

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 (c) 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. 796f-2(d)(2))

§ 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.

(d) A copy of each review under this section shall be provided to the Secretary and 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 (h))

Subpart E—Enforcement and Appeals Procedures

§ 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 hearing by submitting a formal written request that gives the reasons why the

§ 366.40

center believes that the Secretary should have approved the center's corrective action plan.

(d) If the center does not submit a corrective action plan to the Secretary, the center has 90 days after receiving the notification required by paragraph (a) of this section to request a hearing by submitting a formal written request that gives the reasons why the center believes that the Secretary should have found the center in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(e) The date of filing a formal written request for a hearing to the Secretary under paragraph (c) or (d) of this section is determined in a manner consistent with the requirements of 34 CFR 81.12.

(f) The Secretary issues a written decision to terminate funds to the center if, after providing reasonable notice and an opportunity for a hearing, the Secretary finds that—

(1) The 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; or

(2) The center's corrective action plan submitted under paragraph (b)(1) of this section cannot be approved.

(g) The Secretary's decision to terminate funds to a center pursuant to paragraph (f) of this section takes effect upon issuance.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: 29 U.S.C. 711(c) and 796f-1(g))

§ 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 a center's funds or take any other significant adverse action against the center;