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Table of Contents

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>v</td>
</tr>
</tbody>
</table>

Title 34:

**SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION (CONTINUED)**

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education ........................................ 5

Findings Aids:

- Table of CFR Titles and Chapters ............................................. 513
- Alphabetical List of Agencies Appearing in the CFR ..................... 533
- List of CFR Sections Affected .................................................. 543
Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 34 CFR 300.1 refers to title 34, part 300, section 1.
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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

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CHARLES A. BARTH,
Director,
Office of the Federal Register.
July 1, 2012.
Title 34—Education is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1–299, parts 300–399, parts 400–679, and part 680 to end. The contents of these volumes represent all regulations codified under this title of the CFR as of July 1, 2012.

For this volume, Michele Bugenhagen was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.
Title 34—Education

(This book contains parts 300 to 399)

SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION (CONTINUED)

Part

CHAPTER III—Office of Special Education and Rehabilitative Services, Department of Education .......................... 300
Subtitle B—Regulations of the Offices of the Department of Education (Continued)
<table>
<thead>
<tr>
<th>Part</th>
<th>Assistance to States for the education of children with disabilities</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>303</td>
<td>Early intervention program for infants and toddlers with disabilities</td>
<td>165</td>
</tr>
<tr>
<td>304</td>
<td>Service obligations under special education—personnel development to improve services and results for children with disabilities</td>
<td>269</td>
</tr>
<tr>
<td>350</td>
<td>Disability and Rehabilitation Research Projects and Centers Program</td>
<td>272</td>
</tr>
<tr>
<td>356</td>
<td>Disability and rehabilitation research: Research fellowships</td>
<td>287</td>
</tr>
<tr>
<td>359</td>
<td>Disability and rehabilitation research: Special projects and demonstrations for spinal cord injuries</td>
<td>290</td>
</tr>
<tr>
<td>361</td>
<td>State Vocational Rehabilitation Services Program</td>
<td>293</td>
</tr>
<tr>
<td>363</td>
<td>The State Supported Employment Services Program</td>
<td>358</td>
</tr>
<tr>
<td>364</td>
<td>State Independent Living Services Program and Centers for Independent Living Program: General provisions</td>
<td>364</td>
</tr>
<tr>
<td>365</td>
<td>State independent living services</td>
<td>383</td>
</tr>
<tr>
<td>366</td>
<td>Centers for independent living</td>
<td>387</td>
</tr>
<tr>
<td>367</td>
<td>Independent living services for older individuals who are blind</td>
<td>407</td>
</tr>
<tr>
<td>369</td>
<td>Vocational rehabilitation service projects</td>
<td>413</td>
</tr>
<tr>
<td>370</td>
<td>Client Assistance Program</td>
<td>420</td>
</tr>
<tr>
<td>371</td>
<td>Vocational rehabilitation service projects for American Indians with disabilities</td>
<td>431</td>
</tr>
<tr>
<td>373</td>
<td>Special demonstration programs</td>
<td>435</td>
</tr>
<tr>
<td>376</td>
<td>Special projects and demonstrations for providing transitional rehabilitation services to youth with disabilities</td>
<td>441</td>
</tr>
<tr>
<td>Part</td>
<td>Description</td>
<td>Page</td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>377</td>
<td>Demonstration Projects To Increase Client Choice Program</td>
<td>443</td>
</tr>
<tr>
<td>379</td>
<td>Projects with industry</td>
<td>449</td>
</tr>
<tr>
<td>380</td>
<td>Special projects and demonstrations for providing supported employment services to individuals with the most severe disabilities and technical assistance projects</td>
<td>459</td>
</tr>
<tr>
<td>381</td>
<td>Protection and advocacy of individual rights</td>
<td>464</td>
</tr>
<tr>
<td>385</td>
<td>Rehabilitation training</td>
<td>469</td>
</tr>
<tr>
<td>386</td>
<td>Rehabilitation training: Rehabilitation long-term training</td>
<td>476</td>
</tr>
<tr>
<td>387</td>
<td>Experimental and innovative training</td>
<td>483</td>
</tr>
<tr>
<td>388</td>
<td>State vocational rehabilitation unit in-service training</td>
<td>484</td>
</tr>
<tr>
<td>389</td>
<td>Rehabilitation continuing education programs</td>
<td>487</td>
</tr>
<tr>
<td>390</td>
<td>Rehabilitation short-term training</td>
<td>489</td>
</tr>
<tr>
<td>395</td>
<td>Vending facility program for the blind on Federal and other property</td>
<td>491</td>
</tr>
<tr>
<td>396</td>
<td>Training of interpreters for individuals who are deaf and individuals who are deaf-blind</td>
<td>506</td>
</tr>
<tr>
<td>397-399</td>
<td>[Reserved]</td>
<td></td>
</tr>
</tbody>
</table>
PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Subpart A—General

PURPOSES AND APPLICABILITY

Sec.
300.1 Purposes.
300.2 Applicability of this part to State and local agencies.

