centers) that are in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(e) Support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;

(f) Conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policy makers in order to enhance IL services for individuals with significant disabilities;

(g) Train individuals with significant disabilities, individuals with disabilities, individuals providing services to individuals with significant disabilities, and other persons regarding the IL philosophy; and

(h) Provide outreach to populations that are unserved or underserved by programs under title VII of the Act, including minority groups and urban and rural populations.

AUTHORITY: 29 U.S.C. 796e

§ 365.2 Who is eligible for an award?

Any designated State unit (DSU) identified by the State pursuant to 34
CFR 364.22 is eligible to apply for assistance under this part in accordance with 34 CFR 364.10 and 364.11.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 796c(a)(1) and (c) and 796e(a))

§ 365.3 What regulations apply?

The following regulations apply to this part:

(a) The regulations in 34 CFR part 364.

(b) The regulations in this part 365.

(Authority: 29 U.S.C. 711(c) and 796e)

Subpart B—How Does the Secretary Make a Grant to a State?

§ 365.10 How does a State apply for a grant?

To receive a grant under this part, a State shall submit to the Secretary and obtain approval of a State plan that meets the requirements of part A of title VII of the Act and subparts B and C of 34 CFR part 364.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 711(c) and 796e)

§ 365.11 How is the allotment of Federal funds for State independent living (IL) services computed?

(a) The allotment of Federal funds for State IL services for each State is computed in accordance with the requirements of section 711(a)(1) of the Act.

(b) The allotment of Federal funds for Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau is computed in accordance with section 711(a)(2) of the Act.

(c) If the State plan designates, pursuant to §364.22(c), a unit to administer the part of the plan under which State IL services are provided for individuals who are blind and a separate or different unit to administer the rest of the plan, the division of the State’s allotment between these two units is a matter for State determination.

(Authority: 29 U.S.C. 711(c) and 796e(a))

§ 365.12 How are payments from allotments for IL services made?

(a) From the allotment of a State for a fiscal year under §365.11, the Secretary pays to the State the Federal share of the expenditures incurred by the State during the year in accordance with the State plan approved under section 706 of the Act. After any necessary adjustments resulting from previously made overpayments or underpayments, the payments may be made in advance or by reimbursement, in installments, and on conditions that the Secretary may determine.

(b)(1) The Federal share with respect to any State for any fiscal year is 90 percent of the expenditures incurred by the State during that fiscal year under its State plan approved under section 706 of the Act.

(2) The non-Federal share of the cost of any project that receives assistance through an allotment under this part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

(Authority: U.S.C. 796e-1)

§ 365.13 What requirements apply if the State’s non-Federal share is in cash?

(a) Except as further limited by paragraph (b) of this section, expenditures that meet the requirements of 34 CFR 80.24(a) through (b)(6) may be used to meet the non-Federal share matching requirement under section 712(b) of the Act if—

(1) The expenditures are made with funds made available by appropriation directly to the designated State agency or with funds made available by allotment or transfer from any other unit of State or local government;

(2) The expenditures are made with cash contributions from a donor that are deposited in the account of the designated State agency in accordance with State law for expenditure by, and at the sole discretion of, the DSU for activities identified or described in the State plan and authorized by §365.20; or
§ 365.14 What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?

(a) A State may not condition the award of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act on the requirement that the applicant for the grant or subgrant make a cash or in-kind contribution of any particular amount or value to the State.

(b) An individual, entity, or organization that is a grantee or subgrantee of the State, or has a contract with the State, may not condition the award of a subgrant or subcontract under section 713 of the Act or section 723 of the Act on the requirement that the applicant for the subgrant or subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the grantee or contractor of the State.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

§ 365.15 What requirements apply if the State’s non-Federal share is in kind?

Subject to §365.14, in-kind contributions may be:

(a) Used to meet the matching requirement under section 712(b) of the Act if the in-kind contributions meet the requirements of 34 CFR 80.24 (b)(7) through (g) and if the in-kind contributions would be considered allowable costs under this part, as determined by the cost principles made applicable by either subpart Q of 34 CFR part 74 or 34 CFR 80.22, as appropriate; and

(b) Made to the program or project by the State or by a third party (i.e., an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a grantee, subgrantee, or contractor that is receiving or will receive assistance under section 713 or 723 of the Act.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

§ 365.16 What requirements apply to refunds and rebates?

The following must be treated as a reduction of expenditures charged to the grant, subgrant, or contract awarded under this part and may not be used for meeting the State’s matching requirement under section 712(b) of the Act:

(a) Rebates, deductions, refunds, discounts, or reductions to the price of goods, products, equipment, rental property, real property, or services.

(b) Premiums, bonuses, gifts, and any other payments related to the purchase of goods, products, equipment, rental property, real property, or services.

(Authority: 29 U.S.C. 711(c), 796e–1(b), and OMB Circulars A–87 and A–122)
Subpart C—For What Purpose Are Funds Authorized or Required To Be Used?

§ 365.20 What are the authorized uses of funds?

The State may use funds received under this part to support the activities listed in §365.1 and to meet its obligation under section 704(e) of the Act and 34 CFR 364.43(b).

(Authority: 29 U.S.C. 796e–2)

§ 365.21 What funds may the State use to provide the IL core services?

(a) In providing IL services as required under section 704(e) of the Act and 34 CFR 364.43(b), a State may use funds provided under this part to provide directly, or through grants or contracts, the following IL core services:

(1) Information and referral services.
(2) IL skills training.
(3) Peer counseling, including cross-disability peer counseling.
(4) Individual and systems advocacy.
(b) Information and referral services may be provided independently of the other services described in paragraph (a) of this section and without regard to subpart G of 34 CFR part 366.

(Authority: 29 U.S.C. 711(c) and 796c(e))

§ 365.22 What additional IL services may the State provide?

In addition to the IL core services that the State may provide pursuant to §365.21(a) with funds received under part B of chapter 1 of title VII of the Act, the State also may use funds received under part B of chapter 1 of title VII of the Act to provide other IL services defined in 34 CFR 364.4 (Independent living services).

(Authority: 29 U.S.C. 796e–2(1))

§ 365.23 How does a State make a subgrant or enter into a contract?

If a State makes a subgrant or enters into a contract to provide IL services to meet its obligation under section 704(e) of the Act—

(a) The provisions of this part apply to both the State and the entity or individual to whom it awards a subgrant or with whom it enters into a contract; and
(b) The provisions concerning the administration of subgrants and contracts in 34 CFR parts 76 and 80 apply to the State.
(c) Cross-reference: See 34 CFR parts 74, 76, and 80.

(Authority: 29 U.S.C. 711(c), 796c(f), and 796e–2)

Subpart D—What Conditions Must Be Met After an Award?

§ 365.30 What are the standards for processing referrals and applications?

The DSU shall develop, establish, and maintain written standards and procedures to be applied by service providers to assure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796e)

§ 365.31 What are the standards for service providers?

(a) The DSU shall develop, establish, make available to the public, maintain, and implement written minimum standards for the provision of—

(1) IL services to be met by service providers that are not centers; and
(2) Specialized IL services to individuals with significant disabilities by centers under a contract with the DSU.
(b) The minimum standards developed pursuant to paragraph (a)(2) of this section may differ from the standards and assurances in section 725 of the Act and subparts F and G of 34 CFR part 366.
(c) The DSU shall assure that participating service providers meet all applicable State licensure or certification requirements.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c))
Subpart A—General

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AUTHORITY: 29 U.S.C. 796d–1(b) and 796f–796f–6, unless otherwise noted.

SOURCE: 59 FR 41900, Aug. 15, 1994, unless otherwise noted.

Subpart A—General

§ 366.1 What is the Centers for Independent Living (CIL) program?

The CIL program provides financial assistance for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725(b) and (c) of the Act, consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(Authority: 29 U.S.C. 796f, 796f–1(a)(2), and 796f–2(a)(1)(A)(ii))

§ 366.2 What agencies are eligible for assistance under the CIL program?

(a) In any State in which the Secretary has approved the State plan required by section 704 of the Act, an applicant may receive a grant under subpart C or D of this part, as applicable, if the applicant demonstrates in its application submitted pursuant to § 366.21, 366.24, 366.33, 366.35, or 366.36 that it—

(1) Has the power and authority to—

(i) Carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of this part within a community located within that State or in a bordering State; and

(ii) Receive and administer—

(A) Funds under this part;

(B) Funds and contributions from private or public sources that may be used in support of a center; and

(C) Funds from other public and private programs; and

(2) Is able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of this part.

(b) An applicant that meets the requirements of paragraph (a) of this section is eligible to apply as a new center under §§ 366.24 or 366.36 if it—

(1) Is not receiving funds under part C of chapter 1 of title VII of the Act; or

(2) Proposes the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location; and

(3) Meets the requirements of § 366.24;

(c) A State that received assistance in fiscal year (FY) 1993 to directly operate a center in accordance with section 724(a) of the Act is eligible to continue to receive assistance under this part to directly operate that center for FY 1994 or a succeeding fiscal year if, for the fiscal year for which assistance is sought—

(1) No nonprofit private agency submits and obtains approval of an acceptable application under section 722 or 723 of the Act or § 366.21 or § 366.24 to operate a center for that fiscal year before a date specified by the Secretary; or

(2) After funding all applications so submitted and approved, the Secretary determines that funds remain available to provide that assistance.

(d) Except for the requirement that the center be a private nonprofit agency, a center that is operated by a State that receives assistance under paragraph (a), (b), or (c) of this section shall comply with all of the requirements of part C of title VII of the Act and the requirements in subparts C or D, as applicable, and F of this part.

(e) Eligibility requirements for assistance under subpart B of this part are described in § 366.10.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: 29 U.S.C. 711(c), 796f–1(b) and (d)(3), 796f–2(b), and 796f–3(a)(2) and (b))

§ 366.3 What activities may the Secretary fund?

(a) An eligible agency may use funds awarded under subpart B of this part to carry out activities described in § 366.11(b).
(b) An eligible agency may use funds awarded under subparts C and D of this part to—

(1) Plan, conduct, administer, and evaluate centers that comply with the standards and assurances in section 725(b) and (c) of the Act;

(2) Promote and practice the independent living (IL) philosophy in accordance with Evaluation Standard 1 (”Philosophy”);

(3) Provide IL services (including IL core services and, as appropriate, a combination of any other IL services specified in section 7(30)(B) of the Act) to individuals with a range of significant disabilities in accordance with Evaluation Standards 2 and 5 (”Provision of services” and “Independent living core services,” respectively);

(4) Facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance in the development and achievement of IL goals from the center in accordance with Evaluation Standard 3 (”Independent living goals”);

(5) Increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of IL goals by individuals with significant disabilities in accordance with Evaluation Standard 4 (”Community options”);

(6) Increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities in accordance with Evaluation Standard 6 (”Activities to increase community capacity”);

(7) Conduct resource development activities to obtain funding from sources other than chapter I of title VII of the Act in accordance with Evaluation Standard 7 (Resource development activities); and

(8) Conduct activities necessary to comply with the assurances in section 725(c) of the Act, including, but not limited to the following:

(i) Aggressive outreach regarding services provided through the center in an effort to reach populations of individuals with significant disabilities that are underserved or underserved by programs under title VII of the Act, especially minority groups and urban and rural populations.

(ii) Training for center staff on how to serve underserved populations, including minority groups and urban and rural populations.

(9) Cross-reference: See §366.71 in subpart G.

(Authority: 29 U.S.C. 796f through 796f-4)

§ 366.4 What regulations apply?

The following regulations apply to the CIL program:

(a) The regulations in 34 CFR part 364.

(b) The regulations in this part 366.

(Authority: 29 U.S.C. 711(c) and 796f-796f-5)

§ 366.5 What definitions apply to this program?

Decisionmaking position means the executive director, any supervisory position, and any other policymaking position within the center.

Staff position means a paid non-contract position within the center that is not included within the definition of a “decisionmaking position.”

(Authority: 29 U.S.C. 796a(a))

[60 FR 39221, Aug. 1, 1995]

§ 366.6 How are program funds allotted?

(a) The Secretary allots Federal funds appropriated for FY 1994 and subsequent fiscal years for the CIL program to each State in accordance with the requirements of section 721 of the Act.

(b)(1) After the Secretary makes the reservation required by section 721(b) of the Act, the Secretary makes an allotment, from the remainder of the amount appropriated for a fiscal year to carry out part C of title VII of the Act, to each State whose State plan has been approved under section 706 of the Act and 34 CFR part 364.

(2) The Secretary makes the allotment under paragraph (b)(1) of this section subject to sections 721(c)(1)(B) and (C), 721(c)(2) and (3), and 721(d) of the Act.

(Authority: 29 U.S.C. 796f)

§ 366.10 What agencies are eligible for assistance to provide training and technical assistance?

Entities that have experience in the operation of centers are eligible to apply for grants to provide training and technical assistance under section 721(b) of the Act to eligible agencies, centers, and Statewide Independent Living Councils (SILCs).

(Authority: 29 U.S.C. 796f(b)(1))

§ 366.11 What financial assistance does the Secretary provide for training and technical assistance?

(a) From funds, if any, reserved under section 721(b)(1) of the Act to carry out the purposes of this subpart, the Secretary makes grants to, and enters into contracts, cooperative agreements, and other arrangements with, entities that have experience in the operation of centers.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance to eligible agencies, centers, and SILCs to plan, develop, conduct, administer, and evaluate centers.

(Authority: 29 U.S.C. 796f(b)(1)–(3))

§ 366.12 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or other arrangement under section 721(b) of the Act and this subpart, an applicant shall submit an application to the Secretary containing a proposal to provide training and technical assistance to eligible agencies, centers, and SILCs and any additional information at the time and in the manner that the Secretary may require.

(b) The Secretary provides for peer review of grant applications by panels that include persons who are not Federal government employees and who have experience in the operation of centers.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: 29 U.S.C. 711(c) and 796f(b))

§ 366.13 How does the Secretary determine funding priorities?

In making awards under this section, the Secretary determines funding priorities in accordance with the training and technical assistance needs identified by the survey of SILCs and centers required by section 721(b)(3) of the Act.

(Authority: 29 U.S.C. 796f(b)(3))

§ 366.14 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in §366.15.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f(b)(3))

§ 366.15 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications for new awards for training and technical assistance:

(a) Meeting the purposes of the program (30 points). The Secretary reviews each application to determine how well the project will be able to meet the purpose of the program of providing training and technical assistance to eligible agencies, centers, and SILCs with respect to planning, developing, conducting, administering, and evaluating centers.

(b) Extent of need for the project (20 points). The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in title VII of the Act, including consideration of—

(1) The needs addressed by the project;

(2) How the objectives further training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers.

(3) How those needs will be met by the project; and

(4) The benefits to be gained by meeting those needs.
Plan of operation (15 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

1. The quality of the design of the project;
2. The extent to which the plan of management ensures proper and efficient administration of the project;
3. How well the objectives of the project relate to the purpose of the program;
4. The quality of the applicant’s plan to use its resources and personnel to achieve each objective; and
5. How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

Quality of key personnel (7 points).
1. The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including—
   i. The qualifications of the project director, if one is to be used;
   ii. The qualifications of each of the other management and decision-making personnel to be used in the project;
   iii. The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project;
   iv. How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and
   v. The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups, women, persons with disabilities, and elderly individuals.

2. To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

Experience and training in fields related to the objectives of the project; and
Any other qualifications that pertain to the objectives of the project.

Budget and cost effectiveness (5 points). The Secretary reviews each application for information that shows the extent to which—

1. The budget is adequate to support the project; and
2. Costs are reasonable in relation to the objectives of the project.

Evaluation plan (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant’s methods of evaluation—

1. Are appropriate to the project;
2. Will determine how successful the project is in meeting its goals and objectives; and
3. Are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590.

Adequacy of resources (3 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Extent of prior experience (15 points). The Secretary reviews each application to determine the extent of experience the applicant has in the operation of centers and with providing training and technical assistance to centers, including—

1. Training and technical assistance with planning, developing, and administering centers;
2. The scope of training and technical assistance provided, including methods used to conduct training and technical assistance for centers;
3. Knowledge of techniques and approaches for evaluating centers; and
4. The capacity for providing training and technical assistance as demonstrated by previous experience in these areas.
Subpart C—Grants to Centers for Independent Living (Centers) in States in Which Federal Funding Exceeds State Funding

§ 366.20 When does the Secretary award grants to centers?

The Secretary awards grants to centers in a State in a fiscal year if—

(a) The amount of Federal funds allotted to the State under section 721(c) and (d) of the Act to support the general operation of centers is greater than the amount of State funds earmarked for the same purpose, as determined pursuant to §§366.29 and 366.31; or

(b) The Director of a designated State unit (DSU) does not submit to the Secretary and obtain approval of an application to award grants under section 723 of the Act and §§366.32(a) and (b).

(Authority: 29 U.S.C. 796f–1 and 796f–2(a)(2))

§ 366.21 What are the application requirements for existing eligible agencies?

To be eligible for assistance, an eligible agency shall submit—

(a) An application at the time, in the manner, and containing the information that is required;

(b) An assurance that the eligible agency meets the requirements of §366.2; and

(c) The assurances required by section 725(c) of the Act and subpart F of this part.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–1(b))

§ 366.22 What is the order of priorities?

(a) In accordance with a State’s allotment and to the extent funds are available, the order of priorities for allocating funds among centers within a State is as follows:

(1) Existing centers, as described in §366.23, that comply with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of this part first receive the level of funding each center received in the previous year. However, any funds received by an existing center to establish a new center at a different geographical location pursuant to proposed §366.2(b)(2) are not included in determining the level of funding to the existing center in any fiscal year that the new center applies for and receives funds as a separate center.

(2) Existing centers that meet the requirements of paragraph (a)(1) of this section then receive a cost-of-living increase in accordance with procedures consistent with section 721(c)(3) of the Act.

(3) New centers, as described in §366.2(b), that comply with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of this part.

(b) If, after meeting the priorities in paragraphs (a)(1) and (2) of this section, there are insufficient funds under the State’s allotment under section 721(c) and (d) of the Act to fund a new center under paragraph (a)(3) of this section, the Secretary may—

(1) Use the excess funds in the State to assist existing centers consistent with the State plan; or

(2) Reallocate these funds in accordance with section 721(d) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–1(e))

§ 366.23 What grants must be made to existing eligible agencies?

(a) In accordance with the order of priorities established in §366.22, an eligible agency may receive a grant if the eligible agency demonstrates in its application that it—

(1) Meets the requirements in §366.21 or §366.24;

(2) Is receiving funds under part C of title VII of the Act on September 30, 1993; and

(3) Is in compliance with the program and fiscal standards and assurances in section 725(b) and (c) of the Act and subparts F and G of this part. (The indicators of minimum compliance in subpart G of this part are used to determine compliance with the evaluation standards in section 725(b) of the Act.)

(b) For purposes of this section, an eligible agency is receiving funds under
§ 366.24 How is an award made to a new center?

(a) To apply for a grant as a new center, an eligible agency shall—
   (1) Meet the requirements of § 366.2(b);
   (2) Submit an application that meets the requirements of § 366.21; and
   (3) Meet the requirements of this section.

(b) Subject to the order of priorities established in § 366.22, a grant for a new center may be awarded to the most qualified eligible agency that applies for funds under this section, if—
   (1)(i) No center serves a geographic area of a State; or
       (ii) A geographic area of a State is underserved by centers serving other areas of the State;
   (2) The eligible agency proposes to serve the geographic area that is unserved or underserved in the State;
   and
   (3) The increase in the allotment of the State under section 721 of the Act for a fiscal year, as compared with the immediately preceding fiscal year, is sufficient to support an additional center in the State.

(c) The establishment of a new center under this subpart must be consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(d) An applicant may satisfy the requirements of paragraph (c) of this section by submitting appropriate documentation demonstrating that the establishment of a new center is consistent with the design in the State plan required by 34 CFR 364.25.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–1(c))

§ 366.25 What additional factor does the Secretary use in making a grant for a new center under § 366.24?

In selecting from among applicants for a grant under § 366.24 for a new center, the Secretary considers comments regarding the application, if any, by the SILC in the State in which the applicant is located.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–1(d)(1))

§ 366.26 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in § 366.27.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f(b)(3))

§ 366.27 What selection criteria does the Secretary use?

In evaluating each application for a new center under this part, the Secretary uses the following selection criteria:

(a) Extent of the need for the project (20 points). (1) The Secretary reviews each application for persuasive evidence that shows the extent to which the project meets the specific needs for the program, including considerations of—
   (i) The needs addressed by the project;
   (ii) How the applicant identified those needs (e.g., whether from the 1990 census data or other current sources);
   (iii) How those needs will be met by the project; and
   (iv) The benefits to be gained by meeting those needs.

   (2) The Secretary looks for information that shows that the need for the center has been established based on an assessment of the ability of existing programs and facilities to meet the need for IL services of individuals with significant disabilities in the geographic area to be served.

   (3) The Secretary looks for information that shows—
   (1) That the applicant proposes to establish a new center to serve a priority
service area that is identified in the current State plan; and

(ii) The priority that the State has placed on establishing a new center in this proposed service area.

(b) Past performance (5 points). The Secretary reviews each application for information that shows the past performance of the applicant in successfully providing services comparable to the IL core services and other IL services listed in section 7 (29) and (30) of the Act and 34 CFR 365.21 and 365.22 and other services that empower individuals with significant disabilities.

(c) Meeting the standards and the assurances (25 points). The Secretary reviews each application for information that shows—

(1) Evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the standards in section 725(b) of the Act and subpart G of this part; and

(2) Convincing evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the assurances in section 725(c) of the Act and subpart F of this part.

(d) Quality of key personnel (10 points). (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, including—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(e) Budget and cost effectiveness (10 points). The Secretary reviews each application for information that shows the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) Evaluation plan (5 points). The Secretary reviews each application for information that shows the quality of the evaluation plan for the project, including the extent to which the applicant’s methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine how successful the project is in meeting its goals and objectives; and

(3) Are objective and produce data that are quantifiable.

(g) Plan of operation (20 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality and adequacy of the applicant’s plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability; and
(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including—
   (i) Members of racial or ethnic minority groups;
   (ii) Women;
   (iii) Elderly individuals; and
   (iv) Children and youth.

(h) Involvement of individuals with significant disabilities (5 points). (1) The Secretary reviews each application for information that shows that individuals with significant disabilities are appropriately involved in the development of the application.
   (2) The Secretary looks for information that shows that individuals with significant disabilities or their parents, guardians, or other legally authorized advocates or representatives, as appropriate, will be substantially involved in planning, policy direction, and management of the center, and, to the greatest extent possible, that individuals with significant disabilities will be employed by the center.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–1(d)(2)(B))

§ 366.28 Under what circumstances may the Secretary award a grant to a center in one State to serve individuals in another State?

(a) The Secretary may use funds from the allotment of one State to award a grant to a center located in a bordering State if the Secretary determines that the proposal of the out-of-State center to serve individuals with significant disabilities who reside in the bordering State is consistent with the State plan of the State in which these individuals reside.

(b) An applicant shall submit documentation demonstrating that the arrangements described in paragraph (a) of this section are consistent with the State plan of the State in which the individuals reside.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f (c) and (d))

Subpart D—Grants to Centers in States in Which State Funding Equals or Exceeds Federal Funding

DETERMINING WHETHER STATE FUNDING EQUALS OR EXCEEDS FEDERAL FUNDING

§ 366.29 When may the Director of the designated State unit (DSU) award grants to centers?

(a) The Director of the DSU (Director) may award grants under section 723 of the Act and this subpart to centers located within the State or in a bordering State in a fiscal year if—
   (1) The Director submits to the Secretary and obtains approval of an application to award grants for that fiscal year under section 723 of the Act and §366.32 (a) and (b); and
   (2) The Secretary determines that the amount of State funds that were earmarked by the State to support the general operation of centers meeting the requirements of part C of chapter 1 of title VII of the Act in the second fiscal year preceding the fiscal year for which the application is submitted equalled or exceeded the amount of funds allotted to the State under section 721 (c) and (d) of the Act (or part B of title VII of the Act as in effect on October 28, 1992) for that preceding fiscal year.

(b) For purposes of section 723(a)(1)(A)(iii) of the Act and this subpart, the second fiscal year preceding the fiscal year for which the State submits an application to adminster the CIL program is considered the “preceding fiscal year.” Example: If FY 1995 is the fiscal year for which the State submits an application to administer the CIL program under this subpart, FY 1993 is the “preceding fiscal year.” In determining the “preceding fiscal year” under this subpart, the Secretary makes any adjustments necessary to accommodate a State’s multi-year funding cycle or fiscal year that does not coincide with the Federal fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–2(a)(3))
§ 366.30 What are earmarked funds?

(a) For purposes of this subpart, the amount of State funds that were earmarked by a State to support the general operation of centers does not include—

(1) Federal funds used for the general operation of centers;
(2) State funds used to purchase specific services from a center, including State funds used for grants or contracts to procure or purchase personal assistance services or particular types of skills training;
(3) State attendant care funds; or
(4) Social Security Administration reimbursement funds.

(b) For purposes of this subpart, earmarked funds means funds appropriated by the State and expressly or clearly identified as State expenditures in the relevant fiscal year for the sole purpose of funding the general operation of centers.

(Authority: 29 U.S.C. 711(c) and 796f-2(a)(1)(A))

§ 366.31 What happens if the amount of earmarked funds does not equal or exceed the amount of Federal funds for a preceding fiscal year?

If the State submits an application to administer the CIL program under section 723 of the Act and this subpart for a fiscal year, but did not earmark the amount of State funds required by §366.29(a)(2) in the preceding fiscal year, the State shall be ineligible to make grants under section 723 of the Act and this subpart after the end of the fiscal year succeeding the preceding fiscal year and for each succeeding fiscal year.

Example: A State meets the earmarking requirement in FY 1994. It also meets this requirement in FY 1995. However, in reviewing the State’s application to administer the CIL program in FY 1996, the Secretary determines that the State failed to meet the earmarking requirement in FY 1996. The State may continue to award grants in FY 1997 but may not do so in FY 1998 and succeeding fiscal years.

(Authority: 29 U.S.C. 796f-2(a)(1)(B))

§ 366.32 Under what circumstances may the DSU make grants?

