

(c) Inform the center that it has 90 days from the date the center receives the notice to submit a corrective action plan;

(d) Inform the center that it may seek mediation and conciliation in accordance with §366.40(a) to resolve any dispute with the Director within the 90 days before the proposed termination of funds or other significant adverse action against the center; and

(e) Inform the center that, if mediation and conciliation are not successful and the Director does not issue a final written decision pursuant to §366.42, the center may appeal to the Secretary the decision described in the Director's initial written notice on or after the 90th day, but not later than the 120th day, after the center receives the Director's initial 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 (i))

§ 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 cen-

ter does not take effect until the Secretary issues a final decision.

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(Authority: 29 U.S.C. 711(c) and 796f-2 (g) and (i))

§ 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.

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(Authority: 29 U.S.C. 711(c) and 796f-2 (g) and (i))

§ 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

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in section 725 (b) and (c) of the Act and subparts F and G of this part.

(c) To appeal to the Secretary a decision described in a Director's initial written notice or a Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action, a center shall file with the Secretary—

(1) A formal written appeal—

(i) On or after the 90th day but not later than the 120th day following a center's receipt of a Director's initial written notice; or

(ii) On or before the 30th day after a center's receipt of the Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action;

(2) A copy of the corrective action plan, if any, submitted to the Director; and

(3) One copy each of any other written submissions sent to the Director in response to the Director's initial written notice to terminate funds or take other significant adverse action against the center.

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

(e) If the center files a formal written appeal with the Secretary, the center shall send a separate copy of this appeal to the Director by registered or certified mail, return receipt requested, or other means that provide a record that the Director received a separate copy of the center's written appeal.

(f) The center's formal written appeal to the Secretary must state why—

(1) The Director has not met the burden of showing that the center is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and in subparts F and G of this part;

(2) The corrective action plan, if any, should have been approved; or

(3) The Director has not met the procedural requirements of §§ 366.40 through 366.45.

(g) As part of its submissions under this section, the center 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.

(h) A Director's decision to terminate funds that is described in an initial written notice 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.

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(Authority: 29 U.S.C. 711(c) and 796f–2(g)(2) and (i))

§ 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 sent to 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.

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(Authority: 29 U.S.C. 711(c) and 796f–2(g)(2) and (i))