DEFINITIONS USED IN THIS PART

300.4 Act.
300.5 Assistive technology device.
300.6 Assistive technology service.
300.7 Charter school.
300.8 Child with a disability.
300.9 Consent.
300.10 Core academic subjects.
300.11 Day; business day; school day.
300.12 Educational service agency.
300.13 Elementary school.
300.14 Equipment.
300.15 Evaluation.
300.16 Excess costs.
300.17 Free appropriate public education.
300.18 Highly qualified special education teachers.
300.19 Homeless children.
300.20 Include.
300.21 Indian and Indian tribe.
300.22 Individualized education program.
300.23 Individualized education program team.
300.24 Individualized family service plan.
300.25 Infant or toddler with a disability.
300.26 Institution of higher education.
300.27 Limited English proficient.
300.28 Local educational agency.
300.29 Native language.
300.30 Parent.
300.31 Parent training and information center.
300.32 Personally identifiable.
300.33 Public agency.
300.34 Related services.
300.35 Scientifically based research.
300.36 Secondary school.
300.37 Services plan.
300.38 Secretary.
300.39 Special education.
300.40 State.
300.41 State educational agency.
300.42 Supplementary aids and services.
300.43 Transition services.
300.44 Universal design.
300.45 Ward of the State.

Subpart B—State Eligibility

GENERAL

300.100 Eligibility for assistance.

FAPE REQUIREMENTS

300.101 Free appropriate public education (FAPE).
300.102 Limitation—exception to FAPE for certain ages.

OTHER FAPE REQUIREMENTS

300.103 FAPE—methods and payments.
300.104 Residential placement.
300.105 Assistive technology.
300.106 Extended school year services.
300.107 Nonacademic services.
300.108 Physical education.
300.109 Full educational opportunity goal (FEOG).
300.110 Program options.
300.111 Child find.
300.112 Individualized education programs (IEP).
300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

LEAST RESTRICTIVE ENVIRONMENT (LRE)

300.114 LRE requirements.
300.115 Continuum of alternative placements.
300.116 Placements.
300.117 Nonacademic settings.
300.118 Children in public or private institutions.
300.119 Technical assistance and training activities.
300.120 Monitoring activities.

ADDITIONAL ELIGIBILITY REQUIREMENTS

300.121 Procedural safeguards.
300.122 Evaluation.
300.123 Confidentiality of personally identifiable information.
300.124 Transition of children from the Part C program to preschool programs.
300.125–300.128 [Reserved]

CHILDREN IN PRIVATE SCHOOLS

300.129 State responsibility regarding children in private schools.

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

300.130 Definition of parentally-placed private school children with disabilities.
300.131 Child find for parentally-placed private school children with disabilities.
300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.
300.133 Expenditures.
300.134 Consultation.
300.135 Written affirmation.
300.136 Compliance.
300.137 Equitable services determined.
300.138 Equitable services provided.
300.139 Location of services and transportation.
300.140 Due process complaints and State complaints.
300.141 Requirement that funds not benefit a private school.
300.142 Use of personnel.
300.143 Separate classes prohibited.
300.144 Property, equipment, and supplies.

CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES
300.145 Applicability of §§ 300.146 through 300.147.
300.146 Responsibility of SEA.
300.147 Implementation by SEA.

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE
300.148 Placement of children by parents when FAPE is at issue.

SEA RESPONSIBILITY FOR GENERAL SUPERVISION AND IMPLEMENTATION OF PROCEDURAL SAFEGUARDS
300.149 SEA responsibility for general supervision.
300.150 SEA implementation of procedural safeguards.

STATE COMPLAINT PROCEDURES
300.151 Adoption of State complaint procedures.
300.152 Minimum State complaint procedures.
300.153 Filing a complaint.

METHODS OF ENSURING SERVICES
300.154 Methods of ensuring services.

ADDITIONAL ELIGIBILITY REQUIREMENTS
300.155 Hearings relating to LEA eligibility.
300.156 Personnel qualifications.
300.157 Performance goals and indicators.
300.158-300.159 [Reserved]
300.160 Participation in assessments.
300.161 [Reserved]
300.162 Supplementation of State, local, and other Federal funds.
300.163 Maintenance of State financial support.
300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.
300.165 Public participation.
300.166 Rule of construction.

STATE ADVISORY PANEL
300.167 State advisory panel.
300.168 Membership.
300.169 Duties.

OTHER PROVISIONS REQUIRED FOR STATE ELIGIBILITY
300.170 Suspension and expulsion rates.