(a) To be eligible to award grants under this subpart and to carry out section 723 of the Act for a fiscal year, the Director must submit to the Secretary for approval an application at the time and in the manner that the Secretary may require and that includes, at a minimum—

(1) Information demonstrating that the amount of funds earmarked by the State for the general operation of centers meets the requirements in §366.29(a)(1); and
(2) A summary of the annual performance reports submitted to the Director from centers in accordance with §366.50(n).

(b) If the amount of funds earmarked by the State for the general operation of centers meets the requirements in §366.29(a)(1), the Secretary approves the application and designates the Director to award the grants and carry out section 723 of the Act.

(c) If the Secretary designates the Director to award grants and carry out section 723 of the Act under paragraph (b) of this section, the Director makes grants to eligible agencies in a State, as described in §366.2, for a fiscal year from the amount of funds allotted to the State under section 721(c) and (d) of the Act.

(d)(1) In the case of a State in which there is both a DSU responsible for providing IL services to the general population and a DSU responsible for providing IL services for individuals who are blind, for purposes of subparts D and E of this part, the “Director” shall be the Director of the general DSU.

(2) The State units described in paragraph (d)(1) of this section shall periodically consult with each other with respect to the provision of services for individuals who are blind.

(e) The Director may enter into assistance contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, an assistance contract is an instrument whose principal purpose is to transfer funds allotted to the State under section 721
§ 366.33 What are the application requirements for existing eligible agencies?

To be eligible for assistance under this subpart, an eligible agency shall comply with the requirements in § 366.21.

(Authority: 29 U.S.C. 711(c) and 796f–2(a)(2))

§ 366.34 What is the order of priorities?

(a) Unless the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, jointly agree on another order of priorities, the Director shall follow the order of priorities in § 366.22 for allocating funds among centers within a State, to the extent funds are available.

(b) If the order of priorities in § 366.22 is followed and, after meeting the priorities in § 366.22(a)(1) and (2), there are insufficient funds under the State’s allotment under section 721(c) and (d) of the Act to fund a new center under § 366.22(a)(3), the Director may—

1. Use the excess funds in the State to assist existing centers consistent with the State plan; or

2. Return these funds to the Secretary for reallocation in accordance with section 721(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796f–2(e))

§ 366.35 What grants must be made to existing eligible agencies?

In accordance with the order of priorities established in § 366.34(a), an eligible agency may receive a grant under this subpart if the eligible agency meets the applicable requirements in §§366.2, 366.21, and 366.23.

(Authority: 29 U.S.C. 796f–2(c))

§ 366.36 How is an award made to a new center?

To be eligible for a grant as a new center under this subpart, an eligible agency shall meet the requirements for a new center in §§366.2(b) and 366.24, except that the award of a grant to a new center under this section is subject to the order of priorities in § 366.34(a).

(Authority: 29 U.S.C. 796f–2(d))

§ 366.37 What procedures does the Director of the DSU (Director) use in making a grant for a new center?

(a) In selecting from among applicants for a grant for a new center under § 366.24 of this subpart—

1. The Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances in section 725 (b) and (c) of the
Act and subparts F and G of this part and any criteria jointly established by the Director and the chairperson or other designated individual;

(2) The peer review committee shall consider the ability of each applicant to operate a center and shall recommend an applicant to receive a grant under this subpart, based on either the selection criteria in §366.27 or the following:

(i) Evidence of the need for a center, consistent with the State plan.

(ii) Any past performance of the applicant in providing services comparable to IL services.

(iii) The plan for complying with, or demonstrated success in complying with, the standards and the assurances in section 725 (b) and (e) of the Act and subparts F and G of this part.

(iv) The quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant.

(v) The budget and cost-effectiveness of the applicant.

(vi) The evaluation plan of the applicant.

(vii) The ability of the applicant to carry out the plans identified in paragraphs (a)(2) (iii) and (vi) of this section.

(b) The Director shall award the grant on the basis of the recommendations of the peer review committee if the actions of the committee are consistent with Federal and State law.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(1) and (b))

§ 366.39 What procedures does the Secretary use for enforcement?

(a) If the Secretary determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part, the Secretary immediately notifies the center, by certified mail, return receipt requested, or other means that provide proof of receipt, that the center is out of compliance. The Secretary also offers technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) The Secretary terminates all funds under section 721 of the Act to that center 90 days after the date of the notification required by paragraph (a) of this section unless—

(1) The center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Secretary; or

(2) The center requests a hearing pursuant to paragraph (c) or (d) of this section.

(c) If the Secretary does not approve a center’s corrective action plan submitted pursuant to paragraph (b)(1) of this section, the center has 30 days from receipt of the Secretary’s written notice of disapproval of the center’s corrective action plan to request a

Subpart E—Enforcement and Appeals Procedures

§ 366.38 What are the procedures for review of centers?

(a) The Director shall, in accordance with section 723(g)(1) and (h) of the Act, periodically review each center receiving funds under section 723 of the Act to determine whether the center is in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(b) The periodic reviews of centers required by paragraph (a) of this section must include annual on-site compliance reviews of at least 15 percent of the centers assisted under section 723 of the Act in that State in each year.

(c) Each team that conducts an on-site compliance review of a center shall include at least one person who is not an employee of the designated State agency, who has experience in the operation of centers, and who is jointly selected by the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(1) and (b))
§ 366.40 How does the Director initiate enforcement procedures?

(a) If the Director determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part, the Director shall immediately provide the center, by certified mail, return receipt requested, or other means that provide proof of receipt, with an initial written notice that the center is out of compliance with the standards and assurances and that the Director will terminate the center’s funds or take other proposed significant adverse action against the center 90 days after the center’s receipt of this initial written notice. The Director shall provide technical assistance to the center to develop a corrective action plan to comply with the standards and assurances. (b) Unless the center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Director or, if appealed, by the Secretary, the Director shall terminate all funds under section 723 of the Act to a center 90 days after the later of—

(1) The date that the center receives the initial written notice required by paragraph (a) of this section; or

(2) The date that the center receives the Secretary’s final decision issued pursuant to §366.46(c) if—

(i) The center files a formal written appeal of the Director’s final written decision pursuant to §366.44(a); or

(ii) The center files a formal written appeal of the decision described in the Director’s initial written notice pursuant to §366.44(b).

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2(g) and (i))

§ 366.41 What must be included in an initial written notice from the Director?

The initial written notice required by §366.40(a) must—

(a) Include, at a minimum, the following:

(1) The name of the center.

(2) The reason or reasons for proposing the termination of funds or other significant adverse action against the center, including any evidence that the center has failed to comply with any of the evaluation standards or assurances in section 725(b) and (c) of the Act and subparts F and G of this part.

(3) The effective date of the proposed termination of funds or other significant adverse action against the center;

(b) Be given 90 days in advance of the date the Director intends to terminate
Chapter 366 - Rehabilitation Services Administration

§ 366.42 When does a Director issue a final written decision?

(a) If the center submits a corrective action plan in accordance with §366.40(b), the Director shall provide to the center, not later than the 120th day after the center receives the Director’s initial written notice, a final written decision approving or disapproving the center’s corrective action plan and informing the center, if appropriate, of the termination of the center’s funds or any other proposed significant adverse action against the center.

(b) The Director shall send the final written decision to the center by registered or certified mail, return receipt requested, or other means that provide a record that the center received the Director’s final written decision.

(c) A Director’s final written decision to terminate funds or take any other adverse action against a center may not take effect until 30 days after the date that the center receives it.

(d) If a center appeals pursuant to §366.44(a), the Director’s final written decision to terminate funds or take any other adverse action against a center does not take effect until the Secretary issues a final decision.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: 29 U.S.C. 711(c) and 796f-2 (g) and (l))

§ 366.43 What must be included in the Director’s final written decision?

The Director’s final written decision to disapprove a center’s corrective action plan required by §366.42 must—

(a) Address any response from the center to the Director’s initial written notice to terminate funds or take other significant adverse action against the center;

(b) Include a statement of the reasons why the Director could not approve the corrective action plan; and

(c) Inform the center of its right to appeal to the Secretary the Director’s final written decision to terminate funds or take any other significant adverse action against the center.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: 29 U.S.C. 711(c) and 796f-2 (g) and (l))

§ 366.44 How does a center appeal a decision included in a Director’s initial written notice or a Director’s final written decision?

(a) To obtain the Secretary’s review of a Director’s final written decision to disapprove a center’s corrective action plan submitted pursuant to §366.40(b), the center shall file, within 30 days from receipt of the Director’s final written decision, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have approved the center’s corrective action plan. (Cross-reference: See §366.42.)

(b) To obtain the Secretary’s review of a decision described in a Director’s initial written notice, a center that does not submit a corrective action plan to a Director shall file, in accordance with paragraph (c)(1)(i) of this section, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have found the center in compliance with the standards and assurances

Office of Special Education and Rehab Services, Education
§ 366.45 What must a Director do upon receipt of a copy of a center's formal written appeal to the Secretary?

(a) If the center files a formal written appeal in accordance with §366.44(c), the Director shall, within 15 days of receipt of the center's appeal, submit to the Secretary one copy each of the following:

(1) The Director's initial written notice to terminate funds or take any other significant adverse action against the center.

(2) The Director's final written decision, if any, to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center.

(3) Any other written documentation or submissions the Director wishes the Secretary to consider.

(b) As part of its submissions under this section, the Director may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(1) The Director's initial written notice to terminate funds or final written decision is stayed as of the date (determined pursuant to paragraph (d) of this section) that the center files a formal written appeal with the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f-2(g)(2) and (1))

§ 366.45 What must a Director do upon receipt of a center's formal written appeal to the Secretary?

(a) If the center files a formal written appeal in accordance with §366.44(c), the Director shall, within 15 days of receipt of the center's appeal, submit to the Secretary one copy each of the following:

(1) The Director's initial written notice to terminate funds or take any other significant adverse action against the center.

(2) The Director's final written decision, if any, to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center.

(3) Any other written documentation or submissions the Director wishes the Secretary to consider.

(4) Any other information requested by the Secretary.

(b) As part of its submissions under this section, the Director may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f-2(g)(2) and (1))
§ 366.46 How does the Secretary review a center’s appeal of a decision included in a Director’s initial written notice or a Director’s final written decision?

(a) If either party requests a meeting under §§ 366.44(g) or 366.45(b), the meeting is to be held within 30 days of the date of the Secretary’s receipt of the submissions from the Director that are required by § 366.45(a). The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the date of receipt of the submissions required from the Director by § 366.45(a), the Secretary issues to the parties the Secretary’s decision.

(c) The Secretary reviews a decision included in a Director’s initial written notice or a Director’s final written decision to disapprove the center’s corrective action plan and to terminate the center’s funds or take any other significant adverse action against the center based on the record submitted under §§ 366.44 and 366.45 and may affirm or, if the Secretary finds that the decision included in a Director’s initial written notice or a Director’s final written decision is not supported by the evidence or is not in accordance with the law, may—

(1) Remand the appeal for further findings; or

(2) Reverse the decision described in the Director’s initial written notice or the Director’s final written decision to disapprove the center’s corrective action plan and to terminate funds or take any other significant adverse action against the center.

(d) The Secretary sends copies of his or her decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(e) If the Secretary affirms the decision described in a Director’s initial written notice or the Director’s final written decision, the Director’s decision takes effect on the date of the Secretary’s final decision to affirm.

(Authority: 29 U.S.C. 711(c) and 796f-2(g)(2) and (i))

Subpart F—Assurances for Centers

§ 366.50 What assurances shall a center provide and comply with?

To be eligible for assistance under this part, an eligible agency shall provide satisfactory assurances that—

(a) The applicant is an eligible agency;

(b) The center will be designed and operated within local communities by individuals with disabilities, including an assurance that the center will have a board that is the principal governing body of the center and a majority of which must be composed of individuals with significant disabilities;

(c) The applicant will comply with the standards in subpart G;

(d) The applicant will establish clear priorities through—

(1) Annual and three-year program and financial planning objectives for the center, including overall goals or a mission for the center;

(2) A work plan for achieving the goals or mission, specific objectives, service priorities, and types of services to be provided; and

(3) A description that demonstrates how the proposed activities of the applicant are consistent with the most recent three-year State plan under section 704 of the Act;

(e) The applicant will use sound organizational and personnel assignment practices, including taking affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Act;

(f) The applicant will ensure that the majority of the staff, and individuals in decision-making positions, of the applicant are individuals with disabilities;

(g) The applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit;

(h) The applicant will conduct an annual self-evaluation, prepare an annual performance report, and maintain records adequate to measure performance with respect to the standards in subpart G;
§ 366.60 What are the project evaluation standards?

To be eligible to receive funds under this part, an applicant must agree to comply with the following evaluation standards:

(a) Evaluation standard 1—Philosophy.

The center shall promote and practice the IL philosophy of—

(1) Consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;

(2) Self-help and self-advocacy;

(3) Development of peer relationships and peer role models;

(4) Equal access of individuals with significant disabilities to all of the center’s services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(5) Promoting equal access of individuals with significant disabilities to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, on the same basis that access is provided to other

(b) Evaluation standard 2—Compliance.

The center shall comply with the following standards:

(1) The annual performance report and the records of the center’s performance required by paragraph (h) of this section must each contain information regarding, at a minimum—

(1) The extent to which the center is in compliance with the standards in section 725(b) of the Act and subpart G of this part (Cross-reference: See §§366.70(a)(2) and 366.73);

(2) The number and types of individuals with significant disabilities receiving services through the center;

(3) The types of services provided through the center and the number of individuals with significant disabilities receiving each type of service;

(4) The sources and amounts of funding for the operation of the center;

(5) The number of individuals with significant disabilities who are employed by, and the number who are in management and decision-making positions in, the center;

(6) The number of individuals from minority populations who are employed by, and the number who are in management and decision-making positions in, the center; and

(7) A comparison, if appropriate, of the activities of the center in prior years with the activities of the center in most recent years;

(j) Individuals with significant disabilities who are seeking or receiving services at the center will be notified by the center of the existence of, the availability of, and how to contact the client assistance program;

(k) Aggressive outreach regarding services provided through the center will be conducted in an effort to reach populations of individuals with significant disabilities that are underserved or underserved populations under title VII of the Act, especially minority groups and urban and rural populations;

(l) Staff at centers will receive training on how to serve underserved and underserved populations, including minority groups and urban and rural populations;

(m) The center will submit to the SILC a copy of its approved grant application and the annual performance report required under paragraph (h) of this section;
§ 366.63 What are the compliance indicators?

(a) The compliance indicators establish the activities that a center shall carry out to demonstrate minimum compliance with the evaluation standards in § 366.60.

(b) If a center fails to satisfy any one of the indicators, the center is out of compliance with the evaluation standards.

(Authority: 20 U.S.C. 796d-1(b))

§ 366.62 What are the requirements for continuation funding?

(a) To be eligible to receive a continuation award for the third or any subsequent year of a grant, a center shall—

(1) Have complied fully during the previous project year with all of the terms and conditions of its grant;

(2) Provide adequate evidence in its most recent annual performance report that the center is in minimum compliance with the evaluation standards in § 366.60 (Cross-reference: See §§ 366.50(h) and (i) and 34 CFR 75.118(a)); and

(3) Meet the requirements in this part 366.

(b) If a recipient receives funding for more than one center, each individual center that receives a continuation award shall meet the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0606)

(Authority: 29 U.S.C. 711(c), 796d–1(b), 796e, and 796f–4)

§ 366.63 What evidence must a center present to demonstrate that it is in minimum compliance with the evaluation standards?

(a) Compliance indicator 1—Philosophy—(1) Consumer control. (i) The center shall provide evidence in its most recent annual performance report that—

(A) Individuals with significant disabilities constitute more than 50 percent of the center’s governing board; and

(B) Individuals with disabilities constitute more than 50 percent of the center’s—

(1) Employees in decisionmaking positions; and

(2) Employees in staff positions.

(ii) A center may exclude personal assistants, readers, drivers, and interpreters employed by the center from the requirement in paragraph (a)(1)(B) of this section.
(iii) The determination that over 50 percent of a center’s employees in decisionmaking and staff positions are individuals with disabilities must be based on the total number of hours (excluding any overtime) for which employees are actually paid during the last six-month period covered by the center’s most recent annual performance report. However, a center must include in this determination its employees who are on unpaid family or maternity leave during this six-month period.

(2) **Self-help and self-advocacy.** The center shall provide evidence in its most recent annual performance report that it promotes self-help and self-advocacy among individuals with significant disabilities (e.g., by conducting activities to train individuals with significant disabilities in self-advocacy).

(3) **Development of peer relationships and peer role models.** The center shall provide evidence in its most recent annual performance report that it promotes the development of peer relationships and peer role models among individuals with significant disabilities (e.g., by using individuals with significant disabilities who have achieved IL goals [whether the goals were achieved independently or through assistance and services provided by a center] as instructors [volunteer or paid] in its training programs or as peer counselors).

(4) **Equal access.** The center shall provide evidence in its most recent annual performance report that it—

(i) Ensures equal access of individuals with significant disabilities, including communication and physical access, to the center’s services, programs, activities, resources, and facilities, whether publicly or privately funded. Equal access, for purposes of this paragraph, means that the same access is provided to any individual with a significant disability regardless of the individual’s type of significant disability.

(ii) Advocates for and conducts activities that promote the equal access to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, for individuals with significant disabilities. Equal access, for purposes of this paragraph, means that the same access provided to individuals without disabilities is provided in the center’s service area to individuals with significant disabilities.

(5) **Alternative formats.** To ensure that a center complies with §366.63(a)(4) and for effective communication, a center shall make available in alternative formats, as appropriate, all of its written policies and materials and IL services.

(b) **Compliance indicator 2—Provision of services on a cross-disability basis.** The center shall provide evidence in its most recent annual performance report that it—

(1) Provides IL services to eligible individuals or groups of individuals without restrictions based on the particular type or types of significant disability of an individual or group of individuals, unless the restricted IL service (other than the IL core services) is unique to the significant disability of the individuals to be served;

(2) Provides IL services to individuals with a diversity of significant disabilities and individuals who are members of populations that are underserved or unserved by programs under title VII of the Act; and

(3) Provides IL core services to individuals with significant disabilities in a manner that is neither targeted nor limited to a particular type of significant disability.

(c) **Compliance indicator 3—Independent living goals.** (1) The center shall provide evidence in its most recent annual performance report that it—

(i) Maintains a consumer service record that meets the requirements of 34 CFR 364.53 for each consumer;

(ii) Facilitates the development and achievement of IL goals selected by individuals with significant disabilities who request assistance from the center;

(iii) Provides opportunities for consumers to express satisfaction with the center’s services and policies in facilitating their achievement of IL goals and provides any results to its governing board and the appropriate SILC; and

(iv) Notifies all consumers of their right to develop or waive the development of an IL plan (ILP).
(2) The center shall provide evidence in its most recent annual performance report that the center maintains records on—

(i) The IL goals that consumers receiving services at the center believe they have achieved;

(ii) The number of ILPs developed by consumers receiving services at the center; and

(iii) The number of waivers signed by consumers receiving services at the center stating that an ILP is unnecessary.

(d) **Compliance indicator 4—Community options and community capacity.** The center shall provide evidence in its most recent annual performance report that, during the project year covered by the center’s most recent annual performance report, the center promoted the increased availability and improved quality of community-based programs that serve individuals with significant disabilities and promoted the removal of any existing architectural, attitudinal, communication, environmental, or other type of barrier that prevents the full integration of these individuals into society. This evidence must demonstrate that the center performed at least one activity in each of the following categories:

1. Community advocacy.
2. Technical assistance to the community on making services, programs, activities, resources, and facilities in society accessible to individuals with significant disabilities.
3. Public information and education.
4. Aggressive outreach to members of populations of individuals with significant disabilities that are unserved or underserved by programs under title VII of the Act in the center’s service area.
5. Collaboration with service providers, other agencies, and organizations that could assist in improving the options available for individuals with significant disabilities to avail themselves of the services, programs, activities, resources, and facilities in the center’s service area.

(e) **Compliance indicator 5—IL core services and other IL services.** The center shall provide evidence in its most recent annual performance report that it provides—

1. Information and referral services to all individuals who request this type of assistance or services from the center in formats accessible to the individual requesting these services; and
2. As appropriate in response to requests from individuals with significant disabilities who are eligible for IL services from the center, the following services:
   (i) IL skills training.
   (ii) Peer counseling (including cross-disability peer counseling).
   (iii) Individual and systems advocacy.
   (iv) A combination, as appropriate, of any two or more of the IL services defined in section 7(30)(B) of the Act.

(f) **Compliance indicator 6—Resource development activities.** The center shall provide evidence in its most recent annual performance report that it has conducted resource development activities within the period covered by the performance report to obtain funding from sources other than chapter 1 of title VII of the Act.

(Approved by the Office of Management and Budget under control number 1820–0606)

(Authority: 29 U.S.C. 711(c), 796d–1(b), and 796f–4)

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

Subpart A—General

Sec. 367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?

367.2 Who is eligible for an award?

367.3 What activities may the Secretary fund?

367.4 What regulations apply?

367.5 What definitions apply?

Subpart B—What Are the Application Requirements?

367.10 How does a designated State agency (DSA) apply for an award?

367.11 What assurances must a DSA include in its application?
§ 367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?

This program supports projects that—
(a) Provide any of the independent living (IL) services to older individuals who are blind that are described in §367.3(b); (b) Conduct activities that will improve or expand services for these individuals; and (c) Conduct activities to help improve public understanding of the problems of these individuals.

(Authority: 29 U.S.C. 796k(a) and (b))

§ 367.2 Who is eligible for an award?

Any designated State agency (DSA) is eligible for an award under this program if the DSA—

(a) Is authorized to provide rehabilitation services to individuals who are blind; and
(b) Submits to and obtains approval from the Secretary of an application that meets the requirements of section 752(i) of the Act and §§367.10 and 367.11.

(Authority: 29 U.S.C. 796k(a)(2))

§ 367.3 What activities may the Secretary fund?

(a) The DSA may use funds awarded under this part for the activities described in §367.1 and paragraph (b) of this section.
(b) For purposes of §367.1(a), IL services for older individuals who are blind include—
(1) Services to help correct blindness, such as—
(i) Outreach services;
(ii) Visual screening;
(iii) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and
(iv) Hospitalization related to these services;
(2) The provision of eyeglasses and other visual aids;
(3) The provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;
(4) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind to adjust to blindness;
(5) Guide services, reader services, and transportation;
(6) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;
(7) IL skills training, information and referral services, peer counseling, and individual advocacy training; and
(8) Other IL services, as defined in section 7(30) of the Act and as listed in 34 CFR 365.22.

(Authority: 29 U.S.C. 796k (d) and (e))

§ 367.4 What regulations apply?

The following regulations apply to the Independent Living Services for Older Individuals Who Are Blind program:
(a) The Education Department General Administrative Regulations (EDGAR) as follows:

1. 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to subgrants to an entity that is not a State or local government or Indian tribal organization.
2. 34 CFR part 75 (Direct Grant Programs), with respect to grants under subpart C.
3. 34 CFR part 76 (State-Administered Programs), with respect to grants under subpart D.
4. 34 CFR part 77 (Definitions That Apply to Department Regulations).
5. 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
6. 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
7. 34 CFR part 81 (General Education Provisions Act—Enforcement).
8. 34 CFR part 82 (New Restrictions on Lobbying).
9. 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
10. 34 CFR part 86 (Drug-Free Schools and Campuses).
(b) The regulations in this part 367.
(c) The following provisions in 34 CFR part 364:
1. Section 364.4 (What definitions apply?).
2. Section 364.5 (What is program income and how may it be used?)
3. Section 364.6 (What requirements apply to the obligation of Federal funds and program income?)
4. Section 364.30 (What notice must be given about the Client Assistance Program (CAP)?).
5. Section 364.37 (What access to records must be provided?).
6. Section 364.56 (What are the special requirements pertaining to the protection, use, and release of personal information?).
(d) The following provisions in 34 CFR part 365:
1. Section 365.13 (What requirements apply if the State’s non-Federal share is in cash?).
2. Section 365.14 (What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?).
3. Section 365.15 (What requirements apply if the State’s non-Federal share is in kind?).
4. Section 365.16 (What requirements apply to refunds and rebates?).

Authority: 29 U.S.C. 711(c) and 796k

§ 367.5 What definitions apply?
In addition to the definitions in 34 CFR 364.4, the following definitions also apply to this part:

Independent living services for older individuals who are blind means those services listed in §367.3(b).

Older individual who is blind means an individual age fifty-five or older whose severe visual impairment makes competitive employment extremely difficult to obtain but for whom IL goals are feasible.

Authority: 29 U.S.C. 711(c) and 796j

Subpart B—What Are the Application Requirements?

§ 367.10 How does a designated State agency (DSA) apply for an award?
To receive a grant under section 752(i) or a reallocation grant under section 752(j)(4) of the Act, a DSA must submit to and obtain approval from the Secretary of an application for assistance under this program at the time, in the form and manner, and containing the agreements, assurances, and information, that the Secretary determines to be necessary to carry out this program.