300.171 Annual description of use of Part B funds.
300.172 Access to instructional materials.
300.173 Overidentification and disproportionality.
300.174 Prohibition on mandatory medication.
300.175 SEA as provider of FAPE or direct services.
300.176 Exception for prior State plans.
300.177 States’ sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.

DEPARTMENT PROCEDURES
300.178 Determination by the Secretary that a State is eligible to receive a grant.
300.179 Notice and hearing before determining that a State is not eligible to receive a grant.
300.180 Hearing official or panel.
300.181 Hearing procedures.
300.182 Initial decision; final decision.
300.183 Filing requirements.
300.184 Judicial review.
300.185 [Reserved]
300.186 Assistance under other Federal programs.

BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS
300.189 By-pass—general.
300.190 Provisions for services under a by-pass.
300.191 Notice of intent to implement a by-pass.
300.192 Notice of intent to implement a by-pass.
300.193 Request to show cause.
300.194 Show cause hearing.
300.195 Decision.
300.196 Filing requirements.
300.197 Judicial review.
300.198 Continuation of a by-pass.

STATE ADMINISTRATION
300.199 State administration.

Subpart C—Local Educational Agency Eligibility
300.200 Condition of assistance.
300.201 Consistency with State policies.
300.202 Use of amounts.
300.203 Maintenance of effort.
300.204 Exception to maintenance of effort.
300.205 Adjustment to local fiscal efforts in certain fiscal years.
300.206 Schoolwide programs under title I of the ESEA.
300.207 Personnel development.
300.208 Permissive use of funds.
300.209 Treatment of charter schools and their students.
300.210 Purchase of instructional materials.
300.211 Information for SEA.
300.212 Public information.
300.213 Records regarding migratory children with disabilities.
Off. of Spec. Educ. and Rehab. Services, Education  
Pt. 300

300.214–300.219 [Reserved]
300.220 Exception for prior local plans.
300.221 Notification of LEA or State agency in case of ineligibility.
300.222 LEA and State agency compliance.
300.224 Requirements for establishing eligibility.
300.225 [Reserved]
300.226 Early intervening services.
300.227 Direct services by the SEA.
300.228 State agency eligibility.
300.229 Disciplinary information.
300.230 SEA flexibility.

Subpart D—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational placements

PARENTAL CONSENT
300.300 Parental consent.

EVALUATIONS AND REEVALUATIONS
300.301 Initial evaluations.
300.302 Screening for instructional purposes is not evaluation.
300.303 Reevaluations.
300.304 Evaluation procedures.
300.305 Additional requirements for evaluations and reevaluations.
300.306 Determination of eligibility.

ADDITIONAL PROCEDURES FOR IDENTIFYING CHILDREN WITH SPECIFIC LEARNING DISABILITIES
300.307 Specific learning disabilities.
300.308 Additional group members.
300.309 Determining the existence of a specific learning disability.
300.310 Observation.
300.311 Specific documentation for the eligibility determination.

INDIVIDUALIZED EDUCATION PROGRAMS
300.320 Definition of individualized education program.
300.321 IEP Team.
300.322 Parent participation.
300.323 When IEPs must be in effect.

DEVELOPMENT OF IEP
300.324 Development, review, and revision of IEP.
300.325 Private school placements by public agencies.
300.326 [Reserved]
300.327 Educational placements.
300.328 Alternative means of meeting participation.

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN
300.500 Responsibility of SEA and other public agencies.
300.501 Opportunity to examine records; parent participation in meetings.
300.502 Independent educational evaluation.
300.503 Prior notice by the public agency; content of notice.
300.504 Procedural safeguards notice.
300.505 Electronic mail.
300.506 Mediation.
300.507 Filing a due process complaint.
300.508 Due process complaint.
300.509 Model forms.
300.510 Resolution process.
300.511 Impartial due process hearing.
300.512 Hearing rights.
300.513 Hearing decisions.
300.514 Finality of decision; appeal; impartial review.
300.515 Timelines and convenience of hearings and reviews.
300.516 Civil action.
300.517 Attorneys’ fees.
300.518 Child’s status during proceedings.
300.519 Surrogate parents.
300.520 Transfer of parental rights at age of majority.
300.521–300.529 [Reserved]

DISCIPLINE PROCEDURES
300.530 Authority of school personnel.
300.531 Determination of setting.
300.532 Appeal.
300.533 Placement during appeals.
300.534 Protections for children not determined eligible for special education and related services.
300.535 Referral to and action by law enforcement and judicial authorities.
300.536 Change of placement because of disciplinary removals.
300.537 State enforcement mechanisms.
300.538–300.599 [Reserved]

Subpart F—Monitoring, Enforcement, Confidentiality, and Program Information

MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT
300.600 State monitoring and enforcement.
300.601 State performance plans and data collection.
300.602 State use of targets and reporting.
300.603 Secretary’s review and determination regarding State performance.
300.604 Enforcement.
300.605 Withholding funds.
300.606 Public attention.
300.607 Divided State agency responsibility.
300.608 State enforcement.
300.609 Rule of construction.
§ 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 further education, 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(d))

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

(a) States. This part applies to each State that receives payments under Part B of the Act, as defined in § 300.4.
(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).
   (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 of the Act.
(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 § 300.148.

(Authority: 20 U.S.C. 1412)
§ 300.7 Charter school.

Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

(Authority: 20 U.S.C. 7221i(1))

§ 300.8 Child with a disability.

(a) General. (1) Child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part 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 §§300.304 through 300.311, 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 §300.39(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 this part.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in §300.111(b), 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 of a child with a disability are defined as follows:

(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, 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.

(ii) Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified 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)(i) Emotional disturbance 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) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(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 or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities 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 a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), 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, sickle cell anemia, and Tourette syndrome; and

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

(10) Specific learning disability—(1) General. Specific learning disability 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 the 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. Specific learning disability 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. Traumatic brain injury 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. Traumatic brain injury 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); 1401(30))

§ 300.9 Consent.

Consent means that—
(a) 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 through another mode of communication;
(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
(3) If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.

(Authority: 20 U.S.C. 1414(a)(1)(D))

§ 300.10 Core academic subjects.

Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

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

§ 300.11 Day; business day; school day.

(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 § 300.148(d)(1)(ii)).
(c)(1) School day means any day, including a partial day that children are in attendance at school for instructional purposes.
(2) School day has the same meaning for all children in school, including children with and without disabilities.

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

§ 300.12 Educational service agency.

Educational service agency means—
(a) A regional public multiservice agency—
(1) Authorized by State law to develop, manage, and provide services or programs to LEAs;
(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;
(b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and
(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5))

§ 300.13 Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

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

§ 300.14 Equipment.

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 audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7))
Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

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

§ 300.16 Excess costs.

Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—

(a) Amounts received—
(1) Under Part B of the Act;
(2) Under Part A of title I of the ESEA; and
(3) Under Parts A and B of title III of the ESEA and;
(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See appendix A to part 300 for an example of how excess costs must be calculated.)

(Authority: 20 U.S.C. 1401(8))

§ 300.17 Free appropriate public education.

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 an appropriate preschool, elementary school, or secondary school education in the State involved; and
(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

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

§ 300.18 Highly qualified special education teachers.

(a) Requirements for special education teachers teaching core academic subjects.

For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also—

(1) Include the requirements described in paragraph (b) of this section; and
(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.
(b) Requirements for special education teachers in general.

(1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that—
(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State’s public charter school law;
(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
(iii) The teacher holds at least a bachelor’s degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which—
(i) The teacher—
(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in
order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) Requirements for special education teachers teaching to alternate academic achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate academic achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (Housse) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single Housse covering multiple subjects.

(d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (Housse) covering multiple subjects; or

(e) Separate Housse standards for special education teachers. Provided that any adaptations of the State’s Housse would not establish a lower standard for the content knowledge requirements for special education teachers and meet all the requirements for a Housse for regular education teachers—

(1) A State may develop a separate Housse for special education teachers;

(2) The standards described in paragraph (e)(1) of this section may include single Housse evaluations that cover multiple subjects.

(f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to
§ 300.25 Infant or toddler with a disability.

(a) Infant or toddler with a disability—

(1) Means an individual under three years of age who needs early intervention services because the individual—

(2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(b) 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, 43 U.S.C. 1601 et seq.).

(c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a–1.

(Authority: 20 U.S.C. 1401(12) and (13))

§ 300.22 Individualized education program.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324.

(Authority: 20 U.S.C. 1401(14))

§ 300.23 Individualized education program team.

Individualized education program team or IEP Team means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(Authority: 20 U.S.C. 1414(d)(1)(B))

§ 300.24 Individualized family service plan.

Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act.

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

§ 300.25 Infant or toddler with a disability.

Infant or toddler with a disability—

(a) Means an individual under three years of age who needs early intervention services because the individual—

(b) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and
§ 300.26 Institution of higher education.

Institution of higher education—

(a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and

(b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

(Authority: 20 U.S.C. 1401(17))

§ 300.27 Limited English proficient.

Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

(Authority: 20 U.S.C. 1401(18))

§ 300.28 Local educational agency.

(a) General. Local educational agency or LEA 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 schools or secondary schools.

(b) Educational service agencies and other public institutions or agencies. The term includes—

(1) An educational service agency, as defined in §300.12; and

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

(c) BIA funded schools. The term includes an elementary school 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 the Act with the smallest student population.

(Authority: 20 U.S.C. 1401(19))

§ 300.29 Native language.

(a) Native language, when used with respect to an individual who is limited English proficient, 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(20))

§ 300.30 Parent.