(Approved by the Office of Management and Budget under control number 1829-0018)

Authority: 29 U.S.C. 796k(c)(2) and (i)(1)

§ 367.11 What assurances must a DSA include in its application?
An application for a grant under section 752(1) or a reallocation grant under section 752(j)(4) of the Act must contain an assurance that—

(a) Grant funds will be expended only for the purposes described in §367.1;
(b) With respect to the costs of the program to be carried out by the State pursuant to this part, the State will make available, directly or through donations from public or private entities, non-Federal contributions toward these costs in an amount that is not less than $1 for each $9 of Federal funds provided in the grant;

(c) In carrying out §367.1(a) and (b), and consistent with 34 CFR 364.28, the DSA will seek to incorporate into and describe in the State plan under section 704 of the Act any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part and that the DSA determines to be effective;

(d) At the end of each fiscal year, the DSA will prepare and submit to the Secretary a report, with respect to each project or program the DSA operates or administers under this part, whether directly or through a grant or contract, that contains, information that the Secretary determines necessary for the proper and efficient administration of this program, including—

(1) The number and types of older individuals who are blind, including older individuals who are blind from minority backgrounds, and are receiving services;

(2) The types of services provided and the number of older individuals who are blind and are receiving each type of service;

(3) The sources and amounts of funding for the operation of each project or program;

(4) The amounts and percentages of resources committed to each type of service provided;

(5) Data on actions taken to employ, and advance in employment, qualified—

(i) Individuals with significant disabilities;

(ii) Older individuals with significant disabilities who are blind;

(iii) Individuals who are members of racial or ethnic minority groups;

(iv) Women; and

(v) Elderly individuals;

(6) A comparison, if appropriate, of prior year activities with the activities of the most recent year; and

(7) Any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part;

(e) The DSA will—

(1) Provide services that contribute to the maintenance of, or the increased independence of, older individuals who are blind; and

(2) Engage in—

(i) Capacity-building activities, including collaboration with other agencies and organizations;

(ii) Activities to promote community awareness, involvement, and assistance; and

(iii) Outreach efforts;

(f) The application is consistent with the State plan for providing IL services required by section 704 of the Act and subpart C of 34 CFR part 364; and

(g) The applicant has been designated by the State as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796k(d), (f), (h), and (i))

Subpart C—How Does the Secretary Award Discretionary Grants on a Competitive Basis?

§ 367.20 Under what circumstances does the Secretary award discretionary grants on a competitive basis to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards discretionary grants under this part on a competitive basis to States.

(b) Subparts A, B, C, and E of this part govern the award of competitive grants under this part.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796k(b)(1))

§ 367.21 How does the Secretary evaluate an application for a discretionary grant?

(a) The Secretary evaluates an application for a discretionary grant on the basis of the criteria in §367.22.
(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

§ 367.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a discretionary grant:

(a) Extent of need for the project (20 points). (1) The Secretary reviews each application to determine the extent to which the project meets the specific needs of the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine—

(i) The extent that the need for IL services for older individuals who are blind is justified, in terms of complementing or expanding existing IL and aging programs and facilities; and

(ii) The potential of the project to support the overall mission of the IL program, as stated in section 701 of the Act.

(b) Plan of operation (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality and adequacy of the applicant’s plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability;

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups; and

(7) The extent to which the plan of operation and management includes involvement by older individuals who are blind in planning and conducting program activities.

(c) Quality of key personnel (10 points). (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(2) The Secretary reviews each application to determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) Budget and cost effectiveness (5 points). The Secretary reviews each application to determine the extent to which—
(1) The budget is adequate to support the project;
(2) Costs are reasonable in relation to the objectives of the project; and
(3) The applicant demonstrates the cost-effectiveness of project services in comparison with alternative services and programs available to older individuals who are blind.

(e) Evaluation plan (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant’s methods of evaluation—

(1) Accurately evaluate the success and cost-effectiveness of the project;
(2) Are objective and produce data that are quantifiable; and
(3) Will determine how successful the project is in meeting its goals and objectives.

(f) Adequacy of resources (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment, and supplies.

(g) Service comprehensiveness (20 points). (1) The Secretary reviews each application to determine the extent to which the proposed outreach activities promote maximum participation of the target population within the geographic area served by the project.

(2) The Secretary reviews each application to determine the extent to which the DSA addresses the unmet IL needs in the State of older individuals with varying degrees of significant visual impairment. In making this determination, the Secretary reviews the extent to which the DSA makes available appropriate services listed in §367.3(b), which may include any or all of the following services:

(i) Orientation and mobility skills training that will enable older individuals who are blind to travel independently, safely, and confidently in familiar and unfamiliar environments.

(ii) Skills training in Braille, handwriting, typewriting, or other means of communication.

(iii) Communication aids, such as large print, cassette tape recorders, and readers.

(iv) Training to perform daily living activities, such as meal preparation, identifying coins and currency, selection of clothing, telling time, and maintaining a household.

(v) Provision of low-vision services and aids, such as magnifiers to perform reading and mobility tasks.

(vi) Family and peer counseling services to assist older individuals who are blind adjust emotionally to the loss of vision as well as to assist in their integration into the community and its resources.

(h) Likelihood of sustaining the program (10 points). The Secretary reviews each application to determine—

(1) The likelihood that the service program will be sustained after the completion of Federal project grant assistance;

(2) The extent to which the applicant intends to continue to operate the service program through cooperative agreements and other formal arrangements; and

(3) The extent to which the applicant will identify and, to the extent possible, use comparable services and benefits that are available under other programs for which project participants may be eligible.

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Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1)

§367.23 What additional factor does the Secretary consider?

In addition to the criteria in §367.22, the Secretary considers the geographic distribution of projects in making an award.

Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1)

Subpart D—How Does the Secretary Award Contingent Formula Grants?

§367.30 Under what circumstances does the Secretary award contingent formula grants to States?

(a) In the case of a fiscal year for which the amount appropriated under
§ 367.31 How are allotments made?

(a) For purposes of making grants under section 752(c) of the Act and this subpart, the Secretary makes an allotment to each State in an amount determined in accordance with section 752(j) of the Act.

(b) The Secretary makes a grant to a DSA in the amount of the allotment to the State under section 752(j) of the Act if the DSA submits to and obtains approval from the Secretary of an application for assistance under this program that meets the requirements of section 752(1) of the Act and §§367.10 and 367.11.

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(Authority: 29 U.S.C. 796k(c)(2))

§ 367.32 How does the Secretary reallocate funds under section 752(j)(4) of the Act?

(a) From the amounts specified in paragraph (b) of this section, the Secretary may make reallocation grants to States, as determined by the Secretary, whose population of older individuals who are blind has a substantial need for the services specified in section 752(d) of the Act and §367.3(b), relative to the populations in other States of older individuals who are blind.

(b) The amounts referred to in paragraph (a) of this section are any amounts that are not paid to States under section 752(c)(2) of the Act and §367.31 as a result of—

(1) The failure of a DSA to prepare, submit, and receive approval of an application under section 752(1) of the Act and in accordance with §§367.10 and 367.11; or

(2) Information received by the Secretary from the DSA that the DSA does not intend to expend the full amount of the State’s allotment under section 752(c) of the Act and this subpart.

(c) A reallocation grant to a State under paragraph (a) of this section is subject to the same conditions as grants made under section 752(a) of the Act and this part.

(d) Any funds made available to a State for any fiscal year pursuant to this section are regarded as an increase in the allotment of the State under §367.31 for that fiscal year only.

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(Authority: 29 U.S.C. 796k(j)(4))

Subpart E—What Conditions Must Be Met After an Award?

§ 367.40 What matching requirements apply?

(a) Non-Federal contributions required by §367.11(b) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(b) For purposes of non-Federal contributions required by §367.11(b), amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of non-Federal contributions.

(Authority: 29 U.S.C. 796k(f))

§ 367.41 When may a DSA award grants or contracts?

(a) A DSA may operate or administer the program or projects under this part to carry out the purposes specified in §367.1, either directly or through—

(1) Grants to public or private non-profit agencies or organizations; or

(2) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(b) Notwithstanding paragraph (a) of this section, a DSA may enter into assistance contracts, but not procurement contracts, with public or private nonprofit agencies or organizations in a manner consistent with 34 CFR 366.32(e).

(Authority: 29 U.S.C. 796k(g) and 132(b)(2)(A))
§ 367.42 When does the Secretary award noncompetitive continuation grants?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards non-competitive continuation grants for a multi-year project to pay for the costs of activities for which a grant was awarded—

(1) Under chapter 2 of title VII of the Act; or

(2) Under part C of title VII of the Act, as in effect on October 28, 1992.

(b) To be eligible to receive a non-competitive continuation grant under this part, a grantee must satisfy the applicable requirements in this part and in 34 CFR 75.253.

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(Authority: 29 U.S.C. 796k(b)(2))

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

§ 369.1 What are the Vocational Rehabilitation Service Projects?

(a) These programs provide financial assistance for the support of special project activities for providing vocational rehabilitation services and related services to individuals with disabilities and other persons.

(1) Vocational Rehabilitation Service Projects for American Indians with Disabilities (34 CFR part 371).

(2) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities.

(3) Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities.

(4) Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youths with Disabilities (34 CFR part 376).

(5) Projects for Initiating Special Recreation Programs for Individuals with Disabilities.
§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs listed in §369.1(b):

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities); except the part 79 does not apply to the Vocational Rehabilitation Service Program for American Indians with Disabilities.

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).
§ 369.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR part 77 apply to the programs under Vocational Rehabilitation Service Projects—

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Profit
Project Period
Public
Secretary
Work of Art

(b) The following definitions also apply to programs under Vocational Rehabilitation Service Projects:


Community rehabilitation program means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

(1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Recreational therapy;

(4) Physical and occupational therapy;

(5) Speech, language and hearing therapy;

(6) Psychiatric, psychological and social services, including positive behavior management;

(7) Assessment for determining eligibility and vocational rehabilitation needs;

(8) Rehabilitation technology;

(9) Job development, placement, and retention services;

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services for individuals who are blind;

(12) Extended employment;

(13) Psychosocial rehabilitation services;

(14) Supported employment services and extended services;

(15) Services to family members when necessary to the vocational rehabilitation of the individual;

(16) Personal assistance services; or

(17) Services similar to the services described in paragraphs (1) through (16) of this definition.

Employment outcome means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, the practice of a profession, self-employment, homemaking, farm or family work (including work for which payment is in kind rather than cash), extended employment in a community rehabilitation program, supported employment, or other gainful work.

Individual who is blind means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

Individual with a disability means any individual who—

(1) Has a physical or mental impairment that for that individual constitutes or results in a substantial impediment to employment; and
(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided under title I, III, VI, or VIII of the Act.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

Indipidual with a severe disability means an individual with a disability—

(1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined to cause comparable substantial functional limitation.

(Authority: Sec. 7(15)(A) of the Act; 29 U.S.C. 706(15)(A))

Physical and mental restoration services means—

(1) Medical or corrective surgical treatment for the purpose of correcting or modifying substantially a physical or mental condition that is stable or slowly progressive and constitutes a substantial impediment to employment and that is likely, within a reasonable period of time, to be corrected or substantially modified as a result of the medical or surgical treatment;

(2) Diagnosis and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(3) Dentistry;

(4) Nursing services;

(5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(6) Convalescent or nursing home care;

(7) Drugs and supplies;

(8) Prosthetic, orthotic, or other assistive devices, including hearing aids essential to obtaining or retaining employment;

(9) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by qualified persons under State licensure laws, that are selected by the individual;

(10) Podiatry;

(11) Physical therapy;

(12) Occupational therapy;

(13) Speech and hearing therapy;

(14) Psychological services;

(15) Therapeutic recreation services;

(16) Medical or medically related social work services;

(17) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;

(18) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(19) Other medical or medically related rehabilitation services, including art therapy, dance therapy, music therapy, and psychodrama.

(Authority: Sec. 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

Physical or mental impairment means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual’s employment activities or vocational functioning.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

Reservation means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations.
under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Sec. 130(c) of the Act; 29 U.S.C. 750(c))

State agency means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sec. 7(3)(A) and 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

State plan means the State plan for vocational rehabilitation services. (34 CFR part 361)

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

State unit, State vocational rehabilitation unit or designated State unit means either—

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: Sec. 7(3) of the Act; 29 U.S.C. 706(3))

Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) significantly restricts an individual’s occupational performance by preventing his preparing for, obtaining, or retaining employment consistent with his capacities and abilities.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Vocational rehabilitation services: (1) When provided to an individual, means any goods or services necessary to render an individual with a disability employable, including, but not limited to, the following—

(i) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(ii) Counseling, guidance, and work-related placement services for individuals with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and follow-up, follow-along, and specific diagnosis services necessary to assist such individuals to maintain, regain, or advance in employment;

(iii) Vocational and other training services for individuals with disabilities, including personal and vocational adjustment, books, or other training materials;

(iv) Services to the families of such individuals with disabilities, if necessary to the adjustment or rehabilitation of such individuals;

(v) Physical and mental restoration services;

(vi) Maintenance for additional costs incurred while participating in rehabilitation;

(vii) Interpreter services and note-taking services for individuals who are deaf, including tactile interpreting for individuals who are deaf-blind;

(viii) Reader services and note-taking services for those individuals who are determined to be blind after an examination by qualified personnel under State licensure laws;

(ix) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety and law enforcement, and other appropriate service employment;

(x) Rehabilitation teaching services and orientation and mobility services for individuals who are blind;

(xi) Occupational licenses, tools, equipment, and initial stocks and supplies;

(xii) Transportation in connection with the rendering of any vocational rehabilitation service;

(xiii) Telecommunications, sensory, and other technological aids and devices;

(xiv) Rehabilitation technology services;
(xv) Referral and other services designed to assist individuals with disabilities in securing needed services from other agencies;

(xvi) Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives;

(xvii) On-the-job or other related personal assistance services provided while an individual with a disability is receiving vocational rehabilitation services; and

(xviii) Supported employment services.

(Authority: Sec. 103(a) of the Act; 29 U.S.C. 723(a))

(2) When provided for the benefit of groups of individuals, Vocational rehabilitation services also mean—

(i) In the case of any type of small business enterprise operated by individuals with the most severe disabilities under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(ii) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a rehabilitation facility to provide services that promote integration and competitive employment;

(iii) The provision of services, including services provided at community rehabilitation programs, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized written rehabilitation program of any one individual with disabilities;

(iv) The use of existing telecommunications systems;

(v) The use of services providing recorded material for persons who are blind and captioned films or video cassettes for persons who are deaf; and

(vi) Technical assistance and support services to businesses that are not subject to title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(Authority: Sec. 103(b) of the Act; 29 U.S.C. 723(b))


Subpart B—Reserved

Subpart C—How Does One Apply for a Grant?

§ 369.20 What are the application procedures for these programs?

The Secretary gives the appropriate State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§75.155–75.159.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.21 What application requirement applies to these programs?

Each applicant for a grant under a program covered by this part must include in its application a description of the manner in which it will address the needs of individuals with disabilities from minority backgrounds.

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(Authority: Sec. 21(b)(5) of the Act; 29 U.S.C. 718b)


Subpart D—How Does the Secretary Make a Grant?

§ 369.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 711(c))

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making awards under these programs, considers such factors as—

(a) The geographical distribution of projects in each program category throughout the country; and

(b) The past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(a)).


Subpart E—What Conditions Must Be Met by a Grantee?

§§ 369.40—369.41 [Reserved]

§ 369.42 What special requirements affect provision of services to individuals with disabilities?

(a) Vocational rehabilitation services provided in projects assisted under these programs must be provided in the same manner as services provided under the State plan for vocational rehabilitation services under 34 CFR part 361.

(b) Each grantee under a program covered by this part must advise applicants for or recipients of services under its project, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State’s Client Assistance Program, including information on seeking assistance from that program.

(Authority: Secs. 20 and 306(h) of the Act; 29 U.S.C. 718a and 716(h))


§ 369.43 What are the affirmative action plan requirements affecting grantees?

A recipient of Federal assistance must develop and implement an affirmative action plan to employ and advance in employment qualified individuals with disabilities. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))


§ 369.44 What wage and hour standards apply to community rehabilitation programs?

All applicable Federal and State wage and hour standards must be observed in projects carried out in community rehabilitation programs.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))


§ 369.45 What are the special requirements pertaining to the membership of project advisory committees?

If an advisory committee is established under a project, its membership must include persons with disabilities or their representatives and other individuals to be assisted within the project, providers of services, and other appropriate individuals.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))


§ 369.46 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.
(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, have been obtained in writing. The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))


§ 369.47 What are the special requirements affecting the collection of data from State agencies?

If the collection of data is necessary either from individuals with disabilities being served by two or more State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under this part.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))


PART 370—CLIENT ASSISTANCE PROGRAM

Subpart A—General

Sec.

370.3 What are the special requirements pertaining to the protection, use, and release of personal information?

AUTHORITY: 29 U.S.C. 732, unless otherwise noted.
§ 370.1 What is the Client Assistance Program (CAP)?

The purpose of this program is to establish and carry out CAPs that—
(a) Advise and inform clients and client applicants of all services and benefits available to them through programs authorized under the Rehabilitation Act of 1973 (Act), as amended;
(b) Assist and advocate for clients and client applicants in their relationships with projects, programs, and community rehabilitation programs providing services under the Act; and
(c) Inform individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under the Act and under title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101–12213.

(Authority: 29 U.S.C. 732(a))

§ 370.2 Who is eligible for an award?

(a) Any State, through its Governor, is eligible for an award under this part if the State submits, and receives approval of, an application in accordance with §370.20.
(b) The Governor of each State shall designate a public or private agency to conduct the State’s CAP under this part.
(c) Except as provided in paragraph (d) of this section, the Governor shall designate an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act.
(d) The Governor may, in the initial designation, designate an agency that provides treatment, services, or rehabilitation to individuals with disabilities under the Act if, at any time before February 22, 1984, there was an agency in the State that both—
(1) Was a grantee under section 112 of the Act by serving as a client assistance agency and directly carrying out a CAP; and
(2) Was, at the same time, a grantee under any other provision of the Act.

(e) Except as permitted in paragraph (f) of this section, an agency designated by the Governor of a State to conduct the State’s CAP under this part may not award a subgrant to or enter into a contract with an agency that provides services under this Act either to carry out the CAP or to provide services under the CAP.

(f) An agency designated by the Governor of a State to conduct the State’s CAP under this part may enter into a contract with a center for independent living (center) that provides services under the Act if—
(1) On February 22, 1984, the designated agency was contracting with one or more centers to provide CAP services; and
(2) The designated agency meets the requirements of paragraph (g) of this section.

(g) A designated agency that contracts to provide CAP services with a center (pursuant to paragraph (f) of this section) or with an entity or individual that does not provide services under the Act remains responsible for—
(1) The conduct of a CAP that meets all of the requirements of this part;
(2) Ensuring that the center, entity, or individual expends CAP funds in accordance with—
(i) The regulations in this part; and
(ii) The cost principles applicable to the designated agency; and
(3) The direct day-to-day supervision of the CAP services being carried out by the contractor. This day-to-day supervision must include the direct supervision of the individuals who are employed or used by the contractor to provide CAP services.

(Authority: 29 U.S.C. 711(c) and 732(a) and (c)(1)(A))

§ 370.3 Who is eligible for services and information under the CAP?

(a) Any client or client applicant is eligible for the services described in §370.4.
(b) Any individual with a disability is eligible to receive information on the services and benefits available to individuals with disabilities under the Act and title I of the ADA.

(Authority: 29 U.S.C. 732(a))
§ 370.4 What kinds of activities may the Secretary fund?

(a) Funds made available under this part must be used for activities consistent with the purposes of this program, including—

(1) Advising and informing clients, client applicants, and individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of—

(i) All services and benefits available to them through programs authorized under the Act; and

(ii) Their rights in connection with those services and benefits;

(2) Informing individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under title I of the ADA;

(3) Upon the request of a client or client applicant, assisting and advocating on behalf of a client and client applicant in his or her relationship with projects, programs, and community rehabilitation programs that provide services under the Act by engaging in individual or systemic advocacy and pursuing, or assisting and advocating on behalf of a client and client applicant to pursue, legal, administrative, and other available remedies, if necessary—

(i) To ensure the protection of the rights of a client or client applicant under the Act; and

(ii) To facilitate access by individuals with disabilities and individuals with disabilities who are making the transition from public school programs to services funded under the Act; and

(4) Providing information to the public concerning the CAP.

(b) In providing assistance and advocacy services under this part with respect to services under title I of the Act, a designated agency may provide assistance and advocacy services to a client or client applicant to facilitate the individual’s employment, including assistance and advocacy services with respect to the individual’s claims under title I of the ADA, if those claims under title I of the ADA are directly related to services under the Act that the individual is receiving or seeking.

(Authority: 29 U.S.C. 732(a))

§ 370.5 What regulations apply?

The following regulations apply to the expenditure of funds under the CAP:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations) applies to the designated agency if the designated agency is not a State agency, local government agency, or Indian tribal organization. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of part 74.

(2) 34 CFR part 76 (State-Administered Programs) applies to the State and, if the designated agency is a State or local government agency, to the designated agency, except for—

(i) § 76.103;

(ii) §§ 76.125 through 76.137;

(iii) §§ 76.300 through 76.401;

(iv) § 76.708;

(v) § 76.734; and

(vi) § 76.740.

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applies to the State and, if the designated agency is a State or local government agency, to the designated agency.

(6) 34 CFR part 81 (General Education Provisions Act-Enforcement) applies to both the State and the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of Part 81.

(7) 34 CFR part 82 (New Restrictions on Lobbying).
§ 370.6

(b) The regulations in this part 370.

(c) The regulations in 34 CFR 369.43, 369.46 and 369.48, relating to various conditions to be met by grantees.

Note: Any funds made available to a State under this program that are transferred by a State to a designated agency do not comprise a subgrant as that term is defined in 34 CFR 77.1. The designated agency is not, therefore, in these circumstances a subgrantee, as that term is defined in that section or in 34 CFR part 74, 76, or 80.

(Authority: 29 U.S.C. 711(c) and 732)

§ 370.6 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Award

EDGAR

Fiscal year

Nonprofit

Private

Public

Secretary

(b) Other definitions. The following definitions also apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual’s cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether State, local or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether State, local or Federal), or as in the case of a lawyer or non-lawyer representing an individual’s cause before private entities or organizations, or government agencies (whether State, local or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is individual advocacy;

(2) More than one individual or a group or class of individuals, in which case it is systems (or systemic) advocacy; or

(3) Oneself, in which case it is self advocacy.

Class action means a formal legal suit on behalf of a group or class of individuals filed in a Federal or State court that meets the requirements for a “class action” under Federal or State law. “Systems (or systemic) advocacy” that does not include filing a formal class action in a Federal or State court is not considered a class action for purposes of this part.

Client or client applicant means an individual receiving or seeking services under the Act, respectively.

Designated agency means the agency designated by the Governor under §370.2 to conduct a client assistance program under this part.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator may not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

Services under the Act means vocational rehabilitation, independent living, supported employment, and other similar rehabilitation services provided under the Act. For purposes of the CAP, the term “services under the Act” does not include activities carried out under the protection and advocacy program authorized by section 509 of the Act (i.e., the Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381).

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (but only until September 30, 1998), except for purposes of the allotments under section 112 of the
§ 370.11 What requirements apply to a notice of proposed redesignation?

(a) Prior to any redesignation of the agency that conducts the CAP, the Governor shall give written notice of the proposed redesignation to the designated agency, the State Rehabilitation Advisory Council (SRAC), and the State Independent Living Council (SILC) and publish a public notice of the Governor’s intention to redesignate. Both the notice to the designated agency, the SRAC, and the SILC and the public notice must include, at a minimum, the following:

(1) The Federal requirements for the CAP (section 112 of the Act).
(2) The goals and function of the CAP.
(3) The name of the current designated agency.
(4) A description of the current CAP and how it is administered.
(5) The reason or reasons for proposing the redesignation, including why the Governor believes good cause exists for the proposed redesignation.
(6) The effective date of the proposed redesignation.
(7) The name of the agency the Governor proposes to administer the CAP.
(8) A description of the system that the redesignated (i.e., new) agency would administer.

(b) The notice to the designated agency must—

(1) Be given at least 30 days in advance of the Governor’s written decision to redesignate; and
§ 370.12 How does a designated agency preserve its right to appeal a redesignation?

(a) To preserve its right to appeal a Governor’s written decision to redesignate (see §370.13), a designated agency must respond in writing to the Governor within 30 days after it receives the Governor’s notice of proposed redesignation.

(b) The designated agency shall send its response to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received the designated agency’s response.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.13 What are the requirements for a decision to redesignate?

(a) If, after complying with the requirements of §370.11, the Governor decides to redesignate the designated agency, the Governor shall provide to the designated agency a written decision to redesignate that includes the rationale for the redesignation. The Governor shall send the written decision to redesignate to the designated agency by registered or certified mail, return receipt requested, or other means that provides a record that the designated agency received the Governor’s written decision to redesignate.

(b) If the designated agency submitted to the Governor a timely response to the Governor’s notice of proposed redesignation, the Governor shall inform the designated agency that it has at least 15 days from receipt of the Governor’s written decision to redesignate to file a formal written appeal with the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(A))

§ 370.14 How does a designated agency appeal a written decision to redesignate?

(a) A designated agency may appeal to the Secretary a Governor’s written decision to redesignate only if the designated agency submitted to the Governor a timely written response to the Governor’s notice of proposed redesignation in accordance with §370.12.

(b) To appeal to the Secretary a Governor’s written decision to redesignate, a designated agency shall file a formal written appeal with the Secretary within 15 days after the designated agency’s receipt of the Governor’s written decision to redesignate. The date of filing of the designated agency’s written appeal with the Secretary will be determined in a manner consistent with the requirements of 34 CFR 81.12.

(c) If the designated agency files a written appeal with the Secretary, the designated agency shall send a separate copy of this appeal to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received a copy of the designated agency’s appeal to the Secretary.

(d) The designated agency’s written appeal to the Secretary must state why the Governor has not met the burden of showing that good cause for the redesignation exists or has not met the procedural requirements under §§370.11 and 370.13.

(e) The designated agency’s written appeal must be accompanied by the designated agency’s written response.
§ 370.15 What must the Governor of a State do upon receipt of a copy of a designated agency’s written appeal to the Secretary?

(a) If the designated agency files a formal written appeal in accordance with §370.14, the Governor shall, within 15 days of receipt of the designated agency’s appeal, submit to the Secretary copies of the following:
(1) The written notice of proposed redesignation sent to the designated agency.
(2) The public notice of proposed redesignation.
(3) Transcripts of all public hearings held on the proposed redesignation.
(4) Written comments received by the Governor in response to the public notice of proposed redesignation.
(5) The Governor’s written decision to redesignate, including the rationale for the decision.
(6) Any other written documentation or submissions the Governor wishes the Secretary to consider.
(7) Any other information requested by the Secretary.
(b) As part of the submissions under this section, the Governor may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

Section 370.16 How does the Secretary review an appeal of a redesignation?