(a) Parent means—
(1) A biological or adoptive parent of a child;
(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
(5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

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

§ 300.31 Parent training and information center.

Parent training and information center means a center assisted under sections 671 or 672 of the Act.

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

§ 300.32 Personally identifiable.

Personally identifiable means information that contains—
(a) The name of the child, the child’s parent, or other family member;
(b) The address of the child;
(c) A personal identifier, such as the child’s social security number or student number; or
(d) 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. 1412(a)(11))

§ 300.33 Public agency.

Public agency includes the SEA, LEAs, ESAs, nonprofit 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)(11))

§ 300.34 Related services.

(a) General. 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, interpreting 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. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants. (1) Related services do not include a medical device that is surgically implanted, the optimization of that device’s functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the
IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.133(b).

(c) Individual related services 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 (lipreading), 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) **Interpreting services** includes—

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) **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.

(6) **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.

(7) **Orientation and mobility services**—

(i) Means services provided to blind or visually impaired children 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 children 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 or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8)(i) **Parent counseling and training** means 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.

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

(10) 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 educational needs of children as indicated by psychological tests, interviews, direct observation, 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.

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

(12) 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 a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child’s IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) 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.

(15) 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 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.

(16) 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(26))

§ 300.35 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi))

§ 300.36 Secondary school.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law,
§ 300.37 Services plan.

Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with § 300.132, and is developed and implemented in accordance with §§ 300.137 through 300.139.

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

§ 300.38 Secretary.

Secretary means the Secretary of Education.

(Authority: 20 U.S.C. 1401(28))

§ 300.39 Special education.

(a) General. (1) 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) Special education includes each of the following, if the services otherwise meet 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 special education 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 means—

(i) 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 the child 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 not requiring a baccalaureate or advanced degree.

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

§ 300.40 State.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(Authority: 20 U.S.C. 1401(31))

§ 300.41 State educational agency.

State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of
§ 300.101 Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

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

1. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

§ 300.44 Universal design.

Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

(Authority: 20 U.S.C. 1401(35))

§ 300.45 Ward of the State.

Subpart B—State Eligibility

GENERAL

§ 300.100 Eligibility for assistance.

A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§300.101 through 300.176.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

FAPE REQUIREMENTS

§ 300.101 Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

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

1. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))
(1) 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 §300.323(b).

(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.

(c) Children advancing from grade to grade.  

(1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) 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 eligibility determinations.

(3) Children with disabilities who have graduated from high school with a regular high school diploma.

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

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

(iii) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

(2)(i) Children 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 §300.8; 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 children with disabilities, aged 18 through 21, who—

(A) Had been identified as a child with a disability under §300.8 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 §300.8.

(iii) Children with disabilities who have graduated from high school with a regular high school diploma.

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED).

(3) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

(2)(i) Children 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 §300.8; 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 children with disabilities, aged 18 through 21, who—

(A) Had been identified as a child with a disability under §300.8 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 §300.8.

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

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

(2)(i) Children 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 §300.8; 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 children with disabilities, aged 18 through 21, who—

(A) Had been identified as a child with a disability under §300.8 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 §300.8.

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

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED).

(3) Children with disabilities who have graduated from high school with a regular high school diploma.

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

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

(iii) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.
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 §300.323(c), 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.

(Approved by the Office of Management and Budget under control number 1820–0030)

§ 300.104 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.

(Approved by the Office of Management and Budget under control number 1820–0030)

§ 300.105 Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child’s—

(1) Special education under §300.36;

(2) Related services under §300.34; or

(3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(i).

(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.

(Approved by the Office of Management and Budget under control number 1820–0030)

§ 300.106 Extended school year services.

(a) General. (1) Each public agency must 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 §§300.320 through 300.324, 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.

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(1))

§ 300.107 Nonacademic services.

The State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child’s IEP Team, 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,
§ 300.108 Physical education.

The State must ensure that public agencies in the State comply with the following:

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(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 must 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 must ensure that the child receives appropriate physical education services in compliance with this section.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§ 300.109 Full educational opportunity goal (FEOG).

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§ 300.110 Program options.

The State must ensure that each public agency takes 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.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§ 300.111 Child find.

(a) General. (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 who are homeless children or are wards of the State, and 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.

(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of developmental delay under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

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

(3) If an LEA uses the term developmental delay for children described in §300.8(b), the LEA must conform to both the State’s definition of that term
and to the age range that has been adopted by the State.

(4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child’s eligibility under this part.

(c) Other children in child find. Child find also must include—

(1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in §300.8 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.

§ 300.113 Routine checking of hearing aids and external components of surgically implanted medical devices.

(a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) External components of surgically implanted medical devices. (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

(Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1401(1), 1412(a)(3))

LEAST RESTRICTIVE ENVIRONMENT (LRE)

§ 300.114 LRE requirements.

(a) General. (1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.

(2) Each public agency must ensure that—

(i) 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 non-disabled; and

(ii) 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.

(b) Additional requirement—State funding mechanism—(1) General. (1) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

(II) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child’s IEP.

(2) Assurance. If the State does not have policies and procedures to ensure
§ 300.115 Continuum of alternative placements.

(a) Each public agency must 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 §300.38 (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.

§ 300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must 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 §§300.114 through 300.118;

(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 education curriculum.

§ 300.117 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 §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child’s IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

§ 300.118 Children in public or private institutions.

Except as provided in §300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that §300.114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

[71 FR 61306, Oct. 30, 2007]
§ 300.119 Technical assistance and training activities.

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.114; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§ 300.120 Monitoring activities.

(a) The SEA must carry out activities to ensure that § 300.114 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.114, the SEA must—

(1) Review the public agency’s justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(5))

ADDITIONAL ELIGIBILITY REQUIREMENTS

§ 300.121 Procedural safeguards.

(a) General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§ 300.500 through 300.536.

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

(Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.122 Evaluation.

Children with disabilities must be evaluated in accordance with §§ 300.300 through 300.311 of subpart D of this part.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§ 300.123 Confidentiality of personally identifiable information.

The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§ 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.124 Transition of children from the Part C program to preschool programs.

The State must have policies and procedures in effect 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)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§§ 300.125–300.128 [Reserved]

CHILDREN IN PRIVATE SCHOOLS

§ 300.129 State responsibility regarding children in private schools.

The State must have policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet
the private school requirements in §§300.130 through 300.148.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§ 300.130 Definition of parentally-placed private school children with disabilities.

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§ 300.131 Child find for parentally-placed private school children with disabilities.

(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure—

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency’s public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133.

(e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with §300.301.

(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

(Approved by the Office of Management and Budget under control number 1820–0030)


§ 300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.

(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.

(b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and
§ 300.133 Expenditures.

(a) Formula. To meet the requirement of § 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed 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(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2)(i) For children aged three through five, an amount that is the same proportion of the LEA’s total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

(2)(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in a private, including religious, elementary school, if they are enrolled in a private school that meets the definition of elementary school in § 300.13.

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under § 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See appendix B for an example of how proportionate share is calculated).

(c) Annual count of the number of parentally-placed private school children with disabilities. (1) Each LEA must—

   (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with § 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

   (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

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

(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§ 300.134 Consultation.

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-
placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including—
(1) How parentally-placed private school children suspected of having a disability can participate equitably; and
(2) How parents, teachers, and private school officials will be informed of the process.

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of—
(1) The types of services, including direct services and alternate service delivery mechanisms; and
(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
(3) How and when those decisions will be made;

(e) Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

(Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)


§ 300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

(Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)


§ 300.136 Compliance.

(a) General. A private school official has the right to submit a complaint to the SEA that the LEA—
(1) Did not engage in consultation that was meaningful and timely; or
(2) Did not give due consideration to the views of the private school official.

(b) Procedure. (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and
(2) The LEA must forward the appropriate documentation to the SEA.

(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and
(ii) The SEA must forward the appropriate documentation to the Secretary.

(Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)

§ 300.137 Equitable services determined.

(a) No individual right to special education and related services. No paren tally-placed 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.

(b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§ 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and § 300.134(d).

(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) Services plan for each child served under §§ 300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child’s parents and will receive special education or related services from an LEA, the LEA must—

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 300.130(b); and

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

(Approved by the Office of Management and Budget under control number 1820-0030)

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


§ 300.138 Equitable services provided.

(a) General. (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of § 300.18.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan. (1) Each parentally-placed private school child with a disability who has been designated to receive services under § 300.132 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 §§ 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

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

(i) Meet the requirements of § 300.320, or for a child ages three through five, meet the requirements of § 300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§ 300.321 through 300.324.

(c) Provision of equitable services. (1) The provision of services pursuant to this section and §§ 300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(Approved by the Office of Management and Budget under control number 1820-0030)


§ 300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
§ 300.140 Transportation—(1) General. (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed 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 § 300.133.

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.141 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 must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—
   (1) The needs of a private school; or
   (2) The general needs of the students enrolled in the private school.

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.142 Use of personnel.
(a) 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—
   (1) To the extent necessary to provide services under §§ 300.130 through 300.144 for parentally-placed private school children with disabilities; and
   (2) If those services are not normally provided by the private school.
(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§ 300.130 through 300.144 if—
   (1) The employee performs the services outside of his or her regular hours of duty; and
   (2) The employee performs the services under public supervision and control.

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.143 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 children if—
(a) The classes are at the same site; and
(b) The classes include children enrolled in public schools and children enrolled in private schools.