(a) If either party requests a meeting under §370.14(f) or §370.15(b), the meeting is to be held within 30 days of the submissions by the Governor under §370.15, unless both parties agree to waive this requirement. The Secretary promptly notifies the parties of the date and place of the meeting.
(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the submissions required from the Governor under §370.15, the Secretary issues to the parties a final written decision on whether the redesignation was for good cause.
(c) The Secretary reviews a Governor’s decision based on the record submitted under §§370.14 and 370.15 and any other relevant submissions of other interested parties. The Secretary may affirm or, if the Secretary finds that the redesignation is not for good cause, remand for further findings or reverse a Governor’s redesignation.
(d) The Secretary sends copies of the decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

§ 370.17 When does a redesignation become effective?

A redesignation does not take effect for at least 15 days following the designated agency’s receipt of the Governor’s written decision to redesignate or, if the designated agency appeals, for at least 5 days after the Secretary has affirmed the Governor’s written decision to redesignate.

Subpart C—How Does a State Apply for a Grant?

§ 370.20 What must be included in a request for a grant?

(a) Each State seeking assistance under this part shall submit to the Secretary, in writing, each fiscal year, an
§ 370.30 Application that includes, at a minimum—

(1) The name of the designated agency; and

(2) An assurance that the designated agency meets the independence requirement of section 112(c)(1)(A) of the Act and §370.2(c), or that the State is exempted from that requirement under section 112(c)(1)(A) of the Act and §370.2(d).

(b)(1) Each State also shall submit to the Secretary an assurance that the designated agency has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of clients or client applicants within the State.

(2) The authority to pursue remedies described in paragraph (b)(1) of this section must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining necessary services, such as legal representation, from outside sources.

(c) Each State also shall submit to the Secretary assurances that—

(1) All entities conducting, administering, operating, or carrying out programs within the State that provide services under the Act to individuals with disabilities in the State will advise all clients and client applicants of the existence of the CAP, the services provided under the program, and how to contact the designated agency;

(2) The designated agency will meet each of the requirements in this part; and

(3) The designated agency will provide the Secretary with the annual report required by section 112(g)(4) of the Act and §370.44.

(d) To allow a designated agency to receive direct payment of funds under this part, a State must provide to the Secretary, as part of its application for assistance, an assurance that direct payment to the designated agency is not prohibited by or inconsistent with State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 732 (b) and (f))
§ 370.31 How does the Secretary reallocate funds?

(a) The Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

(b) A designated agency shall inform the Secretary at least 90 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallocation any of those CAP funds that it will be unable to obligate in that fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(e)(2))

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

§ 370.40 What are allowable costs?

(a) If the designated agency is a State or local government agency, the designated agency shall apply the cost principles in accordance with 34 CFR 80.22(b).

(b) If the designated agency is a private nonprofit organization, the designated agency shall apply the cost principles in accordance with subpart Q of 34 CFR part 74.

(c) In addition to those allowable costs established in EDGAR, and consistent with the program activities listed in §370.4, the cost of travel in connection with the provision to a client or client applicant of assistance under this program is allowable. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client applicant.

(d) The State and the designated agency are accountable, both jointly and severally, to the Secretary for the proper use of funds made available under this part. However, the Secretary may choose to recover funds under the procedures in 34 CFR part 81 from either the State or the designated agency, or both, depending on the circumstances of each case.

(Authority: 29 U.S.C. 711(c) and 732(c)(3))

§ 370.41 What conflict of interest provision applies to employees of a designated agency?

(a) Except as permitted by paragraph (b) of this section, an employee of a designated agency, of a center under contract with a designated agency (as permitted by §370.2(f)), or of an entity or individual under contract with a designated agency, who carries out any CAP duties or responsibilities, while so employed, may not—

(1) Serve concurrently as a staff member of, consultant to, or in any other capacity within, any other rehabilitation project, program, or community rehabilitation program receiving assistance under the Act in the State; or

(2) Provide any services under the Act, other than CAP and PAIR services.

(b) An employee of a designated agency or of a center under contract with a designated agency, as permitted by §370.2(f), may—

(1) Receive a traineeship under section 302 of the Act;

(2) Provide services under the PAIR program;

(3) Represent the CAP on any board or council (such as the SRAC) if CAP representation on the board or council is specifically permitted or mandated by the Act; and

(4) Consult with policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs, if consultation with the designated agency is specifically permitted or mandated by the Act.

(Authority: 29 U.S.C. 732(g)(1))

§ 370.42 What access must the CAP be afforded to policymaking and administrative personnel?

The CAP must be afforded reasonable access to policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs. One way in which the CAP may be provided that access would be to include the director of the designated agency among the individuals to be consulted on matters of general policy development and implementation, as required
§ 370.43 What requirement applies to the use of mediation procedures?

(a) Each designated agency shall implement procedures designed to ensure that, to the maximum extent possible, good faith negotiations and mediation procedures are used before resorting to formal administrative or legal remedies. In designing these procedures, the designated agency may take into account its level of resources.

(b) For purposes of this section, mediation may involve the use of professional mediators, other independent third parties mutually agreed to by the parties to the dispute, or an employee of the designated agency who—

(1) Is not assigned to advocate for or otherwise represent or is not involved with advocating for or otherwise representing the client or client applicant who is a party to the mediation; and

(2) Has not previously advocated for or otherwise represented or been involved with advocating for or otherwise representing that same client or client applicant.

(Authority: 29 U.S.C. 732(g)(3))

§ 370.44 What reporting requirement applies to each designated agency?

In addition to the program and fiscal reporting requirements in EDGAR that are applicable to this program, each designated agency shall submit to the Secretary, no later than 90 days after the end of each fiscal year, an annual report on the operation of its CAP during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by the program. The annual report must contain information on—

(a) The number of requests received by the designated agency for information on services and benefits under the Act and title I of the ADA;

(b) The number of referrals to other agencies made by the designated agency and the reason or reasons for those referrals;

(c) The number of requests for advocacy services received by the designated agency from clients or client applicants;

(d) The number of the requests for advocacy services from clients or client applicants that the designated agency was unable to serve;

(e) The reasons that the designated agency was unable to serve all of the requests for advocacy services from clients or client applicants; and

(f) Any other information that the Secretary may require.

(Authority: 29 U.S.C. 732(g)(4) and (5))

§ 370.45 What limitation applies to the pursuit of legal remedies?

A designated agency may not bring any class action in carrying out its responsibilities under this part.

(Authority: 29 U.S.C. 732(d))

§ 370.46 What consultation requirement applies to a Governor of a State?

In designating a client assistance agency under §370.2, redesignating a client assistance agency under §370.10(a), and carrying out the other provisions of this part, the Governor shall consult with the director of the State vocational rehabilitation agency (or, in States with both a general agency and an agency for the blind, the directors of both agencies), the head of the developmental disability protection and advocacy agency, and representatives of professional and consumer organizations serving individuals with disabilities in the State.

(Authority: 29 U.S.C. 732(c)(2))

§ 370.47 When must grant funds be obligated?

(a) Any funds appropriated for a fiscal year to carry out the CAP that are not expended or obligated by the designated agency prior to the beginning of the succeeding fiscal year remain available for obligation by the designated agency during the succeeding fiscal year in accordance with 34 CFR 76.705 through 76.707.

(b) A designated agency shall inform the Secretary within 90 days after the end of the fiscal year for which the
CAP funds were made available whether the designated agency carried over to the succeeding fiscal year any CAP funds that it was unable to obligate by the end of the fiscal year.

(Approved by the Office of Management and Budget under control number 1820-0520)

(Authority: 29 U.S.C. 718)

§ 370.48 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any designated agency under this part, including lists of names, addresses, photographs, and records of evaluation, must be held strictly confidential.

(b) The designated agency’s use of information and records concerning individuals must be limited only to purposes directly connected with the CAP, including program evaluation activities. Except as provided in paragraphs (c) and (e) of this section, this information may not be disclosed, directly or indirectly, other than in the administration of the CAP, unless the consent of the individual to whom the information applies, or his or her parent, legal guardian, or other legally authorized representative or advocate (including the individual’s advocate from the designated agency), has been obtained in writing. A designated agency may not produce any report, evaluation, or study that reveals any personally identifiable information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraphs (d) and (e) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements are to have complete access to all—

(1) Records of the designated agency that receives funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d) For purposes of conducting any periodic audit, preparing or producing any report, or conducting any evaluation of the performance of the CAP established or assisted under this part, the Secretary does not require the designated agency to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the CAP.

(e) Notwithstanding paragraph (d) of this section and consistent with paragraph (f) of this section, a designated agency shall disclose to the Secretary, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or any other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the CAP if—

(1) An audit, evaluation, monitoring review, State plan assurance review, or other investigation produces reliable evidence that there is probable cause to believe that the designated agency has violated its legislative mandate or misused Federal funds; or

(2) The Secretary determines that this information may reasonably lead to further evidence that is directly related to alleged misconduct of the designated agency.

(f) In addition to the protection afforded by paragraph (d) of this section, the right of a person or designated agency not to produce documents or disclose information to the Secretary is governed by the common law of privileges, as interpreted by the courts of the United States.

(Authority: 29 U.S.C. 711(c) and 732(g)(6))
§ 371.1 Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

371.10 What types of projects are authorized under this program?

Subpart C—How Does One Apply for a Grant?

371.20 What are the application procedures under this program?
371.21 What are the special application requirements related to the State plan Program?

Subpart D—How Does the Secretary Make a Grant?

371.31 How are grants awarded?

Subpart E—What Conditions Apply to a Grantee Under This Program?

371.40 What are the matching requirements?
371.41 What are allowable costs?
371.42 How are services to be administered under this program?
371.43 What other special conditions apply to this program?

AUTHORITY: 29 U.S.C. 711(c) and 750, unless otherwise noted.
SOURCE: 46 FR 5423, Jan. 19, 1981, unless otherwise noted.

§ 371.2 Who is eligible for assistance under this program?

Applications may be made only by the governing bodies of Indian tribes and consortia of those governing bodies located on Federal and State reservations.

(Authority: Sec. 130(a) of the Act; 29 U.S.C. 750(a))


§ 371.3 What regulations apply to this program?

The following regulations apply to this program—
(a) 34 CFR part 369;
(b) The regulations in this part 371.

(Authority: Sec. 130 of the Act; 29 U.S.C. 750)

§ 371.4 What definitions apply to this program?

(a) The definitions in 34 CFR part 369 apply to this program;
(b) The following definitions also apply specifically to this program—

American Indian means a person who is a member of an Indian tribe.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Consortium means two or more eligible governing bodies of Indian tribes that make application as a single applicant under an agreement whereby each governing body is legally responsible for carrying out all of the activities in the application.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Governing bodies of Indian tribes means those duly elected or appointed representatives of an Indian tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts, agreements, and grants on behalf of their constituency.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Indian tribe means any Federal or State Indian band, rancheria, pueblo, colony, and community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)
Reservation means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Secs. 12(c) and 130(c) of the Act; 29 U.S.C. 711(c) and 750(c))


§ 371.5 What is the length of the project period under this program?

(a) The Secretary approves a project period of up to three years.

(b) The Secretary may extend a grant for up to two additional years if the grantee includes in its extension request—

(1) An assurance that the project is in compliance with all applicable program requirements; and

(2) Satisfactory evidence that—

(i) The project has made substantial and measurable progress in meeting the needs of American Indians with disabilities on the reservation or reservations it serves;

(ii) American Indians with disabilities who have received project services have achieved employment outcomes consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice; and

(iii) There is a continuing need for the project.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Section 130(b)(3) of the Act; 29 U.S.C. 750(b)(3))

[60 FR 58137, Nov. 24, 1995]

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 371.10 What types of projects are authorized under this program?

The Vocational Rehabilitation Service Program for American Indians with Disabilities provides financial assistance for the establishment and operation of tribal vocational rehabilitation service programs for American Indians with disabilities who reside on Federal or State reservations.

(Authority: Sec. 130(a) of the Act; 29 U.S.C. 750(a))

[59 FR 8338, Feb. 18, 1994]

Subpart C—How Does One Apply for a Grant?

§ 371.20 What are the application procedures for this program?

In the development of an application, a governing body or consortium is required to consult with the designated State unit or the designated State units of the State or States in which vocational rehabilitation services are to be provided.

(Authority: Sec. 130(b) of the Act; 29 U.S.C. 750(b))


§ 371.21 What are the special application requirements related to the State plan program?

Each applicant under this program must provide evidence that—

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit under 34 CFR part 361.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(b) All decisions affecting eligibility for and the nature and scope of vocational rehabilitation services to be provided, and the provision of these services, will be made by the tribal vocational rehabilitation program through its vocational rehabilitation unit and will not be delegated to another agency or individual.

(Authority: Secs. 12(c) and 101(a) of the Act; 29 U.S.C. 711(c) and 721(a))

(c) Priority in the delivery of vocational rehabilitation service will be given to those American Indians with disabilities who are the most severely disabled.

(Authority: Secs. 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(d) An order of selection of individuals with disabilities to be served...
§ 371.31 How are grants awarded?

To the extent that funds have been appropriated under this program, the Secretary approves all applications which meet acceptable standards of program quality. If any application is not approved because of deficiencies in proposed program standards, the Secretary provides technical assistance to the applicant Indian tribe with respect to any areas of the proposal which were judged to be deficient.
(c) Waiver of non-Federal share. In order to carry out the purposes of the program, the Secretary may waive the non-Federal share requirement, in part or in whole, only if the applicant demonstrates that it does not have sufficient resources to contribute the non-Federal share of the cost of the project.

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(a))

[52 FR 30556, Aug. 14, 1987]

§ 371.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§75.530–75.534, the following items are allowable costs under this program—

(1) Expenditures for the provision of vocational rehabilitation services and for the administration, including staff development, of a program of vocational rehabilitation services.

(2) Expenditures for services reflecting the cultural background of the American Indians being served, including treatment provided by native healing practitioners who are recognized as such by the tribal vocational rehabilitation program when the services are necessary to assist an individual with disabilities to achieve his or her vocational rehabilitation objective.

(b) Expenditures may not be made under this program to cover the costs of providing vocational rehabilitation services to individuals with disabilities not residing on Federal or State reservations.

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(a))


§ 371.42 How are services to be administered under this program?

(a) Directly or by contract. A grantee under this part may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a designated State unit, a community rehabilitation program, or another agency to assist in the implementation of the vocational rehabilitation service program for American Indians with disabilities.

(b) Inter-tribal agreement. A grantee under this part may enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project that serves more than one Indian tribe.

(c) Comparable service program. To the maximum extent feasible, services provided by a grantee under this part must be comparable to rehabilitation service provided under this title to other individuals with disabilities residing in the State.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)


§ 371.43 What other special conditions apply to this program?

(a) Any American Indian with disabilities who is eligible for service under this program but who wishes to be provided service by the designated State unit must be referred to the State unit for such services.

(b) Preference in employment in connection with the provision of vocational rehabilitation services under this section must be given to American Indians, with a special priority being given to American Indians with disabilities.

(c) The provisions of sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act also apply under this program. These provisions relate to grant reporting and audit requirements, maintenance of records, access to records, availability of required reports and information to Indian people served or represented, repayment of unexpended Federal funds, criminal activities involving grants, penalties, wage and labor standards, preference requirements for American Indians in the conduct and administration of the grant, and requirements affecting requests of tribal organizations to enter into contracts. For purposes of applying these requirements to this program, the Secretary carries out those responsibilities assigned to the Secretary of Interior.

(Authority: Secs. 12(c) and 130(b)(2) of the Act; 29 U.S.C. 711(c) and 750(b)(2))

PART 373—SPECIAL DEMONSTRATION PROGRAMS

Subpart A—General

§ 373.1 What is the purpose of the Special Demonstration Programs?

The purpose of this program is to provide competitive grants to, or enter into contracts with, eligible entities to expand and improve the provision of rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (Act), or to further the purposes and policies in sections 2(b) and (c) of the Act by supporting activities that increase the provision, extent, availability, scope, and quality of rehabilitation services under the Act, including related research and evaluations activities.

(Authority: 29 U.S.C. 701(b) and (c), 711(c), and 773(b))
§ 373.4 What definitions apply?

The following definitions apply to this part:

**Act** means the Rehabilitation Act of 1973, as amended.

(Authority: 29 U.S.C. 701 et seq.)

**Early intervention** means a service delivery or model demonstration program for adults with disabilities designed to begin the rehabilitation services as soon as possible after the onset or identification of actually or potentially disabling conditions. The populations served may include, but are not limited to, the following:

(a) Individuals with chronic and progressive diseases that may become more disabling, such as multiple sclerosis, progressive visual disabilities, or HIV.

(b) Individuals in the acute stages of injury or illness, including, but not limited to, diabetes, traumatic brain injury, stroke, burns, or amputation.

(Authority: 29 U.S.C. 711(c))

**Employment outcome** is defined in 34 CFR 361.5.

(Authority: 29 U.S.C. 711(c))

**Individual with a disability** is defined as follows:

(a) For an individual who will receive rehabilitation services under this part, an individual with a disability means an individual—

(1) Who has a physical or mental impairment which, for that individual, constitutes or results in a substantial impediment to employment; and

(2) Who can benefit in terms of an employment outcome from vocational rehabilitation services.

(b) For all other purposes of this part, an individual with a disability means an individual—

(1) Who has a physical or mental impairment that substantially limits one or more major life activities;

(2) Who has a record of such an impairment; or

(3) Who is regarded as having such an impairment.

(c) For purposes of paragraph (b) of this definition, projects that carry out services or activities pertaining to Title V of the Act must also meet the requirements for “an individual with a disability” in section 7(20)(c) through (e) of the Act, as applicable.

(Authority: 29 U.S.C 705(20)(A) and (B))

**Individual with a significant disability** means an individual—

(a) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: 29 U.S.C. 705(21)(A))

**Informed choice** means the provision of activities whereby individuals with disabilities served by projects under this part have the opportunity to be
active, full partners in the rehabilitation process, making meaningful and informed choices as follows:

(a) During assessments of eligibility and vocational rehabilitation needs.

(b) In the selection of employment outcomes, services needed to achieve the outcomes, entities providing these services, and the methods used to secure these services.

(Authority: 29 U.S.C. 711(c))

Rehabilitation services means services provided to an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. Rehabilitation services for an individual with a disability may include—

(a) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(b) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(c) Referral and other services to secure needed services from other agencies;

(d) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(e) Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(f) Diagnosis and treatment of physical and mental impairments;

(g) Maintenance for additional costs incurred while the individual is receiving services;

(h) Transportation;

(i) On-the-job or other related personal assistance services;

(j) Interpreter and reader services;

(k) Rehabilitation teaching services, and orientation and mobility services;

(l) Occupational licenses, tools, equipment, and initial stocks and supplies;

(m) Technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(n) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(o) Transition services for individuals with disabilities that facilitate the achievement of employment outcomes;

(p) Supported employment services;

(q) Services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;

(r) Post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment; and

(s) Expansion of employment opportunities for individuals with disabilities, which includes, but is not limited to—

(1) Self-employment, business ownership, and entrepreneurship;

(2) Non-traditional jobs, professional employment, and work settings;

(3) Collaborating with employers, Economic Development Councils, and others in creating new jobs and career advancement options in local job markets through the use of job restructuring and other methods; and

(4) Other services as identified by the Secretary and published in the Federal Register.

(Authority: 29 U.S.C. 711(c) and 723(a))

Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual’s capacities and abilities.

(Authority: 29 U.S.C. 705(20)(A))

Youth or Young adults with disabilities means individuals with disabilities who
are between the ages of 16 and 26 inclusive when entering the program.

(Authority: 29 U.S.C. 711(c) and 723(a))

§ 373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?

(a)(1) For projects that provide rehabilitation services or activities to expand and improve the provision of rehabilitation services and other services authorized under Titles I, III, and VI of the Act, individuals are eligible who meet the definition in paragraph (a) of an “individual with a disability” as stated in §373.4.

(2) For projects that provide independent living services or activities, individuals are eligible who meet the definition in paragraph (b) of an “individual with a disability” as stated in §373.4.

(3) For projects that provide other services or activities that further the purposes of the Act, individuals are eligible who meet the definition in paragraph (b) of an “individual with a disability” as stated in §373.4.

(b) By publishing a notice in the FEDERAL REGISTER, the Secretary may identify individuals determined to be eligible under one or more of the provisions in paragraph (a) of this section.

(Authority: 29 U.S.C. 711(c) and 723(a))

§ 373.6 What are the priorities and other factors and requirements for competitions?

(a)(1) In making an award, the Secretary may limit competitions to, or otherwise give priority to, one or more of the priority projects listed in paragraph (b) of this section that are identified by the Secretary and published in a notice in the FEDERAL REGISTER.

(2) The Secretary also will identify in the notice the following:

(i) Specific required priority project activities authorized under section 303 of the Act that the applicant must conduct for the priority project to be approved for funding.

(ii) Any of the additional factors listed in paragraph (c) of this section that the Secretary may consider in making an award.

(b) Priority projects are as follows:

(1) Special projects of service delivery.

(2) Model demonstration.

(3) Technical assistance.

(4) Systems change.

(5) Special studies, research, or evaluations.

(6) Dissemination and utilization.

(7) Replication.

(8) Special projects and demonstration of service delivery for adults who are low-functioning and deaf or low-functioning and hard of hearing.

(9) Supported employment.

(10) Model transitional rehabilitation services for youth and young adults with disabilities.

(11) Expansion of employment opportunities for individuals with disabilities, as authorized in paragraph (s) of the definition of “rehabilitation services” as stated in §373.4.

(12) Projects to promote meaningful access of individuals with disabilities to employment-related services under Title I of the Workforce Investment Act of 1998 and under other Federal laws.

(13) Innovative methods of promoting achievement of high-quality employment outcomes.

(14) The demonstration of the effectiveness of early intervention activities in improving employment outcomes.

(15) Projects to find alternative methods of providing affordable transportation services to individuals with disabilities.

(16) Other projects that will expand and improve the provision, extent, availability, scope, and quality of rehabilitation and other services under the Act or that further the purpose and policy of the Act as stated in section 2(b) and (c) of the Act.

(c) The Secretary may identify and publish in the FEDERAL REGISTER for specific projects listed in paragraph (b) of this section one or more of the following factors, including any specific elements defining any factor (e.g., the Secretary may identify ages 16 through 21 to be the specific age range for a particular competition):

(1) Specific stages of the rehabilitation process.

(2) Unserved and underserved populations.
§ 373.10

(3) Unserved and underserved geographical areas.
(4) Individuals with significant disabilities.
(5) Low-incidence disability populations.
(6) Individuals residing in federally designated Empowerment Zones and Enterprise Communities.
(7) Types of disabilities.
(8) Specific age ranges.
(9) Other specific populations and geographical areas.

(d) The Secretary may require that an applicant certify that the project does not include building upon or expanding activities that have previously been conducted or funded, for that applicant or in that service area.

(e) The Secretary may require that the project widely disseminate the methods of rehabilitation service delivery or model proven to be effective, so that they may be adapted, replicated, or purchased under fee-for-service arrangements by State vocational rehabilitation agencies and other disability organizations in the project’s targeted service area or other locations.

(Authority: 29 U.S.C. 711(c) and 723(a))

Subpart B—How Does the Secretary Make a Grant?

§ 373.10 What selection criteria does the Secretary use?

The Secretary publishes in the FEDERAL REGISTER or includes in the application package the selection criteria for each competition under this program. To evaluate the applications for new grants under this program, the Secretary may use the following:

(a) Selection criteria established under 34 CFR 75.209.

(b) Selection criteria in 34 CFR 75.210.

(c) Any combination of selection criteria from paragraphs (a) and (b) of this section.

(Authority: 29 U.S.C. 711(c) and 723(b)(4) and (5))

§ 373.11 What other factors does the Secretary consider when making a grant?

(a) The Secretary funds only those applications submitted in response to competitions announced in the FEDERAL REGISTER.

(b) The Secretary may consider the past performance of the applicant in carrying out activities under previously awarded grants.

(c) The Secretary awards bonus points if identified and published in the FEDERAL REGISTER for specific competitions.

(Authority: 29 U.S.C. 711(c) and 723(a))

Subpart C—What Conditions Must Be Met By a Grantee?

§ 373.20 What are the matching requirements?

The Secretary may make grants to pay all or part of the cost of activities covered under this program. If the Secretary determines that the grantee is required to pay part of the costs, the amount of grantee participation is specified in the application notice, and the Secretary will not require grantee participation to be more than 10 percent of the total cost of the project.

(Authority: 29 U.S.C. 711(c) and 723(a))

§ 373.21 What are the reporting requirements?

(a) In addition to the program and fiscal reporting requirements in EDGAR that are applicable to projects funded under this program, the Secretary may require that recipients of grants under this part submit information determined by the Secretary to be necessary to measure project outcomes and performance, including any data needed to comply with the Government Performance and Results Act.

(b) Specific reporting requirements for competitions will be identified by the Secretary and published in the FEDERAL REGISTER.

(Authority: 29 U.S.C. 711(c) and 776)

§ 373.22 What are the limitations on indirect costs?

(a) Indirect cost reimbursement for grants under this program is limited to the recipient’s actual indirect costs, as determined by its negotiated indirect cost rate agreement, or 10 percent of the total direct cost base, whichever amount is less.
(b) Indirect costs in excess of the 10 percent limit may be used to satisfy matching or cost-sharing requirements.

(c) The 10 percent limit does not apply to federally recognized Indian tribal governments and their tribal representatives.

(Authority: 29 U.S.C. 711(c))

§ 373.23 What additional requirements must be met?

(a) Each grantee must do the following:

(1) Ensure equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disabilities.

(2) Encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disabilities.

(3) Advise individuals with disabilities who are applicants for or recipients of the services, or the applicants’ representatives or the individuals’ representatives, of the availability and purposes of the Client Assistance Program, including information on means of seeking assistance under that program.

(4) Provide, through a careful appraisal and study, an assessment and evaluation of the project that indicates the significance or worth of processes, methodologies, and practices implemented by the project.

(b) A grantee may not make a subgrant under this part. However, a grantee may contract for supplies, equipment, and other services, in accordance with 34 CFR part 74, subpart C—Post-Award Requirements, Procurement Standards.