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.144 Property, equipment, and supplies.

(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

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

(c) The public agency must 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 must 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.

(Approved by the Office of Management and Budget under control number 1820–0030)
(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Approved by the Office of Management and Budget under control number 1820-0030)

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

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

§ 300.148 Placement of children by parents when 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 must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520.

(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 school, 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 Team 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—

(1) Must not be reduced or denied for failure to provide the notice if—

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—

(i) The parents are not literate or cannot write in English; or
SEA Responsibility for General Supervision and Implementation of Procedural Safeguards

§ 300.149 SEA responsibility for general supervision.

(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 (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the educational standards of the SEA (including the requirements of this part).

(3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§ 300.600 through 300.602 and §§ 300.606 through 300.608.

(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.

§ 300.150 SEA implementation of procedural safeguards.

The SEA (and any agency assigned responsibility pursuant to § 300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

§ 300.151 Adoption of State complaint procedures.

(a) General. Each SEA must 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 § 300.153 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 procedures under §§ 300.151 through 300.153.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
§ 300.152 Minimum State complaint procedures.

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 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) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(4) 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

(5) 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—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; 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 §§ 300.530 through 300.532. (1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, 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 raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; 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 hearing decision must be resolved by the SEA.

(Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)

(Authority: 20 U.S.C. 1221e–3)

§ 300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.

(b) The complaint must include—

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;
(a) Establishing responsibility for services. The Chief Executive Officer of a State or designee of that officer must 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) 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) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) 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) 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)(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, §300.34 relating to related services, §300.41 relating to supplementary aids and services, and §300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

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

(2) 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) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) 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 and approved by the Secretary.

(d) Children with disabilities who are covered by public benefits or insurance.

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(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 benefits or 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 parents otherwise would be required to pay;

(iii) May not use a child’s benefits under a public benefits or 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 benefits or 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 benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv)(A) Must obtain parental consent, consistent with §300.9, each time that access to public benefits or insurance is sought; and

(B) Notify parents that the parents’ refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) 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 the parents’ private insurance proceeds only if the parents provide consent consistent with §300.9.

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

(i) Obtain parental consent in accordance with paragraph (e)(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.

(f) Use of Part B funds.

(1) If a public agency is unable to obtain parental consent to use the parents’ private insurance, or public benefits or insurance when the parents 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 benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents’ benefits or insurance (e.g., the deductible or co-pay amounts).

g) Proceeds from public benefits or insurance or private insurance. (1) Proceeds from public benefits or insurance 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 §§300.163 and 300.203.

(h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(12) and (e))

ADDITIONAL ELIGIBILITY REQUIREMENTS

§ 300.155 Hearings relating to LEA eligibility.
The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(13))

§ 300.156 Personnel qualifications.
(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that—
(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
(2) Ensure that related services personnel who deliver services in their discipline or profession—
(i) Meet the requirements of paragraph (b)(1) of this section; and
(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

(d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a
§ 300.157 Performance goals and indicators.

The State must—

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

(1) Promote the purposes of this part, as stated in §300.1;

(2) Are the same as the State’s objectives for progress by children in its definition of adequate yearly progress, including the State’s objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311;

(3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and

(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;

(b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311;

(c) Annually 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, which may include elements of the reports required under section 1111(h) of the ESEA.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(15))

§§ 300.158–300.159 [Reserved]

§ 300.160 Participation in assessments.

(a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) Accommodation guidelines. (1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

(2) The State’s (or, in the case of a district-wide assessment, the LEA’s) guidelines must—

(i) Identify only those accommodations for each assessment that do not invalidate the score; and

(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

(c) Alternate assessments. (1) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—

(i) Are aligned with the State’s challenging academic content standards and challenging student academic achievement standards;

(ii) If the State has adopted modified academic achievement standards permitted in 34 CFR 200.1(e), measure the achievement of children with disabilities meeting the State’s criteria under §200.1(e)(2) against those standards; and

(iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure
the achievement of children with the most significant cognitive disabilities against those standards.

(d) **Explanation to IEP Teams.** A State (or in the case of a district-wide assessment, an LEA) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student’s education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

(e) **Inform parents.** A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child’s achievement will be measured based on alternate or modified academic achievement standards.

(f) **Reports.** An SEA (or, in the case of a district-wide assessment, an LEA) must 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:

1. The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.
2. The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.
3. The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.
4. The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.
5. Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if—
   1. The number of children participating in those assessments is sufficient to yield statistically reliable information; and
   2. Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) **Universal design.** An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(72 FR 17781, Apr. 9, 2007)

§ 300.161 [Reserved]

§ 300.162 **Supplementation of State, local, and other Federal funds.**

(a) **Expenditures.** Funds paid to a State under this part must be expended in accordance with all the provisions of this part.