(Authority: 29 U.S.C. 711(c) and 717)

§ 373.24 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project reporting and evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, has been obtained in writing. The Secretary or other Federal officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final products of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Authority: 29 U.S.C. 711(c))

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO YOUTHS WITH DISABILITIES

Subpart A—General

Sec.
376.1 What is the program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youths with Disabilities?
376.2 Who is eligible for assistance under this program?
376.3 What regulations apply to this program?
376.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Subpart D—How Does the Secretary Make a Grant?

376.10 What types of projects are authorized under this program?
376.30 What priorities are considered for support by the Secretary under this part?
Subpart E—What Conditions Must Be Met by a Grantee?

376.40 What are the matching requirements?
376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Authority: 29 U.S.C. 777a(b), unless otherwise noted.

Source: 51 FR 3895, Jan. 30, 1986, unless otherwise noted.

Subpart A—General

§ 376.1 What is the program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youths with Disabilities?

This program is designed to provide job training for youths with disabilities to prepare them for entry into the labor force, including competitive or supported employment.

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))


§ 376.2 Who is eligible for assistance under this program?

State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

§ 376.3 What regulations apply to this program?

The following regulations apply to this program:
(a) The regulations in 34 CFR part 369.
(b) The regulations in this part 376.
(c) The regulations in 34 CFR part 380.20.

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711(c) and 777a(b))

[51 FR 3895, Jan. 30, 1986, as amended at 57 FR 28441, June 24, 1992]

§ 376.4 What definitions apply to this program?

(a) The definitions in 34 CFR part 369.
(b) The definition of “Supported employment” in 34 CFR part 363.

(d) The following definitions also apply to this program:
(1) Extended services means on-going support services and other appropriate services provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds under this part, part 361, part 363, or part 380, after an individual with the most severe disabilities has made the transition from project support.
(2) Transitional rehabilitation services means any vocational rehabilitation services available under the State plan for vocational rehabilitation services under 34 CFR part 361 or the State plan for independent living services under 34 CFR part 365 and may also include—
(i) Jobs search assistance;
(ii) On-the-job training;
(iii) Job development, including work-site modification and use of advanced learning technology for skills training; and
(iv) Follow-up services for individuals placed in employment.
(3) Youths with disabilities means individuals with disabilities between the ages of 12 and 26.

(Authority: 29 U.S.C. 711(c) and 777a(b))


Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 376.10 What types of projects are authorized under this program?

(a) This program supports special projects and demonstrations, including research and evaluation, for the following purposes:
(1) To demonstrate effective ways in which to provide job training, placement, and other transitional rehabilitation services to youths with disabilities to prepare them for entry in the labor force, including competitive or supported employment.
(2) To demonstrate service programs for youths with disabilities reflecting
cooperative efforts between local educational agencies, business and industry, vocational rehabilitation agencies, community rehabilitation programs, parent groups, public or other non-profit developmental disabilities agencies, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(3) To develop and implement new patterns or practices of transitional rehabilitation service delivery and to conduct the field-testing and evaluation of these patterns or practices to determine the efficacy of their being replicated in other settings.

(b) Research and evaluation activities carried out under this program must be specifically related to a transitional rehabilitation service model under which direct services are provided.

(c) Projects funded under this part must serve youths with disabilities.

(d) A project funded under this part may include dissemination of information on project activities to business and industry.

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711a(c) and 777(b))


Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 376.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually in a notice published in the FEDERAL REGISTER, one or more of the following priority areas for funding under this program:

(a) Community-based transitional rehabilitation service delivery. This priority supports projects that demonstrate exemplary models for developing and establishing community-based transitional rehabilitation service programs that result directly in competitive or supported employment for youths with disabilities within the labor force.

(b) Statewide transitional rehabilitation service delivery. This priority supports projects that demonstrate effective Statewide approaches to transitional rehabilitation service delivery for youths with disabilities and demonstrate cooperative efforts between State agencies responsible for service to youths with disabilities including but not limited to, special education, vocational rehabilitation, and day services for adults with developmental disabilities.

(c) Transitional rehabilitation services for youths with disabilities who have special needs. This priority supports projects that demonstrate transitional rehabilitation service programs focused on meeting the special job training and placement needs of one or more groups of individuals with physical or mental disabilities which present unusual and difficult rehabilitation problems including, but not limited to, blindness, cerebral palsy, deafness, epilepsy, mental illness, mental retardation, and learning disability.

(d) Transitional rehabilitation services for institutionalized persons. This priority supports projects that demonstrate effective ways to assist youths and young adults who are institutionalized, including those residing in skilled nursing or intermediate care facilities, to return to community living and competitive or supported employment.

(e) Transitional rehabilitation services for unemployed youths with disabilities. This priority supports projects that demonstrate ways to train and place in competitive or supported employment youths with disabilities who were unable to participate in special education programs or who recently graduated from those programs but have been unable to secure and maintain employment.

(f) Home-based transitional rehabilitation services. This priority supports projects that demonstrate ways in which youths with disabilities, including those residing in rural areas, who because of the severity of their disabilities are precluded from employment in the community, could be gainfully employed in home settings.

(Authority: Sec. 311(b); 29 U.S.C. 777 (a), (b))

§ 376.40 Subpart E—What Conditions Must Be Met by a Grantee?

§ 376.40 What are the matching requirements?

The Secretary may pay all or part of the costs of activities funded under this program. If part of the costs is to be paid by a grantee, the amount of grantee participation is specified in the application notice and will not be more than 10 percent of the total cost of the project.

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711(c) and 777a(b))

[59 FR 8340, Feb. 18, 1994]

§ 376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Each project must be designed to demonstrate a cooperative effort between local educational agencies, business and industry, vocational rehabilitation programs, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

PART 377—DEMONSTRATION PROJECTS TO INCREASE CLIENT CHOICE PROGRAM

Subpart A—General

§ 377.1 What is the Demonstration Projects to Increase Client Choice Program?

The Demonstration Projects to Increase Client Choice Program is designed to provide financial assistance for projects that demonstrate ways to increase client choice in the vocational rehabilitation process, including choice in the selection of vocational rehabilitation goals, services, and providers.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

§ 377.2 Who is eligible for an award?

States and public and nonprofit agencies and organizations are eligible to receive a grant under this program.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

§ 377.3 What types of activities may the Secretary fund?

The Secretary provides financial assistance under this program for activities that are directly related to planning, operating, and evaluating projects to demonstrate effective ways to increase the choices available to clients in the rehabilitation process as follows:

(a) At a minimum, all projects must demonstrate effective ways to increase the choices available to clients in selecting goals, services, and providers of services.
§ 377.4 What regulations apply?

The following regulations apply to the Demonstration Projects to Increase Client Choice Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

1. 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).
2. 34 CFR part 75 (Direct Grant Programs).
3. 34 CFR part 77 (Definitions that Apply to Department Regulations).
4. 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
5. 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
7. 34 CFR part 82 (New Restrictions on Lobbying).
8. 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
9. 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The following regulations in 34 CFR part 369 (Vocational Rehabilitation Service Projects): §§369.43, 369.46, and 369.47.

(c) The regulations in this part 377.

(Authority: Sec. 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g))

§ 377.5 What definitions apply?

(a) Definitions in the Rehabilitation Act of 1973, as amended (the Act). The following terms used in this part are defined in the Act:

Client or eligible client means an individual with a disability who is not currently receiving services under an individualized written rehabilitation program established through a designated State unit. (Section 802(g)(8) of the Act)

Individual with a disability means any individual who—

1. Has a physical or mental impairment that for that individual constitutes or results in a substantial impediment to employment; and
2. Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, III, VI, or VIII of the Act. (Section 7(8)(A) of the Act)

Individual with a severe disability means an individual with a disability—

1. Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
3. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. (Section 7(15)(A) of the Act)

State means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect). (Section 7(16) of the Act)
§ 377.10 Vocational rehabilitation services
means the services authorized in section 103(a) of the Act. (Section 103(a) of the Act)
(b) Definitions in EDGAR. (1) The following terms used in this part are defined in 34 CFR 77.1:
   Applicant
   Application
   Award
   Budget period
   Department
   EDGAR
   Nonprofit
   Project
   Project period
   Public
   Secretary
   (2) The following terms used in this part are defined in 34 CFR 74.3:
   Grant
   Grantee
   (c) Other definitions. The following definitions also apply to this part:
   Employment outcome means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, the practice of a profession, self-employment, homemaking, farm or family work (including work for which payment is in kind rather than in cash), extended employment in a community rehabilitation program, supported employment, or other gainful work.
   Voucher means a credit of specified monetary value, issued by a grantee to an eligible client, that the eligible client exchanges for vocational rehabilitation services from a qualified provider.

(Authority: Secs. 7(5), 7(b)(A), and 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 706 and 29 U.S.C. 797a(g))
[58 FR 40709, July 29, 1993, as amended at 59 FR 8340, Feb. 18, 1994]

Subpart B—How Does One Apply for an Award?

§ 377.10 How does an eligible entity apply for an award?

In order to apply for a grant, an eligible entity shall submit an application to the Secretary in response to an application notice published in the Federal Register.

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

§ 377.11 What is the content of an application for an award?

(a) The grant application must include a description of—
   (1) The manner in which the applicant intends to promote increased client choice in the geographical area identified in the application;
   (2) The manner in which the applicant intends to provide individuals, including individuals with cognitive disabilities, the information necessary to make informed choices, including, at a minimum, informed choices in the selection of goals, services, and providers;
   (3) The outreach activities the applicant plans to conduct to obtain eligible clients, including clients who are individuals with a severe disability;
   (4) The manner in which the applicant will ensure that service providers are accredited or meet any quality assurance and cost-control criteria established by the State;
   (5) The manner in which the applicant will ensure that eligible clients are satisfied with the quality and scope of services provided;
   (6) The manner in which the applicant will monitor and account for use of funds to purchase services;
   (7) The manner in which the applicant will determine the monetary value of the services or products available to clients, including, if appropriate, the monetary value of vouchers;
   (8) The manner in which the applicant will address the needs of individuals with disabilities who are from minority backgrounds; and
   (9) Those features of the proposed project that the applicant considers to be essential and a discussion of their potential for widespread replication.
(b) The application also must include assurances from the applicant that—
   (1) A written plan to provide vocational rehabilitation services will be established for, and with the full participation of, each eligible client, and,
if the client elects, with the participation also of family members, guardians, advocates, or authorized representatives, that at a minimum will include—

(i) A statement of the client’s vocational rehabilitation goals, which must include goals that are designed to lead to an employment outcome consistent with the client’s unique strengths, resources, priorities, concerns, abilities, and capabilities;

(ii) A statement of the specific vocational rehabilitation services to be provided and the projected dates for the initiation and termination of each service; and

(iii) A description of an evaluation procedure for determining whether the client’s vocational rehabilitation goals are being achieved, including—

(A) Objective evaluation criteria; and

(B) An evaluation schedule;

(2) The Federal funds granted under this part will be used to supplement, and in no case to supplant, funds made available from other Federal and non-Federal sources for projects providing increased choice in the rehabilitation process;

(3) At least 80 percent of the funds awarded for any project under this part will be used to provide vocational rehabilitation services, as specifically chosen by eligible clients;

(4) The applicant will cooperate fully with the Secretary in a national evaluation, including assisting the Department’s contractor in selecting and obtaining data for a control group established through random assignment or by the selection of a matched comparison group; and

(5) Individuals with disabilities will be involved in the development and implementation of the project.

(c) Each applicant also shall submit to the Secretary any other information and assurances that the Secretary determines to be necessary.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Secs. 21(b)(6), 802(g)(2), 802(g)(3), 802(g)(5), 802(g)(6), and 802(g)(7) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

§ 377.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) Plan of operation. (30 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purpose of the program to provide increased client choice in the rehabilitation process, including at a minimum increased choice in the selection of goals, services, and providers, leading to an employment outcome;

(ii) Are attainable within the project period, given the project’s budget and other resources;

(iii) Are objective and measurable for purposes of evaluation, including an estimate of the numbers of clients to be served;

(iv) Include objectives to be met during each budget period that can be used to determine the progress of the project toward meeting its intended outcomes;

(2) The extent to which the plan of operation specifies the methodology for accomplishing each objective of the project;

(3) The extent to which the applicant’s plan of management, including resources and timelines, is designed to achieve each objective and intended outcome during the period of Federal funding;

(4) The extent to which the applicant’s plan identifies the numbers of eligible clients by type of disability...
§ 377.21

and the number of eligible clients with severe disabilities who are available to participate in the project;

(5) The extent to which the applicant plans to conduct outreach activities to obtain eligible clients;

(6) The extent to which the applicant’s plan ensures that clients who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, or age;

(7) The extent to which the applicant’s plan describes a workable process for determining the monetary value of any service or product offered to eligible clients, including, if appropriate, the value of vouchers; and

(8) The extent to which the applicant’s plan describes a satisfactory system for conducting vocational assessment with eligible clients to ensure that a full range of vocational goals are considered.

(b) Key personnel and other resources. (15 points) (1) The Secretary reviews each application to determine the quality of key personnel proposed for the project, including—

(i) The relevant experience and training of the project director;

(ii) The relevant experience and training of each of the other key personnel to be used on the project;

(iii) The amount of time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section will commit to the project;

(iv) The extent to which persons referred to in paragraphs (b)(1)(i) and (ii) of this section are capable of providing technical assistance to other entities interested in replicating the project; and

(v) The extent to which the applicant will ensure that persons employed through the project are selected and work without regard to race, color, national origin, gender, age, or disabling condition.

(2) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project, including—

(i) The facilities that the applicant plans to use;

(ii) The equipment and supplies that the applicant plans to use; and

(iii) The recordkeeping capabilities of the applicant for financial and evaluation purposes.

(c) Service provision. (20 points) The Secretary reviews each application to determine the quality and comprehensiveness of the services to be offered and the applicant’s capacity to provide increased choice in the provision of services to eligible clients, including the extent to which the applicant—

(1) Has the capacity to evaluate the eligibility of applicants for services and to develop written plans for services for individual clients;

(2) Has demonstrated knowledge of a wide range of potential service providers that can meet the needs of eligible clients;

(3) Has described a workable process for enabling eligible clients to choose from among a wide range of service providers;

(4) Has described satisfactory systems to account for the appropriate expenditure of funds; and

(5) Has described satisfactory systems to ensure the provision of quality services.

(d) Evaluation plan. (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant’s methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable, including data that are required under §377.30.

(e) National significance. (15 points) The Secretary reviews each application to determine the extent to which—

(1) Project findings might be effectively used within the State vocational rehabilitation service system; and

(2) Project activities might be successfully replicated by other entities.

(f) Budget and cost effectiveness. (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;
§ 377.22 What additional factors does the Secretary consider in making grants?

In addition to the criteria in §377.21, the Secretary considers the following factors in making grants under this program:

(a) The diversity of strategies to increase client choice, in order to ensure that a variety of approaches are demonstrated by funded projects.

(b) The diversity of clients to be served, in order to ensure that a variety of disability populations are served by funded projects.

(c) The geographical distribution of funded projects.

(Authority: Sec. 802(g)(4) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(4))

Subpart D—What Post-Award Conditions Must Be Met by a Grantee?

§ 377.30 What information must a grantee maintain and provide to the Secretary?

(a) Each grantee shall maintain the records that the Secretary requires to conduct an evaluation of projects funded under this program, which at a minimum must include information regarding the—

1. Types of services provided;
2. Costs of services provided;
3. Number of clients served by disability, race, gender, and age;
4. Number of clients with a severe disability served;
5. Client outcomes obtained;
6. Implementation issues addressed; and
7. Any other information the Secretary requires.

(b) Each grantee shall comply with any request from the Secretary for those records.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 802(g)(5) and 802(g)(7) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(5) and (7))

§ 377.31 What information must a grantee provide to eligible clients?

Each grantee shall advise all clients and applicants for services under this program, or their parents, family members, guardians, advocates, or authorized representatives, of the availability and purposes of the Client Assistance Program under section 112 of the Act, including information on means of seeking assistance under that program.

(Authority: Sec. 20 of the Rehabilitation Act of 1973; 29 U.S.C. 718a)

§ 377.32 What are the matching requirements?

Grants may be made for paying all or part of the costs of projects under this program. If part of the costs is to be covered by the grantee, the amount of grantee contribution is specified in the application notice and will not be required to be more than 10 percent of the total cost of the project.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))
§ 379.1 What is the Projects With Industry (PWI) program?

The purpose of this program is to (a) Create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process; (b) Identify competitive job and career opportunities and the skills needed to perform these jobs; (c) Create practical settings for job readiness and job training programs; and (d) Provide job placements and career advancement.

(Authority: 29 U.S.C. 795(a)(1))

§ 379.2 Who is eligible for a grant award under this program?

(a) The Secretary may, in consultation with the Secretary of Labor and with the appropriate designated State unit or units, make a grant under this program to any—

(1) Community rehabilitation program provider;
(2) Designated State unit (DSU);
(3) Employer;
(4) Indian tribe or tribal organization;
(5) Labor union;
(6) Nonprofit agency or organization;
(7) Trade association; or
(8) Other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities.

(b) The Secretary may make new awards only to those eligible entities identified in paragraph (a) of this section that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program.

(Authority: 29 U.S.C. 795(a)(2) and 795(e)(2))

§ 379.3 Who is eligible for services under this program?

(a) An individual is eligible for services under this program if—

(1) The individual is an individual with a disability or an individual with a significant disability;
§ 379.5 What definitions apply?

(a) The following terms used in this part are defined in 34 CFR part 361:

(1) Act

(2) Community rehabilitation program

(3) Designated State unit

(4) Individual who is blind

(5) Individual with a disability

(6) Individual with a significant disability

(7) Physical or mental impairment

(8) Substantial impediment to employment

(b) The following definitions also apply to this part:

(1) Career advancement services mean services that develop specific job skills beyond those required by the position currently held by an individual with a disability to assist the individual to compete for a promotion or achieve an advanced position.

(2) Competitive employment, as the placement outcome under this program, means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary or usual wage and terms and benefits provided by the employer for the same or similar work performed by individuals who are not disabled.

(3) Integrated setting, as part of the definition of “competitive employment,” means a setting typically found in the community in which individuals...
§379.10 What types of project activities are required of each grantee under this program?

Each grantee under the PWI program must—

(a) Provide for the establishment of a Business Advisory Council (BAC), comprised of representatives of private industry, business concerns, organized labor, individuals with disabilities and their representatives, and a representative of the appropriate DSU, that will—

(1) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(2) Identify the skills necessary to perform those jobs and careers; and

(3) Prescribe for individuals with disabilities in fields related to the job and career availability identified in §379.10(a)(1) either—

(i) training programs designed to develop appropriate job and career skills; or

(ii) job placement programs designed to identify and develop job placement and career advancement opportunities;

(b) Provide job development, job placement, and career advancement services;

(c) To the extent appropriate, arrange for the provision of, or provide for—

(1) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive labor market; and

(2) To the extent practicable, the modification of any facilities or equipment of the employer involved that are to be used by individuals with disabilities under this program. However, a project may not be required to provide for this modification if the modification is required as a reasonable accommodation under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101–12213; and

(d) Provide individuals with disabilities with supportive services that are necessary to permit them to maintain the employment and career advancement for which they have received training under this program.

(Authority: 29 U.S.C. 795)
grant recipients to provide technical assistance to—

(a) Assist employers in hiring individuals with disabilities; or

(b) Improve or develop relationships between grant recipients or prospective grant recipients and employers or organized labor; or

(c) Assist employers in understanding and meeting the requirements of the ADA, as that Act relates to employment of individuals with disabilities.

(Authority: 29 U.S.C. 795)

Subpart C—How Does One Apply for an Award?

§ 379.20 How does an eligible entity apply for an award?

To apply for a grant, an eligible entity must submit an application to the Secretary in response to an application notice published in the Federal Register.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 795(e)(1)(B))

§ 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The responsibilities and membership of the BAC, consistent with section 611(a)(2)(A) of the Act, and how it will interact with the project in carrying out grant activities, including how the BAC will—

(i) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(ii) Identify the skills necessary to perform the jobs and careers identified; and

(iii) For individuals with disabilities in fields related to the job and career availability identified under paragraph (a)(1)(i) of this section, prescribe either—

(A) Training programs designed to develop appropriate job and career skills; or

(B) Job placement programs designed to identify and develop job placement and career advancement opportunities;

(2) How the project will provide job development, job placement, and career advancement services to project participants;

(3) To the extent appropriate, how the project will provide for—

(i) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive market; and

(ii) To the extent practicable, the modification of any facilities or equipment of the employer involved that are used primarily by individuals with disabilities, except that a project will not be required to provide for that modification if the modification is required as a reasonable accommodation under the Americans with Disabilities Act of 1990;

(4) How the project will provide individuals with disabilities with support services that may be required to maintain the employment and career advancement for which the individuals have received training under this part;

(5) How the project will involve private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities;

(6) A plan to annually conduct a review and evaluation of the operation of the proposed project in accordance with the program compliance indicators and evaluation standards in Subpart F of this part and, in conducting the review and evaluation, to collect data and information of the type described in subparagraphs (A) through (C) of section 101(a)(10) of the Act, as determined to be appropriate by the Secretary;

(7) The factors that justify the applicant’s projected average cost per placement, including factors such as the project’s objectives, types of services, target population, and service area, and how these factors affect the projection;
(8) The geographic area to be served by the project, including an explanation of how the area is currently unserved or underserved by the PWI program; and

(9) How the project will address the needs of individuals with disabilities from minority backgrounds, as required by section 21(c) of the Act.

(b) The grant application also must include assurances from the applicant that—

(1) The project will carry out all activities required in §379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will—

(i) Be given terms and benefits of employment equal to terms and benefits that are given to similarly situated nondisabled co-workers; and

(ii) Not be segregated from their co-workers;

(4) The project will maintain any records required by the Secretary and make those records available for monitoring and audit purposes;

(5) The project will provide to the Secretary an annual evaluation report of project operations as required in §379.21(a)(6) and will submit reports in the form and detail and at the time required by the Secretary; and

(6) The applicant will comply with any requirements necessary to ensure the correctness and verification of those reports.

(c) The grant application also must include the projected average cost per placement for the project, which must be calculated by dividing the sum of the total project costs (i.e., Federal dollar amount of the grant plus the total non-Federal contributions) by the number of individuals the applicant projects in its application will be placed by the project.

(Approved by the Office of Management and Budget under control number 1820–0631)

(Authority: Section 611 of the Act; 29 U.S.C. 795)

[65 FR 18218, Apr. 6, 2000; 65 FR 36633, June 9, 2000]

§ 379.22 What are the application procedures for this program?

The Secretary gives the appropriate DSU an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are described in §§75.155 through 75.159 of EDGAR.

(Authority: 20 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 379.30 What selection criteria does the Secretary use under this program?

(a) The Secretary uses the procedures in 34 CFR part 75 to select applications and award new grants.

(b) The Secretary uses the following selection criteria to evaluate an application:

(1) Extent of need for project (20 points). The Secretary reviews each application to determine the extent to which the project meets demonstrated needs. The Secretary looks for evidence that—

(i) The applicant has demonstrated a demand in the competitive labor market of the geographic area to be served for the types of jobs for which project participants will be placed and, if appropriate, trained.

(A) The applicant may demonstrate the demand for those jobs by describing an existing current labor market analysis, other needs assessment, or one that it has performed in collaboration with private industry.

(B) The labor market analysis or needs assessment must be consistent with the current and projected local employment opportunities identified
by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998; and

(ii) The job placement and, if appropriate, job training to be provided meets the identified needs for personnel in specific occupations or occupational categories in the geographic area to be served.

(2) Partnership with industry (25 points). The Secretary looks for information that demonstrates—

(i) The extent of the project’s proposed collaboration with private industry in the planning, implementation, and evaluation of job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities; and

(ii) The extent of proposed participation of the BAC in—

(A) The identification of job and career opportunities within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(B) The identification of the skills necessary to perform the jobs and careers identified; and

(C) For individuals with disabilities in fields related to the job and career availability identified under paragraph (b)(1)(i) of this section, prescribing either—

(1) Training programs designed to develop appropriate job and career skills; or

(2) Job placement programs designed to identify and develop job placement and career advancement opportunities.

(3) Project design and plan of operation for achieving competitive employment (25 points). The Secretary reviews each application to determine—

(i) The extent to which the project goals and objectives for achieving competitive employment for individuals with disabilities to be served by the project are clearly stated and meet the needs identified by the applicant and the purposes of the program;

(ii) The extent to which the project provides for all services and activities required under §379.10;

(iii) The feasibility of proposed strategies and methods for achieving project goals and objectives for competitive employment for project participants;

(iv) The extent to which project activities will be coordinated with the DSU and with other appropriate community resources to ensure an adequate number of referrals and a maximum use of comparable benefits and services;

(v) The extent to which the applicant’s management plan will ensure proper and efficient administration of the project; and

(vi) Whether the applicant has proposed a realistic timeline for the implementation of project activities to ensure timely accomplishment of proposed goals and objectives to achieve competitive employment for individuals with disabilities to be served by the project.

(4) Adequacy of resources and quality of key personnel (10 points). The Secretary reviews each application to determine—

(i) The adequacy of the resources (including facilities, equipment, and supplies) that the applicant plans to devote to the project;

(ii) The quality of key personnel who will be involved in the project, including—

(A) The qualifications of the project director;

(B) The qualifications of each of the other key personnel to be used in the project; and

(C) The experience and training of key personnel in fields related to the objectives and activities of the project; and

(D) The way the applicant plans to use its resources and personnel to achieve the project’s goals and objectives, including the time that key personnel will commit to the project.

(5) Budget and cost effectiveness (10 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) Project evaluation (10 points). The Secretary reviews each application to
§ 379.31 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria in §379.30, the Secretary, in making awards under this program, considers—

(a) The equitable distribution of projects among the States; and

(b) The past performance of the applicant in carrying out a similar PWI project under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of Subpart F of this part.

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80 percent of the total cost of a project under this program. For assistance in calculating the required matching amount, see Appendix C to this part.

(Authority: 29 U.S.C. 795(c))

§ 379.41 What are allowable costs?

In addition to those costs that are allowable in accordance with 34 CFR 74.27 and 34 CFR 80.22, the following items are allowable costs under this program:

(a) The costs of job readiness training, as defined in §379.5(b)(5); job training, as defined in §379.5(b)(6); job placement services; job development and modification; and related support services.

(b) Instruction and supervision of trainees.

(c) Training materials and supplies, including consumable materials.

(d) Instructional aids.

(e) The purchase or modification of rehabilitation technology to meet the needs of individuals with disabilities.

(f) Alteration and renovation appropriate and necessary to ensure access to and use of buildings by individuals with disabilities served by the project.

(g) To the extent practicable, the modification of any facilities or equipment of the employer involved that are to be used by individuals with disabilities under this program. However, a project may not be required to provide for that modification if the modification is required as a reasonable accommodation under the ADA.

(Authority: 29 U.S.C. 711(c) and 795)
§ 379.51 What are the program compliance indicators?

(a) General. The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels in essential project areas to measure the effectiveness of individual grantees.

(b) Primary compliance indicators. “Placement rate” and “Change in earnings” are primary compliance indicators.

(c) Secondary compliance indicators. “Percent placed who have significant disabilities,” “Percent placed who were previously unemployed,” and “Average cost per placement” are secondary compliance indicators.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.50 What are the requirements for continuation funding?

To receive a continuation award for the third or subsequent year of the PWI grant, a grantee must—

(a) Adhere to the provisions of its approved application; and

(b) Meet the minimum performance levels on—

(1) The two “primary” program compliance indicators identified in §379.51(b) and described in §379.53(a); and

(2) Any two of the three “secondary” compliance indicators identified in §379.51(c) and described in §379.53(b).

(Authority: Section 611(f)(4) of the Act; 29 U.S.C. 795(f)(4))

§ 379.45 What are the additional reporting requirements?

Each grantee must submit the data from its annual evaluation of project operations required under §379.21(a)(5) no later than 60 days after the end of each project year, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.44 What are the requirements for a continuation award?

(a) A grantee that wants to receive a continuation award must—

(1) Comply with the provisions of 34 CFR 75.253(a), including making substantial progress toward meeting the objectives in its approved application and submitting all performance and financial reports required by 34 CFR 75.118; and

(2) Submit data in accordance with §379.54 showing that it has met the program compliance indicators established in Subpart F of this part.

(b) In addition to the requirements in paragraph (a) of this section, the following other conditions in 34 CFR 75.253(a) must be met before the Secretary makes a continuation award:

(1) Congress must appropriate sufficient funds under the program.

(2) Continuation of the project must be in the best interest of the Federal Government.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795(f)(4))

§ 379.45 What are the additional reporting requirements?

Each grantee must submit the data from its annual evaluation of project operations required under §379.21(a)(5) no later than 60 days after the end of each project year, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.50 What are the requirements for continuation funding?

To receive a continuation award for the third or subsequent year of the PWI grant, a grantee must—

(a) Adhere to the provisions of its approved application; and

(b) Meet the minimum performance levels on—

(1) The two “primary” program compliance indicators identified in §379.51(b) and described in §379.53(a); and

(2) Any two of the three “secondary” compliance indicators identified in §379.51(c) and described in §379.53(b).

(Authority: Section 611(f)(4) of the Act; 29 U.S.C. 795(f)(4))
§ 379.52 How is grantee performance measured using the compliance indicators?

(a) Each compliance indicator establishes a minimum performance level.

(b) If a grantee does not achieve the minimum performance level for a compliance indicator, the grantee does not pass the compliance indicator.

(Authority: Section 611(f)(1) of the Act; 26 U.S.C. 795(f)(1))

§ 379.53 What are the minimum performance levels for each compliance indicator?

(a) Primary compliance indicators.

(i) Placement rate. The project places individuals it serves into competitive employment as follows:

(ii) Placement rate. The project places individuals it serves into competitive employment as follows:

(iii) No less than 50 percent during fiscal year (FY) 2001.

(iv) No less than 51 percent during FY 2002.

(v) No less than 52 percent during FY 2003.

(vi) No less than 54 percent during FY 2004.

(vii) No less than 55 percent during FY 2005 and any year thereafter.

(2) Change in earnings. (i) Except as provided in paragraph (a)(2)(ii) of this section, the average earnings of all individuals who are placed into competitive employment by the project increase by an average of at least $125.00 a week over the average earnings of all individuals at the time of project entry.

(ii) For projects in which at least 75 percent of individuals placed into competitive employment are working fewer than 30 hours per week, the average earnings of all individuals placed by the project increase by an average of at least $100.00 a week over the average earnings of all individuals at the time of project entry.

(b) Secondary compliance indicators.

(1) Percent placed who have significant disabilities. At least 50 percent of individuals who are placed into competitive employment are individuals with significant disabilities.

(2) Percent placed who were previously unemployed. At least 50 percent of individuals who are placed into competitive employment are individuals who were continuously unemployed for at least 6 months at the time of project entry.

(3) Average cost per placement. The actual average cost per placement does not exceed 115 percent of the projected average cost per placement in the grantee’s application.

(Authority: Section 611(f)(1) of the Act; 26 U.S.C. 795(f)(1))

§ 379.54 What are the reporting requirements for the compliance indicators?

(a) To receive continuation funding for the third or any subsequent year of a PWI grant, each grantee must submit to the Secretary data for the most recent complete budget period no later than 60 days after the end of that budget period, unless the Secretary authorizes a later submission date. The Secretary uses this data to determine if the grantee has met the program compliance indicators in this subpart F.

(b) A grantee may receive its second year of funding (or the first continuation award) under this program before data from the first complete budget period is available. However, to allow the Secretary to determine whether the grantee is eligible for the third year of funding (or the second continuation award), the grantee must submit data from the first budget period in accordance with paragraph (a) of this section.

(c) If the data for the most recent complete budget period provided under paragraph (a) or (b) of this section show that a grantee has failed to achieve the minimum performance levels, as required by § 379.50(b), the grantee may, at its option, submit data from the first 6 months of the current budget period. The grantee must submit this data no later than 60 days after the end of that 6-month period, unless the Secretary authorizes a later submission date. The data must demonstrate that the grantee’s project performance has improved sufficiently to meet the minimum performance levels required in § 379.50(b).

(Approved by the Office of Management and Budget under control number 1820–0631)

(Authority: Section 611(f)(2) and 611(f)(4) of the Act; 29 U.S.C. 795(f)(2) and 795(f)(4))
APPENDIX A TO PART 379—EVALUATION STANDARDS

Standard 1: The primary objective of the project must be to assist individuals with disabilities to obtain competitive employment. The activities carried out by the project must support the accomplishment of this objective.

Standard 2: The project must serve individuals with disabilities that impair their capacity to obtain competitive employment. In selecting persons to receive services, priority must be given to individuals with significant disabilities.

Standard 3: The project must ensure the provision of services that will assist in the placement of individuals with disabilities.

Standard 4: Funds must be used to achieve the project’s primary objective at minimum cost to the Federal Government.

Standard 5: The project’s advisory council must provide policy guidance and assistance in the conduct of the project.

Standard 6: Working relationships, including partnerships, must be established with agencies and organizations to expand the project’s capacity to meet its objectives.

Standard 7: The project must obtain positive results in assisting individuals with disabilities to obtain competitive employment.

APPENDIX B TO PART 379—PRESCRIPTION OF ELIGIBILITY

If a DSU determines that an individual is an eligible individual under section 102(a) of the Act, including that the individual meets the definition of an “individual with a significant disability,” and refers the individual to a PWI project, the PWI grantee may initiate services to that individual without the need for an additional determination of eligibility. In these instances, the PWI grantee should obtain appropriate documentation of this determination from the DSU.

APPENDIX C TO PART 379—CALCULATING REQUIRED MATCHING AMOUNT

1. The method for calculating the required matching amount may be stated by the following formula:
   \[
   X = (Y \times .8) - Y
   \]

   where:
   \[
   X = \text{Required Match (provided in cash or through third party in-kind contributions)}
   \]
   \[
   Y = \text{Amount of Federal Funds}
   \]

   This equation holds true regardless of the total cost of the project. The amount of Federal funds spent in a fiscal year (FY) can never be more than 80 percent (hence, the “.8” in the formula) of the total funds (Federal and non-Federal) spent by the project. Thus, the formula is not dependent on knowing the total cost of the project. One needs to know only that the Federal share can be no more than 80 percent of whatever the total costs may turn out to be. In all cases, the matching contribution is calculated by dividing the amount of the Federal grant award by 80 percent (.8) and subtracting from that result the amount of the Federal grant award.

   For example: If the amount of the Federal PWI grant award is $80,000, the amount of the required match is $100,000, calculated as follows:

   \[
   X = (400,000 \times .8) - 80,000 = 16,000
   \]

   The matching contribution is never simply 20 percent of the amount of the Federal grant award (i.e., in the above example, NOT .2 x $100,000).

2. Another consideration is what happens if a grantee carries over unspent Federal funds it received in a fiscal year. If the grantee spends or obligates less than the amount of its Federal grant award in a particular fiscal year and carries over the unspent or unobligated amount of its Federal grant award, its required matching contribution stays the same because the amount of its required matching expenditures or obligations is based on the amount of Federal dollars received in a particular fiscal year. That is, if the grantee carries over any unspent or unobligated Federal funds, the grantee must have spent or obligated the amount of non-Federal funds required for its matching contribution in the same fiscal year in which the Federal funds were received.

   For example: If a PWI grantee receives a grant award of $80,000 in FY 2000, its matching requirement for these funds is $20,000. If the grantee spends and obligates only $64,000 in FY 2000, it may “carry over” $16,000 to FY 2001. However, the grantee must spend or obligate $20,000 in non-Federal funds in FY 2000 to meet its matching requirements for the $80,000 it received in FY 2000, even though it does not spend or obligate the entire $80,000 in FY 2000. If the grantee fails to spend or obligate in FY 2000 the entire $20,000 in non-
Federal funds, the grantee will fail to meet the matching requirement for the $80,000 it received in FY 2000 and may not carry over the unspent or unobligated $16,000 to FY 2001. The matching contribution also must comply with the requirements of 34 CFR 74.23 (for grantees that are institutions of higher education, hospitals, or other nonprofit organizations) or 34 CFR 80.24 (for grantees that are State, local, or Indian tribal governments). The term “third party in-kind contributions” is defined in either 34 CFR 74.2 or 34 CFR 80.3, as applicable to the type of grantee.

PART 380—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH THE MOST SEVERE DISABILITIES AND TECHNICAL ASSISTANCE PROJECTS

Subpart A—General

Sec.

380.1 What is the program of special projects and demonstrations for providing supported employment services to individuals with the most severe disabilities and technical assistance projects?

380.2 Who is eligible for an award?

380.3 What types of projects are authorized?

380.4 What activities may the Secretary fund under Statewide supported employment demonstration projects?

380.5 What activities may the Secretary fund under community-based supported employment projects?

380.6 What activities may the Secretary fund under technical assistance supported employment projects?

380.7 What priorities may the Secretary establish?

380.8 What regulations apply?

380.9 What definitions apply?

Subpart B—How Does the Secretary Make an Award?

380.10 How does the Secretary evaluate an application?

380.11 What other factors does the Secretary consider in reviewing an application?

380.12 What application requirement applies to this program?

Subpart C—What Post-Award Conditions Must Be Met by a Grantee?

380.20 What requirements must a grantee meet before it provides for the transition of an individual in supported employment?
(a) **Statewide demonstration projects** as described in §380.4. The purpose of Statewide demonstration projects is to stimulate the development and provision of supported employment services on a statewide basis for individuals with the most severe disabilities.

(b) **Community-based projects** as described in §380.5. The purposes of community-based projects are to stimulate the development of innovative approaches for improving and expanding the provision of supported employment services to individuals with the most severe disabilities, and to enhance local capacity to provide supported employment services.

(c) **Technical assistance projects** as described in §380.6. The purpose of technical assistance projects is to provide technical assistance to States in implementing the State Supported Employment Services Program under 34 CFR part 363.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

§380.4 What activities may the Secretary fund under Statewide supported employment demonstration projects?

(a) **Authorized activities.** The following activities are authorized under Statewide Supported Employment demonstration projects:

(1) Program development, including program start-up costs, for new or existing community organizations and employers.

(2) Staff training.

(3) Program evaluation.

(4) Reorganization, expansion, or, if appropriate, conversion of existing programs to provide supported employment services.

(b) **Restrictions on the use of funds.** (1) Statewide Supported Employment demonstration project grants may not be used to provide supported employment services to individuals with the most severe disabilities.

(2) A grantee must provide, or ensure the provision of, those direct services needed by individuals with the most severe disabilities in order for them to obtain and maintain employment from funds other than those made available under this part. These supported employment services include but are not limited to—

(i) Job site training to prepare and enable individuals with the most severe disabilities to perform work and maintain the job;

(ii) Ongoing supervision of individuals with the most severe disabilities on the job;

(iii) Ongoing behavior management; and

(iv) Case management, including assistance to coordinate services from various sources.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))


§380.5 What activities may the Secretary fund under community-based supported employment projects?

(a) **Authorized activities.** The following activities are authorized under community-based projects:

(1) Job search assistance.

(2) Job development, including worksite modification and use of advanced learning technology for skills training.

(3) On-the-job training.

(4) Job placement.

(5) Application of rehabilitation technology in providing supported employment services.

(6) Provision of supported employment services for individuals placed in employment.

(7) Development of cooperative agreements with service providers for the provision of extended services.

(b) **Restrictions on the use of funds.** The Secretary does not provide financial assistance under Community-Based Supported Employment projects for the provision of extended supported employment services.

(Authority: 29 U.S.C. 777a(c))


§380.6 What activities may the Secretary fund under technical assistance supported employment projects?

The following activities are authorized under technical assistance projects:

(a) Staff training.
§ 380.7  
(b) Development of and placement in jobs for individuals with the most severe disabilities.  
(c) Development of cooperative agreements with service providers for extended services.  
(d) Reorganization, expansion, or, if appropriate, conversion of existing programs to provide supported employment services.  

(Authority: 29 U.S.C. 777a(c)(2))  

§ 380.7 What priorities may the Secretary establish?  
In any fiscal year, the Secretary may establish priorities for one or more of the types of projects described in §380.3 by publishing a notice in the FEDERAL REGISTER.  

(Authority: 29 U.S.C. 777a(c)(2))  

§ 380.8 What regulations apply?  
The following regulations apply to the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects:  
(a) The Education Department General Administrative Regulations (EDGAR) as follows:  
(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).  
(2) 34 CFR part 75 (Direct Grant Programs).  
(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).  
(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).  
(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).  
(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).  
(7) 34 CFR part 82 (New Restrictions on Lobbying).  
(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).  
(9) 34 CFR part 86 (Drug-Free Schools and Campuses).  
(b) The regulations in this part 380.  
(c) The regulations in 34 CFR 369.46  

(Authority: 29 U.S.C. 711(c) and 777a(c))  

§ 380.9 What definitions apply?  
(a) The following term used in this part is defined in 34 CFR part 363: Supported employment.  
(b) The following terms used in this part are defined in 34 CFR part 369:  
Designated State unit  
Community rehabilitation program  
Individual with a severe disability  
(c) Other definitions. The following definitions also apply to this part:  
(i) Competitive employment means work—  
(A) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and  
(B) For which an individual is compensated at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled.  
(ii) Integrated setting means a setting typically found in the community in which an individual with the most severe disabilities interacts with non-disabled individuals, other than non-disabled individuals who are providing services to that individual, to the same extent that non-disabled individuals in comparable positions interact with other persons.  
(iii) Supported employment services means on-going support services provided by the grantee with funds under this part—  
(A) For a period not to exceed 18 months, unless under special circumstances a longer period to achieve job stabilization has been jointly agreed to by the individual and the rehabilitation counselor and established in the individual’s program of services, before an individual with the most severe disabilities makes the transition to extended services; and
(B) As discrete post-employment services following transition in accordance with 34 CFR 363.4(c)(3);

(iv) Extended services means on-going support services and other appropriate services provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, part 361, part 363, or part 376 after an individual with the most severe disabilities has made the transition from project support; and

(v) Transitional employment means a series of temporary job placements in competitive work in an integrated work setting with on-going support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of on-going support services must include continuing sequential job placements until job permanency is achieved.

(2) On-going support services means services that are—

(i) Needed to support and maintain an individual with the most severe disabilities in supported employment;

(ii) Based on a determination by the grantee of the individual’s needs as specified in a program of services; and

(iii) Furnished by the grantee from the time of job placement until transition to extended services, except as provided in 34 CFR 363.4(c)(3) and, following transition, by one or more extended services providers throughout the individual’s term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment. On-going support services must include, at a minimum, twice-monthly monitoring at the work site of each individual in supported employment to assess employment stability, unless under special circumstances, especially at the request of the individual, the individual’s program of services provides for off-site monitoring, and, based upon that assessment, the coordination or provision of specific services, at or away from the work site, that are needed to maintain employment stability. If off-site monitoring is determined to be appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month. On-going support services consist of—

(A) Any particularized assessment needed to supplement the comprehensive assessment of rehabilitation needs;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and placement;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services such as regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representative of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of rehabilitation services described in 34 CFR part 361; and

(I) Any service similar to the foregoing services.

(Authority: 29 U.S.C. 777a(c))


Subpart B—How Does the Secretary Make an Award?

§ 380.10 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 777a(c))


§ 380.14 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making awards under this part, considers the geographical distribution of
§ 380.15

projects in each program category throughout the country.
(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

§ 380.15 What application requirement applies to this program?

Each applicant for a grant under this program must include in its application a description of the manner in which it will address the needs of individuals with the most severe disabilities from minority backgrounds.
(Approved by the Office of Management and Budget under control number 1820-0018)
(Authority: 29 U.S.C. 718b)
[59 FR 8343, Feb. 18, 1994]

Subpart C—What Post-Award Conditions Must Be Met by a Grantee?

§ 380.20 What requirements must a grantee meet before it provides for the transition of an individual in supported employment?

A grantee must provide for the transition of an individual with the most severe disabilities to extended services no later than 18 months after placement in supported employment, unless a longer period is established in the individual’s program of services, and only if the individual has made substantial progress toward meeting his or her hours-per-week work goal, is stabilized in the job, and extended services are available and can be provided without a hiatus in services.
(Authority: 29 U.S.C. 777a(c))
[57 FR 28442, June 24, 1992, as amended at 59 FR 8343, Feb. 18, 1994]

§ 380.21 What information requirement applies to this program?

Each grantee must advise recipients of services under its project or, as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State’s Client Assistance Program, including information on seeking assistance from that program.
(Authority: 29 U.S.C. 718a)
[59 FR 8343, Feb. 18, 1994]
§ 381.4 What regulations apply?

The following regulations apply to the PAIR program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), if the eligible system is not a State or local government agency or Indian tribal organization.

(2) 34 CFR part 75 (Direct Grant Programs), if the appropriation for the PAIR program is less than $5,500,000.

(3) 34 CFR part 76 (State-Administered Programs), if the appropriation for the PAIR program is equal to or greater than $5,500,000 and the eligible system meets the requirements of §381.10 is eligible to apply for a grant award under this program.

(b) In any fiscal year in which the amount appropriated to carry out this section is less than $5,500,000, a protection and advocacy system from any State or from Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Republic of Palau may apply for a grant under the Protection and Advocacy of Individual Rights (PAIR) program to plan for, develop outreach strategies for, and carry out a protection and advocacy program authorized under this part, except that the Republic of Palau may not apply for a grant under the PAIR program after the Compact of Free Association with Palau takes effect.

(c) In any fiscal year in which the amount appropriated to carry out this section is equal to or greater than $5,500,000, an eligible system from any State and from any of the jurisdictions named in paragraph (b) of this section may apply to receive the amount allotted pursuant to section 509(c)-(e) of the Act, except that the Republic of Palau may receive an allotment under section 509 of the Act only until the Compact of Free Association with Palau takes effect.

(Authority: Sec. 509(b)-(e) of the Act; 29 U.S.C. 794e(b)-(e)).

§ 381.3 What activities may the Secretary fund?

(a) Funds made available under this part must be used for the following activities:

(1) Establishing a system to protect, and advocate for, the rights of individuals with disabilities.

(2) Pursuing legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State.

(3) Providing information on and making referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs.

(4) Coordinating the protection and advocacy program provided through an eligible system with the advocacy programs under—

(i) Section 112 of the Act (the Client Assistance Program (CAP));

(ii) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(iii) Part C of the DDA; and


(5) Developing a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities.

(6) Providing to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities described in §381.10(f).

(7) Establishing a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system.

(b) Funds made available under this part also may be used to carry out any other activities consistent with the purpose of this part and the activities listed in paragraph (a) of this section.

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f)).

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]
§ 381.5 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Award
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

(b) Other definitions. The following definitions also apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual’s cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether State, local or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual before private entities or organizations, or government agencies (whether State, local or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is individual advocacy;

(2) More than one individual or a group or class of individuals, in which case it is systems (or systemic) advocacy; or

(3) Oneself, in which case it is self advocacy.

Eligible individual with a disability means an individual who—

(1) Needs protection and advocacy services that are beyond the scope of services authorized to be provided by the CAP under section 112 of the Act; and

(2) Is ineligible for—

(i) Protection and advocacy programs under part C of the DDA; and

(ii) Protection and advocacy programs under the PAIMI.

Eligible system means a protection and advocacy system that is established under part C of the DDA, 42 U.S.C. 6041–6043, and that meets the requirements of §381.10 of this part.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator must not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American
§ 381.10 What are the application requirements?

(a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will—

(1) Have in effect a system to protect, and advocate for, the rights of eligible individuals with disabilities;

(2) Have the same general authorities, including access to records and program income, as in part C of the DDA;

(3) Have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State;

(4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs;

(5) Develop a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities;

(6) Provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including—

(i) The objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of those objectives and priorities; and

(ii) The coordination of programs provided through eligible systems with the advocacy programs under—

(A) Section 112 of the Act (CAP);

(B) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(C) Part C of the DDA; and

(D) The PAIMI;

(7) Establish a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system;

(8) Use funds made available under this part to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided; and

(9) Implement procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

(b) To receive direct payment of funds under this part, an eligible system must provide to the Secretary, as part of its application for assistance, an assurance that direct payment is not prohibited by or inconsistent with State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f))

§ 381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary evaluates applications under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 711(c) and 794e (b) and (d))


§ 381.22 How does the Secretary allocate funds under this program?

(a) In any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000—

1. The Secretary sets aside not less than 1.8 percent but not more than 2.2 percent of the amount appropriated to provide training and technical assistance to eligible systems established under this program.

2. After the reservation required by paragraph (a)(1) of this section, the Secretary makes allotments from the remainder of the amount appropriated in accordance with section 509(c)(2)-(e) of the Act.

(b) Notwithstanding any other provision of law, in any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000, the Secretary pays directly to an eligible system that submits an application that meets the requirements of § 381.10 the amount of the allotment to the State pursuant to section 509 of the Act, unless the State provides otherwise.

(Authority: Secs. 12 and 509(i) of the Act; 29 U.S.C. 711(c) and 794e(i))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

§ 381.31 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any eligible system under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The eligible system's use of information and records concerning individuals must be limited only to purposes directly connected with the protection and advocacy program, including program evaluation activities. Except as provided in paragraph (c) of this section, an eligible system may not disclose personal information about an individual, directly or indirectly, other than in the administration of the protection and advocacy program, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other authorized representative or advocate (including
§ 381.33 What are the requirements related to the use of funds provided under this part?

(a) Funds made available under this part must be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided under this part.

(b) In any State in which an eligible system is located within a State agency, that State or State agency may not use more than five percent of any allotment for the costs of administration of the eligible system supported under
this part. For purposes of this paragraph, “costs of administration” include, but are not limited to, administrative salaries (including salaries for clerical and support staff), supplies, depreciation or use allowances, the cost of operating and maintaining facilities, equipment, and grounds (e.g., rental of office space or equipment, telephone, postage, maintenance agreements), and other similar types of costs that may be incurred by the State or State agency to administer the eligible system.

(c) Funds paid to a State or an eligible system within a State for a fiscal year to carry out this program that are not expended or obligated prior to the end of that fiscal year remain available to the State or an eligible system within a State for obligation during the succeeding fiscal year in accordance with 34 CFR 76.705–76.707.

(d) For determining when an eligible system makes an obligation for various kinds of property or services, 34 CFR 75.707 and 76.707, as appropriate, apply to this program. If the appropriation for the PAIR program is less than $5,500,000, §75.707 applies. If the appropriation for the PAIR program is equal to or greater than $5,500,000, §76.707 applies. An eligible system is considered a State for purposes of §76.707.

(Authority: Secs. 12 and 509(f),(g), and (j) of the Act; 29 U.S.C. 711(c) and 794e(f), (g), and (j))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]
individuals, and other appropriate parties to develop the skills necessary for individuals with disabilities to access the rehabilitation system and to become active decisionmakers in the rehabilitation process.

(b) The Secretary awards grants and contracts to pay part of the costs of projects for training, traineeships, and related activities, including the provision of technical assistance, to assist in increasing the numbers of qualified personnel trained in providing rehabilitation services and other services provided under the Act. to individuals with disabilities. Financial assistance is provided through six categories of training programs:

(1) Rehabilitation Long-Term Training (34 CFR part 386).
(2) Experimental and Innovative Training (34 CFR part 387).
(3) State Vocational Rehabilitation Unit In-Service Training (34 CFR part 388).
(4) Rehabilitation Continuing Education Programs (34 CFR part 389).
(5) Rehabilitation Short-Term Training (34 CFR part 390).
(6) Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind (34 CFR part 396).

(Authority: Secs. 301 and 302 of the Act; 29 U.S.C. 770 and 774)

§ 385.2 Who is eligible for assistance under these programs?

States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

(Authority: Secs. 7(19) and 302 of the Act; 29 U.S.C. 706(19) and 774)

§ 385.3 What regulations apply to these programs?

The following regulations apply to the Rehabilitation Training program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).
(2) 34 CFR part 75 (Direct Grant Programs).
(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).
(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).
(7) 34 CFR part 82 (New Restrictions on Lobbying).
(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 385.

(c) The regulations in 34 CFR parts 386, 387, 388, 389, 390, and 396, as appropriate.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

§ 385.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR part 77 apply to the programs under the Rehabilitation Training Program—

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Private
Project
Project Period
Public
Secretary

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(b) The following definitions also apply to programs under the Rehabilitation Training program:

Assistive technology device means any item, piece of equipment, or product
system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

_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. The term includes—

1. The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual’s customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for an individual with disabilities, or, if appropriate, the family of an individual with disabilities; and
6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

_Community rehabilitation program_ means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
2. Testing, fitting, or training in the use of prosthetic and orthotic devices;
3. Recreational therapy;
4. Physical and occupational therapy;
5. Speech, language, and hearing therapy;
6. Psychiatric, psychological, and social services, including positive behavior management;
7. Assessment for determining eligibility and vocational rehabilitation needs;
8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;
13. Psychosocial rehabilitation services;
14. Supported employment services and extended services;
15. Services to family members when necessary to the vocational rehabilitation of the individual;
16. Personal assistance services; or
17. Services similar to the services described in paragraphs (1) through (16) of this definition.

_Designated State agency_ means an agency designated under section 101(a)(1)(A) of the Act.

_Designated State unit_ means (1) Any State agency unit required under section 101(a)(2)(A) of the Act, or (2) In cases in which no State agency unit is required, the State agency described in section 101(a)(2)(B)(i) of the Act.

_Independent living core services_ means—

1. Information and referral services;
2. Independent living skills training;
3. Peer counseling, including cross-disability peer counseling; and
4. Individual and systems advocacy.

_Independent living services_ includes—

1. Independent living core services; and
2. (i) Counseling services, including psychological, psychotherapeutic, and related services;
(ii) Services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of this Act.
and of the titles of this Act, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);

(iii) Rehabilitation technology;
(iv) Mobility training;
(v) Services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;
(vi) Personal assistance services, including attendant care and the training of personnel providing these services;
(vii) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;
(viii) Consumer information programs on rehabilitation and independent living services available under this Act, especially for minorities and other individuals with disabilities who have traditionally been underserved by programs under this Act;
(ix) Education and training necessary for living in the community and participating in community activities;
(x) Supported living;
(xi) Transportation, including referral and assistance for transportation;
(xii) Physical rehabilitation;
(xiii) Therapeutic treatment;
(xiv) Provision of needed prostheses and other appliances and devices;
(xv) Individual and group social and recreational services;
(xvi) Training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;
(xvii) Services for children;
(xviii) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;
(xix) Appropriate preventive services to decrease the need of individuals assisted under this Act for similar services in the future;

(xx) Community awareness programs to enhance the understanding and integration of individuals with disabilities; and

(xxi) Such other services as may be necessary and not inconsistent with the provisions of this Act.

Individual with a disability means any individual who—
(1) Has a physical or mental impairment, which for that individual constitutes or results in a substantial impediment to employment; and
(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, II, III, VI, or VIII of the Act.

Individual with a severe disability means an individual with a disability—
(1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs.

Institution of higher education has the meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Personal assistance services means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically
§ 385.20 What are the application procedures for these programs?

The Secretary gives the designated State agency an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed
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by the applicant and the State are in EDGAR §§ 75.155–75.159.
(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 385.30 [Reserved]

§ 385.31 How does the Secretary evaluate an application?
(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.
(b) The Secretary evaluates each application using selection criteria identified in parts 386, 387, 388, 389 and 390, as appropriate.
(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—
(1) Selection criteria in 34 CFR 75.210;
(2) Selection criteria established under 34 CFR 75.209; or
(Authority: 29 U.S.C. 711(c))

§ 385.33 What other factors does the Secretary consider in reviewing an application?
In addition to the selection criteria listed in § 75.210 and parts 386 through 390, the Secretary, in making awards under this program, considers such factors as—
(a) The geographical distribution of projects in each Rehabilitation Training Program category throughout the country; and
(b) The past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.
(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))
[59 FR 8347, Feb. 18, 1994]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 385.40 What are the requirements pertaining to the membership of a project advisory committee?
If a project funded under 34 CFR parts 386 through 390 or 396 establishes an advisory committee, its membership must include individuals with disabilities or parents, family members, guardians, advocates, or other authorized representatives of the individuals; members of minority groups; trainees; and providers of vocational rehabilitation and independent living rehabilitation services.
(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))
[59 FR 8347, Feb. 18, 1994]

§ 385.41 What are the requirements affecting the collection of data from designated State agencies?
If the collection of data is necessary from individuals with disabilities being served by two or more designated State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under these programs.
(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.42 What are the requirements affecting the dissemination of training materials?
A set of any training materials developed under the Rehabilitation Training
§ 385.43 What requirements apply to the training of rehabilitation counselors and other rehabilitation personnel?

Any grantee who provides training of rehabilitation counselors or other rehabilitation personnel under any of the programs in 34 CFR parts 386 through 396 shall train those counselors and personnel on the services provided under this Act, and, in particular, services provided in accordance with amendments made by the Rehabilitation Act Amendments of 1992. The grantee shall also furnish training to these counselors and personnel regarding the applicability of section 504 of this Act, title I of the Americans with Disabilities Act of 1990, and the provisions of titles II and XVI of the Social Security Act that are related to work incentives for individuals with disabilities.

(Authority: Sec. 302(a)(3) of the Act; 29 U.S.C. 774(a)(3))

[59 FR 8347, Feb. 18, 1994]

§ 385.44 What requirement applies to the training of individuals with disabilities?

Any grantee or contractor who provides training under any of the programs in 34 CFR parts 386 through 390 and 396 shall give due regard to the training of individuals with disabilities as part of its effort to increase the number of qualified personnel available to provide rehabilitation services.

(Authority: Sec. 302(a)(1) of the Act; 29 U.S.C. 774(a)(1))

[59 FR 8347, Feb. 18, 1994]

§ 385.45 What additional application requirements apply to the training of individuals for rehabilitation careers?

(a) All applicants for a grant or contract to provide training under any of the programs in 34 CFR parts 386 through 390 and 396 shall demonstrate how the training they plan to provide will prepare rehabilitation professionals to address the needs of individuals with disabilities from minority backgrounds.

(b) All applicants for a grant under any of the programs in 34 CFR parts 386 through 390 and 396 shall include a detailed description of strategies that will be utilized to recruit and train persons so as to reflect the diverse populations of the United States, as part of the effort to increase the number of individuals with disabilities, and individuals who are members of minority groups, who are available to provide rehabilitation services.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 21(b)(5) and 302(a)(5) of the Act; 29 U.S.C. 718(b)(6) and 774(a)(6))


PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec. 386.1 What is the Rehabilitation Long-Term Training program?

386.2 Who is eligible for an award?

386.3 What regulations apply?

386.4 What definitions apply?

Subpart B [Reserved]
Subpart C—How Does the Secretary Make an Award?

386.20 What additional selection criteria are used under this program?

Subpart D—What Conditions Must Be Met After an Award?

386.30 What are the matching requirements?
386.31 What are the requirements for directing grant funds?
386.32 What are allowable costs?
386.33 What are the requirements for grantees in disbursing scholarships?
386.34 What assurances must be provided by a grantee that intends to provide scholarships?
386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

Subpart E—What Conditions Must Be Met by a Scholar?

386.40 What are the requirements for scholars?
386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?
386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?
386.43 What are the consequences of a scholar’s failure to meet the terms and conditions of a scholarship agreement?

Authority: 29 U.S.C. 711(c) and 714, unless otherwise noted.

Source: 59 FR 31066, June 16, 1994, unless otherwise noted.

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training program?

(a) The Rehabilitation Long-Term Training program provides financial assistance for—
(1) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in paragraph (b) of this section;
(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in one of those fields of study identified in paragraph (b) of this section; and
(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(b) The Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages identified by the Secretary and published in a notice in the Federal Register. These areas may include—
(1) Vocational rehabilitation counseling;
(2) Rehabilitation technology;
(3) Rehabilitation medicine;
(4) Rehabilitation nursing;
(5) Rehabilitation social work;
(6) Rehabilitation psychiatry;
(7) Rehabilitation psychology;
(8) Rehabilitation dentistry;
(9) Physical therapy;
(10) Occupational therapy;
(11) Speech pathology and audiology;
(12) Physical education;
(13) Therapeutic recreation;
(14) Community rehabilitation program personnel;
(15) Prosthetics and orthotics;
(16) Specialized personnel for rehabilitation of individuals who are blind or have vision impairment;
(17) Rehabilitation of individuals who are deaf or hard of hearing;
(18) Rehabilitation of individuals who are mentally ill;
(19) Undergraduate education in the rehabilitation services;
(20) Independent living;
(21) Client assistance;
(22) Administration of community rehabilitation programs;
(23) Rehabilitation administration;
(24) Vocational evaluation and work adjustment;
(25) Services to individuals with specific disabilities or specific impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;
(26) Job development and job placement services to individuals with disabilities;
(27) Supported employment services, including services of employment specialists for individuals with disabilities;
(28) Specialized services for individuals with severe disabilities;
(29) Recreation for individuals with disabilities;
§ 386.2  Who is eligible for an award?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: 29 U.S.C. 771a(a))

§ 386.3  What regulations apply?

The following regulations apply to the Rehabilitation Training: Rehabilitation Long-Term Training program:

(a) The regulations in this part 386.

(b) The regulations in 34 CFR part 385.

(Authority: 29 U.S.C. 771a)

§ 386.4  What definitions apply?

The following definitions apply to this program:

(a) Definitions in 34 CFR 385.4.

(b) Other definitions. The following definitions also apply to this part:

Academic year means a full-time course of study—

(1) Taken for a period totaling at least nine months; or

(2) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

Certificate means a recognized educational credential awarded by a grantee under this part that attests to the completion of a specified series of courses or program of study.

Professional corporation or professional practice means—

(1) A professional service corporation or practice formed by one or more individuals duly authorized to render the same professional service, for the purpose of rendering that service; and

(2) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

Related agency means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with disabilities under an agreement with a designated State agency in the area of specialty for which training is provided:

(i) A Federal, State, or local agency.

(ii) A nonprofit organization.

(iii) A professional corporation or professional practice group.

Scholar means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in §386.1(b) and who receives scholarship assistance under this part.

Scholarship means an award of financial assistance to a scholar for training and includes all disbursements or credits for student stipends, tuition and fees, and student travel in conjunction with training assignments.

State rehabilitation agency means the designated State agency.

(Authority: 29 U.S.C. 711(c))

Subpart B  [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 386.20  What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) Relevance to State-Federal rehabilitation service program. (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs; or

(ii) To improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.
(b) Nature and scope of curriculum. (1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: 29 U.S.C. 711(c) and 771a)

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(b) The Secretary may award grants that use less than 75 percent of the total award for scholarships based upon the unique nature of the project, such as the establishment of a new training program or long-term training in an emerging field that does not award degrees or certificates.

(c) For multi-year projects in existence on October 1, 1994, the requirements of paragraph (a) of this section do not apply for the remainder of the project period.

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.32 What are allowable costs?

In addition to those allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable under long-term training projects:

(a) Student stipends.

(b) Tuition and fees.

(c) Student travel in conjunction with training assignments.

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.33 What are the requirements for grantees in disbursing scholarships?

(a) Before disbursement of scholarship assistance to an individual, a grantee—

(1)(i) Shall obtain documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall confirm from documentation issued to the individual by the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Shall confirm that the applicant has expressed interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation, supported

Subpart D—What Conditions Must Be Met After an Award?

§ 386.30 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program. The Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the entire match.

(Authority: 29 U.S.C. 711(c))

§ 386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 75 percent of the total award for scholarships as defined in §386.4.
§ 386.34 Employment, or independent living rehabilitation of individuals with disabilities, especially individuals with severe disabilities;

(3) Shall have documentation that the individual expects to maintain or seek employment in a designated State rehabilitation agency or in a nonprofit rehabilitation, professional corporation, professional practice group, or related agency providing services to individuals with disabilities or individuals with severe disabilities under an agreement with a designated State agency;

(4) Shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance, if a scholarship, when added to the amount the scholar is to receive for the same academic year under title IV of the Higher Education Act, would otherwise exceed the scholar's cost of attendance;

(5) Shall limit scholarship assistance to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may provide an extension consistent with the institution's accommodations under section 504 of the Act if the grantee determines that an individual has a disability that seriously affects the completion of the course of study; and

(6) Shall obtain a Certification of Eligibility for Federal Assistance from each scholar as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.34 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this part that intends to grant scholarships for any academic year beginning after June 1, 1992, shall provide the following assurances before an award is made:

(a) Requirement for agreement. No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section. An individual will sign and date the agreement prior to the initial disbursement of scholarship funds to the individual for payment of the individual’s expenses, such as tuition.

(b) Disclosure to applicants. The terms and conditions of the agreement that the grantee enters into with a scholar will be fully disclosed in the application for scholarship.

(c) Form and terms of agreement. Each scholarship agreement with a grantee will be in the form and contain the terms that the Secretary requires, including at a minimum the following provisions:

(1) The scholar will—

(i) Maintain employment—

(A) In a nonprofit rehabilitation agency or related agency or in a State rehabilitation agency or related agency, including a professional corporation or professional practice group through which the individual has a service arrangement with the designated State agency;

(B) On a full- or part-time basis; and

(C) For a period of not less than the full-time equivalent of two years for each year for which assistance under this section was received, within a period, beginning after the recipient completes the training for which the scholarship was awarded, of not more than the sum of the number of years required in this paragraph and two additional years; and

(ii) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of paragraph (c)(1(i) of this section, except as the Secretary by regulations may provide for repayment exceptions and deferrals.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address, or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in §386.41 regarding a deferral or exception, when the scholar enters repayment status under §386.43(e), the
amount of the scholarship that has not been retired through eligible employment will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in §386.43; and

(ii) May be collected by the Secretary in accordance with 34 CFR part 30, in the case of the scholar’s failure to meet the obligation of §386.43.

d Executed agreement. The grantee will provide an original executed agreement upon request to the Secretary.

e Standards for satisfactory progress. The grantee will establish, publish, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar’s course of study. The Secretary considers an institution’s standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution’s program of study, if the institution’s program of study is accredited by such an agency, and if the agency has those standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution’s standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum timeframe in which the scholar shall complete the scholar’s educational objective, degree, or certificate.

(iii) Consistent application of standards to all scholars within categories of students; e.g., full-time, part-time, undergraduates, graduate students, and students attending programs established by the institution.

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

f Exit certification. The grantee has established policies and procedures for receiving written certification from scholars at the time of exit from the program acknowledging the following:

(1) The name of the institution and the number of the Federal grant that provided the scholarship.

(2) The scholar’s field of study.

(3) The number of years the scholar needs to work to satisfy the work requirements in §386.34(c)(1)(i)(C).

(4) The total amount of scholarship assistance received subject to the work-or-repay provision in §386.34(c)(1)(ii).

(5) The time period during which the scholar must satisfy the work requirements in §386.34(c)(1)(i)(C).

(6) All other obligations of the scholar in §386.34.

(g) Tracking system. The grantee has established policies and procedures to determine compliance of the scholar with the terms of the agreement. In order to determine whether a scholar has met the work-or-repay provision in §386.34(c)(1)(i), the tracking system must include for each employment position maintained by the scholar—

(1) Documentation of the employer’s name, address, dates of the scholar’s employment, and the position the scholar maintained;

(2) Documentation of how the employment meets the requirements in §386.34(c)(1)(i); and

(3) Documentation that the grantee, if experiencing difficulty in locating a scholar, has checked with existing tracking systems operated by alumni organizations.

(h) Reports. The grantee shall make reports to the Secretary that are necessary to carry out the Secretary’s functions under this part.

(i) Records. The grantee shall maintain the information obtained in paragraphs (g) and (h) of this section for a period of time equal to the time required to fulfill the obligation under §386.34(c)(1)(i)(C).

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 771a(b))
§ 386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

A grantee that is an institution of higher education provided assistance under this part shall cooperate with the following requests for information from a designated State agency:

(a) Information required by section 101(a)(7) of the Act which may include, but is not limited to—

(1) The number of students enrolled by the grantee in rehabilitation training programs; and

(2) The number of rehabilitation professionals trained by the grantee who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year.

(b) Information on the availability of rehabilitation courses leading to certification or licensure, or the credentials to qualify for certification or licensure, to assist State agencies in the planning of a program of staff development for all classes of positions that are involved in the administration and operation of the State agency’s vocational rehabilitation program.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 771a)

Subpart E—What Conditions Must Be Met by a Scholar?

§ 386.40 What are the requirements for scholars?

A scholar—

(a) Shall receive the training at the educational institution or agency designated in the scholarship; and

(b) Shall not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance conflicts with the individual’s obligation under §386.33(a)(4) or §386.34(c)(1).

(c) Shall enter into a written agreement with the grantee, before starting training, that meets the terms and conditions required in §386.34;

(d) Shall be enrolled in a course of study leading to a certificate or degree in one of the fields designated in §386.1(b); and

(e) Shall maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

A deferral or repayment exception to the requirements of §386.34(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of a disability that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed 12 months.

(Authority: 29 U.S.C. 771(c) and 771a(b))

§ 386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?

To obtain a deferral or exception to performance or repayment under a scholarship agreement, a scholar shall provide the following:

(a) Written application. A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.
PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

Subpart A—General

§ 387.1 What is the Experimental and Innovative Training Program?

This program is designed—

(a) To develop new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of

(2) Any date when the scholar’s failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the number of years required in §386.34(c)(1).

(f) Amounts and frequency of payment.

The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.43 What are the consequences of a scholar’s failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in §386.41, the scholar shall repay all or part of the scholarship as follows:

(a) Amount. The amount of the scholarship to be repaid is proportional to the employment obligation not completed.

(b) Interest rate. The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) Interest accrual. (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar’s repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under §386.41.

(d) Collection costs. Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) Repayment status. A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.
§ 387.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 387.3 What regulations apply to this program?

(a) 34 CFR part 385 (Rehabilitation Training); and
(b) The regulations in this part 387.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 387.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 387.10 What types of projects are authorized under this program?

The Experimental and Innovative Training Program supports time-limited pilot projects through which new types of rehabilitation workers may be trained or through which innovative methods of training rehabilitation workers may be demonstrated.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

Subpart D—How Does the Secretary Make a Grant?

§ 387.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) Relevance to State-Federal rehabilitation service program. (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of individuals with disabilities; or

(ii) To maintain and improve the skills and quality of rehabilitation workers.

(b) Nature and scope of curriculum. (1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities; and

Subpart C [Reserved]
(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services.

(Authority: 29 U.S.C. 711(c) and 774)


Subpart E—What Conditions Must Be Met by a Grantee?

§ 387.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

§ 387.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§ 75.530–75.562, the following items are allowable under experimental and innovative training projects—

(a) Student stipends;
(b) Tuition and fees; and
(c) Student travel in conjunction with training assignments.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

Subpart A—General

Sec.
388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?
388.2 Who is eligible for an award?
388.3 What types of projects are authorized?
388.4 What activities may the Secretary fund?
388.5 What regulations apply?
388.6 What definitions apply?

Subpart B [Reserved]

Subpart C—How Does the Secretary Make an Award?

388.20 What additional selection criterion is used under this program?
388.21 How does the Secretary determine the amount of a basic State award?
388.22 What priorities does the Secretary consider in making an award?

Subpart D—What Conditions Must Be Met After an Award?

388.30 What are the matching requirements?
388.31 What are the allowable costs?

AUTHORITY: 29 U.S.C. 711(c) and 774, unless otherwise noted.

SOURCE: 59 FR 40178, Aug. 5, 1994

Subpart A—General

§ 388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?

This program is designed to support projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit’s program of vocational rehabilitation services or in skill areas that will enable staff personnel to improve their ability to provide vocational rehabilitation services leading to employment outcomes for individuals with disabilities. The State Vocational Rehabilitation Unit In-Service Training program responds to needs identified in the comprehensive system of personnel development in section 101(a)(7) of the Act. The program may include training designed—

(a) To address recruitment and retention of qualified rehabilitation professionals;
(b) To provide for succession planning;
(c) To provide for leadership development and capacity building; and
(d) For fiscal year 1994, to provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(Authority: 29 U.S.C. 771a(g)(3))

§ 388.2 Who is eligible for an award?

Each designated State agency is eligible to receive an award under the basic State award program described in §388.21. If a designated State agency
§ 388.3 What types of projects are authorized?

State vocational rehabilitation unit in-service training projects are concerned with the staff development and training of State vocational rehabilitation unit personnel in order to ensure an improved level of competence in serving State unit clients and to assist in expanding and improving vocational rehabilitation services for individuals with disabilities, especially those with severe disabilities, to ensure employment outcomes.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.4 What activities may the Secretary fund?

(a) Training activities supported under a State vocational rehabilitation unit in-service training grant focus primarily on program areas that are essential to the State unit’s operation or on skill areas that will enable staff personnel to improve their ability to function on their job, or prepare for positions of greater responsibility within the unit, or to correct deficiencies identified in the State program. Projects may—

(1) Address recruitment and retention of qualified rehabilitation professionals;

(2) Provide for succession planning;

(3) Provide for leadership development and capacity building; and


(b) Training methods may include—

(1) Development of State unit training institutes related to the specific aspects of State unit administration or service provision;

(2) Group employee training at courses conducted in cooperation with or by an educational institution;

(3) Individualized directed study in priority areas of State unit service or practice;

(4) Employee access to current agency instructional resources for books, films, videos, tapes, and other human resource development resources;

(5) Distance learning through telecommunications; and

(6) Dissemination and information sharing with other designated State agencies.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.5 What regulations apply?

The following regulations apply to the State Vocational Rehabilitation Unit In-Service Training program:

(a) The regulations in this part 388.

(b) The regulations in 34 CFR part 385.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.6 What definitions apply?

The definitions in 34 CFR part 385 apply to this program.

(Authority: 29 U.S.C. 711(c) and 771(a)(g)(3))

Subpart B [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 388.20 What additional selection criterion is used under this program?

In addition to the selection criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) Evidence of need. (1) The Secretary reviews each application for information that shows that the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) How the proposed project relates to the mission of the State-Federal rehabilitation service program and can be expected to improve the competence of all State vocational rehabilitation
§ 388.22 What priorities does the Secretary consider in making an award?

(a) The Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in §388.20.

(b) In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and address one or more of the following priorities announced in the application notice:

(1) Development and dissemination of model in-service training materials and practices. The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

(2) Distance education. The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

(3) Enhanced employment outcomes for specific populations. The proposed project supports specialized training in the provision of vocational rehabilitation or related services to individuals...
§ 388.30

with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

Subpart D—What Conditions Must Be Met After an Award?

§ 388.30 What are the matching requirements?

(a) The Secretary may make grants for paying part of the costs of projects under this program. Except as provided for in paragraphs (b) and (c) of this section, the grantee shall provide at least 10 percent of the total costs of the project.

(b) Grantees designated in § 388.21(a)(3) to receive a minimum share of one third of one percent of the sums made available for the fiscal year shall provide at least four percent of the total costs of the project.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.31 What are the allowable costs?

In addition to those allowable costs established in 34 CFR 75.530 through 75.562 (Education Department General Administrative Regulations), the following items are allowable under State vocational rehabilitation unit in-service training projects:

(a) Trainee per diem costs.

(b) Trainee travel in connection with a training course.

(c) Trainee tuition and fees.

(d) Telecommunications and technology fees.

(Authority: 29 U.S.C. 711(c), 770, and 771a)
§ 389.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 389.10 What types of projects are authorized under this program?

Rehabilitation Continuing Education Programs—

(a) Train newly employed State agency staff at the administrative, supervisory, professional, subprofessional, or clerical levels in order to develop needs skills for effective agency performance;

(b) Provide training opportunities for experienced State agency personnel at all levels of State agency practice to upgrade their skills and to develop mastery of new program developments dealing with significant issues, priorities and legislative thrusts of the State/Federal vocational rehabilitation program; and

(c) Develop and conduct training programs for staff of—

(1) Private rehabilitation agencies and facilities which cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services;

(2) Centers for independent living; and

(3) Client assistance programs.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)


Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 389.30 What additional selection criterion is used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) Relevance to State-Federal rehabilitation service program. (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary reviews each application for information that shows that the proposed project includes an assessment of the potential of existing programs within the geographical area (including State vocational rehabilitation unit in-service training) to meet the needs for which support is sought.

(3) The Secretary looks for information that shows that the proposed project can be expected to improve the competence of professional and other personnel in the rehabilitation agencies serving individuals with severe disabilities.

(b) [Reserved]

(Authority: 29 U.S.C. 711(c))


Subpart E—What Conditions Must Be Met by a Grantee?

§ 389.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the cost to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

§ 389.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§ 75.530–75.562, the following items are allowable under Rehabilitation Continuing Education programs—

(a) Trainee per diem costs;

(b) Trainee travel in connection with a training course;

(c) Trainee tuition and fees; and

(d) Special accommodations for trainees with handicaps.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

PART 390—REHABILITATION SHORT-TERM TRAINING

Subpart A—General

Sec.
390.1 What is the Rehabilitation Short-Term Training Program?
390.2 Who is eligible for assistance under this program?
390.3 What regulations apply to this program?
390.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

390.10 What types of projects are authorized under this program?

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

390.30 What additional selection criterion is used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

390.40 What are the matching requirements?
390.41 What are allowable costs?

Subpart A—General

§ 390.1 What is the Rehabilitation Short-Term Training program?

This program is designed for the support of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

(Authority: Secs. 12(a)(2) and 302 of the Act; 29 U.S.C. 711(a)(2) and 774)

[59 FR 8348, Feb. 18, 1994]
Subpart D—How Does the Secretary Make a Grant?

§ 390.30 What additional selection criterion is used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) Relevance to State-Federal rehabilitation service program. (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary looks for information that shows that the proposed project can be expected to improve the skills and competence of—

(i) Personnel engaged in the administration or delivery of rehabilitation services; and

(ii) Others with an interest in the delivery of rehabilitation services.

(b) [Reserved]

(Authority: 29 U.S.C. 711(c) and 774)


Subpart E—What Conditions Must Be Met by a Grantee?

§ 390.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)


§ 390.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§75.530–75.562, the following items are allowable under short-term training projects:

(1) Trainee per diem costs;

(2) Trainee travel in connection with a training course;

(3) Trainee registration fees; and

(4) Special accommodations for trainees with handicaps.

(b) The preparation of training materials may not be supported under a short-term training grant unless the materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

§395.1 Definitions

395.36 Enforcement procedures.
395.37 Arbitration of State licensing agency complaints.
395.38 Reports.


Subpart A—Definitions

§395.1 Terms.

Unless otherwise indicated in this part, the terms below are defined as follows:


(b) Blind licensee means a blind person licensed by the State licensing agency to operate a vending facility on Federal or other property.

(c) Blind person means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, has been determined to have

1. Not more than 20/200 central visual acuity in the better eye with correcting lenses, or

2. An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20°.

(d) Cafeteria means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided.

(e) Secretary means the Secretary of the Rehabilitation Services Administration.

(f) Direct competition means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

(g) Federal property means any building, land, or other real property owned, leased, or occupied by any department, agency or instrumentality of the United States (including the Department of Defense and the U.S. Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.

(h) Individual location installation or facility means a single building or a self-contained group of buildings. In order for two or more buildings to be considered to be a self-contained group of buildings, such buildings must be located in close proximity to each other, and a majority of the Federal employees housed in any such building must regularly move from one building to another in the course of official business during normal working days.

(i) License means a written instrument issued by the State licensing agency to a blind person, authorizing such person to operate a vending facility on Federal or other property.

(j) Management services means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. Management services does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

(k) Net proceeds means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting
the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors).

(l) Nominee means a nonprofit agency or organization designated by the State licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the State’s vending facility program.

(m) Normal working hours means an eight hour work period between the approximate hours of 8:00 a.m., to 6:00 p.m., Monday through Friday.

(n) Other property means property which is not Federal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

(o) Permit means the official approval given a State licensing agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of Federal property, or person in control of other property, whereby the State licensing agency is authorized to establish a vending facility.

(p) Program means all the activities of the licensing agency under this part related to vending facilities on Federal and other property.

(q) Satisfactory site means an area fully accessible to vending facility patrons and having:

(1) Effective on March 23, 1977 a minimum of 250 square feet available for the vending and storage of articles necessary for the operation of a vending facility; and

(2) Sufficient electrical plumbing, heating, and ventilation outlets for the location and operation of a vending facility in accordance with applicable health laws and building codes.

(r) Secretary means the Secretary of Education.

(s) Set-aside funds means funds which accrue to a State licensing agency from an assessment against the net proceeds of each vending facility in the State’s vending facility program and any income from vending machines on Federal property which accrues to the State licensing agency.

(t) State means a State, territory, possession, Puerto Rico, or the District of Columbia.

(u) State vocational rehabilitation agency means that agency in the State providing vocational rehabilitation services to the blind as the sole State agency under a State plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973 (29 U.S.C., ch. 16).

(v) State licensing agency means the State agency designated by the Secretary under this part to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(w) United States includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia.

(x) Vending facility means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of a State within such State.

(y) Vending machine, for the purpose of assigning vending machine income under this part, means a coin or currency operated machine which dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

(2) Vending machine income means receipts (other than those of a blind vendor) from vending machine operations on Federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business operations of vending facilities).
practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(aa) Vendor means a blind licensee who is operating a vending facility on Federal or other property.

(bb) Vocational rehabilitation services means those services as defined in §1361.1(ee) (1) and (2) of this chapter.

Subpart B—The State Licensing Agency

§ 395.2 Application for designation as a State licensing agency; general.

(a) An application for designation as a State licensing agency may be submitted only by the State vocational rehabilitation agency providing vocational rehabilitation services to the blind under an approved State plan for vocational rehabilitation services under part 1361 of this chapter.

(b) Such application shall be:

(1) Submitted in writing to the Secretary;

(2) Approved by the chief executive of the State; and

(3) Transmitted over the signature of the administrator of the State agency making application.

§ 395.3 Application for designation as State licensing agency; content.

(a) An application for designation as a State licensing agency under §395.2 shall indicate:

(1) The State licensing agency’s legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;

(2) The State licensing agency’s organization for carrying out the program, including a description of the methods for coordinating the State’s vending facility program and the State’s vocational rehabilitation program, with special reference to the provision of such post-employment services necessary to assure that the maximum vocational potential of each blind vendor is achieved;

(3) The policies and standards to be employed in the selection of suitable locations for vending facilities;

(4) The methods to be used to ensure the continuing and active participation of the State Committee of Blind Vendors in matters affecting policy and program development and administration.

(5) The policies to be followed in making suitable vending facility equipment and adequate initial stock available to a vendor;

(6) The sources of funds for the administration of the program;

(7) The policies and standards governing the relationship of the State licensing agency to the vendors, including their selection, duties, supervision, transfer, promotion, financial participation, rights to a full evidentiary hearing concerning a State licensing agency action, and, where necessary, rights for the submittal of complaints to an arbitration panel;

(8) The methods to be followed in providing suitable training, including on-the-job training and, where appropriate, upward mobility training, to blind vendors;

(9) The arrangements made or contemplated, if any, for the utilization of the services of any nominee under §395.15; the agreements therefor and the services to be provided; the procedures for the supervision and control of the services provided by such nominee and the methods used in evaluating services received, the basis for remuneration, and the fiscal controls and accounting procedures;

(10) The arrangements made or contemplated, if any, for the vesting in accordance with the laws of the State, of the right, title to, and interest in vending facility equipment or stock (including vending machines), used in the program, in a nominee to hold such right, title to, and interest for program purposes; and

(11) The assurances of the State licensing agency that it will:

(i) Cooperate with the Secretary in applying the requirements of the Act in a uniform manner;
(ii) Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

(iii) Submit promptly to the Secretary for approval a description of any changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;

(iv) If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination by the Secretary that the amount of such funds to be set aside is reasonable;

(v) Establish policies against discrimination of any blind vendor on the basis of sex, age, physical or mental impairment, creed, color, national origin, or political affiliation;

(vi) Furnish each vendor a copy of its rules and regulations and a description of the arrangements for providing services, and take adequate steps to assure that each vendor understands the provisions of the permit and any agreement under which he operates, as evidenced by his signed statements:

(vii) Submit to an arbitration panel those grievances of any vendor unresolved after a full evidentiary hearing;

(viii) Adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State’s vending facility program a classification of financial transactions in such detail as is sufficient to enable evaluation of performance; and

(ix) Maintain records and make reports in such form and containing such information as the Secretary may require, make such records available for audit purposes, and comply with such provisions as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) An application submitted under §395.2 shall be accompanied by a copy of State rules and regulations affecting the administration and operation of the State’s vending facility program.

§ 395.4 State rules and regulations.

(a) The State licensing agency shall promulgate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State’s vending facility program (including State licensing agency procedures covering the conduct of full evidentiary hearings) and the operation of each vending facility in accordance with this part and with the requirements and conditions of each department, agency, and instrumentality in control of the maintenance, operation, and protection of Federal property, including the conditions contained in permits, as well as in all applicable Federal and State laws, local ordinances and regulations.

(b) Such rules and regulations and amendments thereto shall be filed or published in accordance with State law.

(c) Such rules and regulations shall include provisions adequate to insure that the right, title to, and interest in each vending facility used in the program and the stock will be vested in accordance with the laws of the State in only the following:

1. The State licensing agency;
2. Its nominee, subject to the conditions specified in §395.15(b); or
3. The vendor, in accordance with State determination.

(d) Notwithstanding the provisions of paragraph (c) of this section, any right, title to, or interest which existed on June 30, 1955, in stock may continue so long as:

1. The interest is in the stock of a facility established under the program prior to July 1, 1955, and
2. The vendor was licensed in the program (whether or not for the operation of the vending facility in question) prior to July 1, 1955.

§ 395.5 Approval of application for designation as State licensing agency.

When the Secretary determines that an application submitted by a State
vocational rehabilitation agency under §395.2, and the accompanying rules and regulations indicate a plan of program operations which will stimulate and enlarge the economic opportunities for the blind, and which will meet all other requirements of this part, he shall approve the application and shall designate the applying State vocational rehabilitation agency as the State licensing agency.

§395.6 Vendor ownership of vending facilities.

(a) If a State licensing agency determines under §395.4(c) that the right, title to, and interest in a vending facility may be vested in the blind vendor, the State licensing agency shall enter into a written agreement with each vendor who is to have such ownership. Such agreement shall contain in full the terms and conditions governing such ownership in accordance with criteria in the State licensing agency’s regulations, this part, and the terms and conditions of the permit. The criteria established to govern the determination that the title may be so vested shall contain reasonable provisions to enable a vendor to purchase vending facility equipment and to ensure that no individual will be denied the opportunity to become a vendor because of his inability to purchase the vending facility equipment or the initial stock;

(b) The State licensing agency shall establish in writing and maintain policies determining whether the vendor-owner or the State licensing agency shall be required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment; and if the former, such policies shall provide that upon such vendor-owner’s failure to do so, the State licensing agency may make the necessary maintenance, replacement, or repairs and make equitable arrangements for reimbursement;

(c) Where the vendor owns such equipment and is required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment, or agrees to purchase additional new equipment, service charges for such purposes shall be equitably reduced and the method for determining such amount shall be established by the State licensing agency in writing;

(d) Where the vendor owns such equipment, the State licensing agency shall retain a first option to repurchase such equipment, and in the event the vendor-owner dies, or for any other reason ceases to be a licensee, or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency for transfer to a successor licensee subject to an obligation on its part to pay to such vendor-owner or his estate, the fair value therein; and

(e) The vendor-owner, his personal representative or next of kin shall be entitled to an opportunity for a full evidentiary hearing with respect to the determination of the amount to be paid by the State licensing agency for a vendor’s ownership in the equipment. When the vendor-owner is dissatisfied with any decision rendered as a result of such hearing, he may file a complaint with the Secretary under §395.13 to request the convening of an ad hoc arbitration panel.

§395.7 The issuance and conditions of licenses.

(a) The State licensing agency shall establish in writing and maintain objective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. Such criteria shall also include provisions to assure that licenses will be issued only to persons who are determined by the State licensing agency to be:

(1) Blind;
(2) Citizens of the United States; and
(3) Certified by the State vocational rehabilitation agency as qualified to operate a vending facility.

(b) The State licensing agency shall provide for the issuance of licenses for an indefinite period but subject to suspension or termination if, after affording the vendor an opportunity for a full evidentiary hearing, the State licensing agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and conditions of the agreement with the vendor.
§ 395.9 The setting aside of funds by the State licensing agency.

(a) The State licensing agency shall establish in writing the extent to which funds are to be set aside or caused to be set aside from the net proceeds of the operation of the vending facilities and, to the extent applicable, from vending machine income under §395.8(c) in an amount determined by the Secretary to be reasonable. Funds may be set aside under paragraph (a) of this section only for the purposes of:

(1) Maintenance and replacement of equipment;
(2) The purchase of new equipment;
(3) Management services;
(4) Assuring a fair minimum of return to vendors; or
(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

(b) The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.

(c) Vending machine income which is retained under paragraph (a) of this section by a State licensing agency shall be used by such agency for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors in such State, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency has provided to each such vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the State licensing agency for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors. Any assessment charged to blind vendors by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

§ 395.8 Distribution and use of income from vending machines on Federal property.

(a) Vending machine income from vending machines on Federal property which has been disbursed to the State licensing agency by a property managing department, agency, or instrumentality of the United States under §395.32 shall accrue to each blind vendor operating a vending facility on such Federal property in each State in an amount not to exceed the average net income of the total number of blind vendors within such State, as determined each fiscal year on the basis of each prior year’s operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States. No blind vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this paragraph. No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor. Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to a State licensing agency in excess of the amounts eligible to accrue to blind vendors in accordance with this paragraph shall be retained by the appropriate State licensing agency.

(b) The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.

(c) The State licensing agency shall further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors. The State licensing agency shall also establish procedures to assure that such policies have been explained to each blind vendor.
§ 395.10 The maintenance and replacement of vending facility equipment.

The State licensing agency shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility.

§ 395.11 Training program for blind individuals.

The State licensing agency shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516). Such programs shall include on-the-job training in all aspects of vending facility operation for blind persons with the capacity to operate a vending facility, and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all blind licensees. The State licensing agency shall further ensure that post-employment services shall be provided to blind vendors as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is achieved and suitable employment is maintained within the State’s vending facility program.

§ 395.12 Access to program and financial information.

Each blind vendor under this part shall be provided access to all financial data of the State licensing agency relevant to the operation of the State vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available in braille or recorded tape. At the request of a blind vendor the licensing agency staff shall arrange a convenient time to assist in the interpretation of such financial data.

§ 395.13 Evidentiary hearings and arbitration of vendor complaints.

(a) The State licensing agency shall specify in writing and maintain procedures whereby such agency affords an opportunity for a full evidentiary hearing to each blind vendor (which procedures shall also apply to cases under § 395.6(e)) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such
decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;
(2) One individual designated by the blind vendor; and
(3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(g) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

(h) The provisions of this section shall not require the participation of grantors of permits for the operation of vending facilities on property other than Federal property.

§ 395.14 The State Committee of Blind Vendors.

(a) The State licensing agency shall provide for the biennial election of a State Committee of Blind Vendors which, to the extent possible, shall be fully representative of all blind vendors in the State program on the basis of such factors as geography and vending facility type with a goal of providing for proportional representation of blind vendors on Federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.

(b) The State Committee of Blind Vendors shall:

(1) Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;
(2) Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;
(3) Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors;
(4) Actively participate with the State licensing agency in the development of training and retraining programs for blind vendors; and
(5) Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors within the State.

§ 395.15 Use of nominee agreements.

(a) The State licensing agency may enter into an agreement whereby another agency or organization undertakes to furnish services to blind vendors. Such agreement shall be in writing and shall contain provisions which:

(1) Clearly insure the retention by the State licensing agency of full responsibility for the administration and operation of all phases of the program;
(2) Specify the type and extent of the services to be provided under such agreement;
(3) Provide that no set-aside charges will be collected from blind vendors except as specified in such agreement;
(4) Specify that no nominee will be allowed to exercise any function with respect to funds for the purchase of new equipment or for assuring a fair minimum of return to vendors, except to collect and hold solely for disposition in accordance with the order of the State licensing agency any charges authorized for those purposes by the licensing agency; and
(5) Specify that only the State licensing agency shall have control with respect to selection, placement, transfer, financial participation and termination of the vendors, and the preservation, utilization, and disposition of program assets.
§ 395.16 Permit for the establishment of vending facilities.

Prior to the establishment of each vending facility, other than a cafeteria, the State licensing agency shall submit an application for a permit setting forth the location, the amount of space necessary for the operation of the vending facility; the type of facility and equipment, the number, location and type of vending machines and other terms and conditions desired to be included in the permit. Such application shall be submitted for the approval of the head of the Federal property managing department, agency, or instrumentality. When an application is not approved, the head of the Federal property managing department, agency, or instrumentality shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval.

§ 395.17 Suspension of designation as State licensing agency.

(a) If the Secretary has reason to believe that, in the administration of the program, there is a failure on the part of any State licensing agency to comply substantially with the Act and this part, he shall so inform such agency in writing, setting forth, in detail, the areas in which there is such failure and giving it a reasonable opportunity to comply.

(b) If, after the lapse of a reasonable time, the Secretary is of the opinion that such failure to comply still continues and that the State licensing agency is not taking the necessary steps to comply, he shall offer to such agency, by reasonable notice in writing thereto and to the chief executive of the State, an opportunity for a hearing before the Secretary (or person designated by the Secretary) to determine whether there is a failure on the part of such agency to comply substantially with the provisions of the Act and of this part.

(c) If it is thereupon determined that there is a failure on the part of such agency to comply substantially with the Act and this part, appropriate written notice shall be given to such agency and to the chief executive of the State suspending such agency’s designation as licensing agency effective 90 days from the date of such notice. A copy of such written notice shall be given to each department, agency, or instrumentality of the United States responsible for the maintenance, operation, and protection of Federal property on which vending machines subject to the requirements of §395.32 are located in the State. Upon the suspension of such designation, vending machine income from vending machines on Federal property due for accrual to the State licensing agency under §395.32 shall be retained in escrow by such department, agency, or instrumentality, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (e) of this section.

(d) If, before the expiration of such 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking the necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds that there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to place funds in escrow under paragraph...
Subpart C—Federal Property Management

§ 395.30 The location and operation of vending facilities for blind vendors on Federal property.

(a) Each department, agency, or instrumentality of the United States in control of the maintenance, operation, and protection of Federal property shall take all steps necessary to assure that, wherever feasible, in light of appropriate space and potential patronage, one or more vending facilities for operation by blind licensees shall be located on all Federal property provided that the location or operation of such facility or facilities would not adversely affect the interests of the United States. Blind persons licensed by State licensing agencies shall be given priority in the operation of vending facilities on any Federal property.

(b) Any limitation on the location or operation of a vending facility for blind vendors by a department, agency, or instrumentality based on a finding that such location or operation or type of location or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary who shall determine whether such limitation is warranted. A determination made by the Secretary concerning such limitation shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination in the Federal Register along with supporting documents directly relating to the determination.

(c) Priority in the operation of vending facilities in areas administered by the National Park Service or the National Aeronautics and Space Administration shall be given to blind vendors. Priority in the awarding of contracts for the operation of concessions in such areas when such concessions provide accommodations, facilities, and services of a scope or of a character not generally available in vending facilities operated by blind vendors shall be given in accordance with the provisions of the Concession Policy Act (Pub. L. 98–249, 16 U.S.C. 1) or the National Aeronautics and Space Act of 1958, as amended (Pub. L. 85–568, 42 U.S.C. 2473). The provisions of this part shall not apply when all accommodations, facilities, or services in such areas are operated by a single responsible concessioner.

§ 395.31 Acquisition and occupation of Federal property.

(a) Effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, or lease, or to otherwise occupy, in whole or in part, any building unless it is determined that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a purchase contract, an agreement to lease, or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply.

(b) Effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to occupy, in whole or in part, any building which is to be constructed, substantially altered, or renovated, or in the case of a building which is occupied on January 2, 1975 by a department, agency, or instrumentality of the United States, no such department, agency, or instrumentality shall undertake to substantially alter or renovate such building, unless it is determined that the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a design contract or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply. For purposes of this paragraph, substantial alteration or renovation of a building means a permanent material change in the floor area of such building which would render such building appropriate for the location and operation of a vending facility by a blind vendor.
§ 395.32 Collection and distribution of vending machine income from vending machines on Federal property.

(a) The on-site official responsible for the Federal property of each property managing department, agency, or instrumentality of the United States, in such determination, the provisions of paragraphs (a) and (b) of this section shall not apply. The provisions of paragraphs (a) and (b) of this section shall also not apply when fewer than 100 Federal Government employees are or will be located during normal working hours in the building to be acquired or otherwise occupied or when such building contains less than 15,000 square feet of interior space to be utilized for Federal Government purposes in the case of buildings in which services are to be provided to the public.

(e) The operation of a vending facility established under pre-existing arrangements shall not be affected by the provisions of this section. The provisions of this section shall further not preclude future arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified in paragraph (d) of this section: Provided, That both the State licensing agency and the Federal property managing department, agency or instrumentality concur in such establishment.

(f) Each department, agency, and instrumentality of the United States, when leasing property in privately owned buildings, shall make every effort to lease property capable of accommodating a vending facility. When, however, such department, agency, or instrumentality is leasing part of a privately owned building in which prior to the execution of the lease, the lessor or any of his tenants had in operation or had entered into a contract for the operation of a restaurant or other food facility in a part of the building not included in such lease and the operation of a vending facility by a blind vendor would be in proximate and substantial direct competition with such restaurant or other food facility, the provisions of paragraphs (a), (b), and (c) of this section shall not apply.
accordance with established procedures of such department, agency, or instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on Federal property under his control and shall otherwise ensure compliance with the provisions of this section.

(b) Effective January 2, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating such vending facility on such property provided that the total amount of such income accruing to such blind vendor does not exceed the maximum amount determined under §395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under §395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with §395.8(c).

(c) Effective January 2, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating such vending facility on such property. In the event that there is no blind vendor on such property, such income shall accrue to the State licensing agency, except as indicated under paragraph (d) of this section. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under §395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under §395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with §395.8(c).

(e) The determination that a vending machine on Federal property is in direct competition with a vending facility operated by a blind vendor shall be the responsibility of the on-site official responsible for the Federal property of each property managing department, agency or instrumentality of the United States, subject to the concurrence of the State licensing agency.

(f) In the case of vending machine income which, prior to the effective date of this part, has been disbursed to a blind vendor by a property managing department, agency, or instrumentality from proceeds which accrued from operations subsequent to January 2, 1975, pursuant to agreements in effect prior to such time, such income may be deducted, at the discretion of such property managing department, agency or instrumentality, from vending machine income due to the State licensing agency under paragraphs (b), (c), or (d) of this section.

(g) The collection of vending machine income and its disbursement to the appropriate State licensing agency shall be conducted on at least a quarterly basis.

(h) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to,
§ 395.33 Operation of cafeterias by blind vendors.

(a) Priority in the operation of cafeterias by blind vendors on Federal property shall be afforded when the Secretary determines, on an individual basis, and after consultation with the appropriate property managing department, agency, or instrumentality, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees, whether by contract or otherwise. Such operation shall be expected to provide maximum employment opportunities to blind vendors to the greatest extent possible.

(b) In order to establish the ability of blind vendors to operate a cafeteria in such a manner as to provide food service at comparable cost and of comparable high quality as that available from other providers of cafeteria services, the appropriate State licensing agency shall be invited to respond to solicitations for offers when a cafeteria contract is contemplated by the appropriate property managing department, agency, or instrumentality. Such solicitations for offers shall establish criteria under which all responses will be judged. Such criteria may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part on or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines, on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees: Provided, however, That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.
§ 395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

§ 395.35 Terms of permit.

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures as are necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any person or persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with title VI of the Civil Rights Act of 1964 and regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas;

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to the department, agency, or instrumentality responsible for the maintenance of the Federal property; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services as are determined by the State licensing agency, in consultation with the on-site official responsible for the Federal property of the property managing department, agency or instrumentality, to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises in accordance with all applicable health laws.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the on-site official responsible for the Federal property of the property managing department, agency, or instrumentality, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; and that costs of relocations initiated by the department, agency, or instrumentality shall be borne by such department, agency, or instrumentality.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit.

§ 395.36 Enforcement procedures.

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the on-site official responsible for the property of the property managing department, agency, or instrumentality as necessary.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be
$395.37 Arbitration of State licensing agency complaints.

(a) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States which has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of the Act or of this part and all informal attempts to resolve the issues have been unsuccessful, such licensing agency may file a complaint with the Secretary.

(b) Upon receipt of a complaint filed under paragraph (a) of this section, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. ch. 5, subchapter II, give notice, conduct a hearing and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. ch. 7. The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(3) One individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(c) If either the State licensing agency or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(d) If the panel finds that the acts or practices of any department, agency, or instrumentality are in violation of the Act or of this part, the head of any such department, agency, or instrumentality (subject to any appeal under paragraph (b) of this section) shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the Federal Register.

(f) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the Federal Register.

$395.38 Reports.

At the end of each fiscal year, each property managing department, agency, or instrumentality of the United States shall report to the Secretary the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected and the amount of such vending machine income disbursed to the State licensing agency in each State.

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

Subpart A—General

Sec.
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AUTHORITY: 29 U.S.C. 771a(f), unless otherwise noted.
SOURCE: 59 FR 52220, Oct. 14, 1994, unless otherwise noted.

Subpart A—General

§ 396.1 What is the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program?

The Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program is designed to establish interpreter training programs or to assist ongoing programs to train a sufficient number of skilled interpreters throughout the country in order to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by—

(a) Training manual, tactile, oral, and cued speech interpreters;
(b) Ensuring the maintenance of the skills of interpreters; and
(c) Providing opportunities for interpreters to raise their level of competence.

(Authority: 29 U.S.C. 771a(f))

§ 396.2 Who is eligible for an award?

Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

(Authority: 29 U.S.C. 771a(f))

§ 396.3 What regulations apply?

The following regulations apply to the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:
(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).
(2) 34 CFR part 75 (Direct Grant Programs).
(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).
(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).
(7) 34 CFR part 82 (New Restrictions on Lobbying).
(8) 34 CFR part 85 (Government Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
(9) 34 CFR part 86 (Drug-Free Schools and Campuses).
(b) The regulations in this part 396.
(c) The following regulations in 34 CFR part 385:
(1) Section 385.32.
(2) Section 385.40.
(3) Section 385.44.
(4) Section 385.45.
(5) Section 385.46.

(Authority: 29 U.S.C. 771a(f))

§ 396.4 What definitions apply?

(a) Definitions in EDGAR. The following terms defined in 34 CFR 77.1 apply to this part:

Applicant
Application
Award
Equipment
Grant
Nonprofit
Private
Project
Public
Secretary
Supplies

(b) Definitions in the rehabilitation training regulations. The following terms defined in 34 CFR 385.4(b) apply to this part:

Individual With a Disability
Institution of Higher Education
§ 396.5 What activities may the Secretary fund?

The Secretary provides assistance for projects that provide training in interpreting skills for persons preparing to serve, and persons who are already serving, as interpreters for individuals who are deaf and as interpreters for individuals who are deaf-blind in public and private agencies, schools, and other service-providing institutions.

(Authority: 29 U.S.C. 711(c) and 771a(f); 29 U.S.C 1905)

§ 396.20 What must be included in an application?

Each applicant shall include in the application—

(a) A description of the manner in which the proposed interpreter training program will be developed and operated during the five-year period following the award of the grant;

(b) A description of the geographical area to be served by the project;

(c) A description of the applicant’s capacity or potential for providing training for interpreters for individuals who are deaf and interpreters for individuals who are deaf-blind;

Subpart C—How Does One Apply for an Award?
§ 396.33 What priorities does the Secretary apply in making awards?

The Secretary, in making awards under this part, gives priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.

(Authority: 29 U.S.C. 771a(f))
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters, and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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(Regulations published from January 1, 2001, through July 1, 2001)

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