(b) **Prohibition against commingling.** (1) Funds paid to a State under this part must not be commingled with State funds.

2. The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)

(c) **State-level nonsupplanting.** (1) Except as provided in §300.203, 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 those Federal, State, and local funds.

2. If the State provides clear and convincing evidence that all children
§ 300.163 Maintenance of State financial support.

(a) General. A State must 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 §300.164 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 shall be the amount that would have been required in the absence of that failure and not the reduced level of the State’s support.

(Approved by the Office of Management and Budget under control number 1820–0030)

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


§ 300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

(a) Except as provided under §§300.202 through 300.205, 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 §300.704(a) and (b) without regard to the prohibition on supplanting other funds.

(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 §300.162 (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
(i) 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 §300.111 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 §§300.151 through 300.153; and

(D) The State’s hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;

(3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.151 through 300.153) and hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), 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 §300.167.

(e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and 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)(18)(A) of the Act and §300.164 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.

(Approved by the Office of Management and Budget under control number 1820–0030)


§ 300.165 Public participation.

(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that 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.

(b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those in 20 U.S.C. 1232d(b)(7).

(Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(19); 20 U.S.C. 1232d(b)(7))

§ 300.166 Rule of construction.

In complying with §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-
law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

(Approved by the Office of Management and Budget under control number 1820-0030)

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

STATE ADVISORY PANEL

§ 300.167 State advisory panel.

The State must establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(21)(A))

§ 300.168 Membership.

(a) General. The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved in, or concerned with the education of children with disabilities, including—

(1) Parents of children with disabilities (ages birth through 26);
(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, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 et seq.);
(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) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
(10) A representative from the State child welfare agency responsible for foster care; and
(11) 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 (ages birth through 26).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(21)(B) and (C))

§ 300.169 Duties.

The advisory panel must—

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;
(b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;
(c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;
(d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and
(e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(21)(D))

OTHER PROVISIONS REQUIRED FOR STATE ELIGIBILITY

§ 300.170 Suspension and expulsion rates.

(a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

(1) Among LEAs in the State; or
(2) Compared to the rates for non-disabled children within those agencies.
(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

(Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(22))

§ 300.171 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 administration and State-level activities under §300.704 will be used to meet the requirements of this part; and
2. How those amounts will be allocated among the activities described in §300.704 to meet State priorities based on input from LEAs.

(b) If a State’s plans for use of its funds under §300.704 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.

(c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States.

(Approved by the Office of Management and Budget under control number 1820–0030)

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

§ 300.172 Access to instructional materials.

(a) General. The State must—

1. Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the FEDERAL REGISTER on July 19, 2006 (71 FR 41084); and

2. Establish a State definition of “timely manner” for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.

(b) Rights and responsibilities of SEA.

1. Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC.

2. If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

3. Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

4. In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(c) Preparation and delivery of files. If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must—

1. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to—

   (i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the
§ 300.173 Overidentification and disproportionality.

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in §300.8.

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(24))

§ 300.174 Prohibition on mandatory medication.

(a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.

(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find).

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(a)(25))

§ 300.175 SEA as provider of FAPE or direct services.

If the SEA provides FAPE to children with disabilities, or provides direct services to these children, the agency—

(a) Must comply with any additional requirements of §§300.201 and 300.202 and §§300.206 through 300.226 as if the agency were an LEA; and

(b) May use amounts that are otherwise available to the agency under Part B of the Act to serve those children without regard to §300.202(b) (relating to excess costs).

(Approved by the Office of Management and Budget under control number 1820–0030)
(Authority: 20 U.S.C. 1412(b))

§ 300.176 Exception for prior State plans.

(a) General. 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 §300.100, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the Secretary considers the State to have met the requirement for purposes of receiving a grant under Part B of the Act.

(b) Modifications made by a State. (1) Subject to paragraph (b)(2) 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 determines necessary.

(2) The provisions of this subpart apply to a modification to an application to the same extent and in the same manner that they apply to the original plan.

(c) 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 December 3, 2004, the provisions of the Act or the regulations in this part are amended;

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

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

(Approved by the Office of Management and Budget under control number 1820-0030)

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

§ 300.178 Determination by the Secretary that a State is eligible to receive a grant.

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)(1))

§ 300.179 Notice and hearing before determining that a State is not eligible to receive a grant.

(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) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

(5) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

(Authority: 20 U.S.C. 1403, 1405)

(73 FR 73027, Dec. 1, 2008)
§ 300.180 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))

§ 300.181 Hearing procedures.

(a) As used in §§300.179 through 300.184 the term party or parties means the following:

(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 Hearing Panel.

(b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.

(c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Hearing 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 Hearing 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 Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties.

(3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Hearing 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 Hearing 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 Hearing Panel.

(5) A prehearing or other conference held under paragraph (c)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties must 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 Hearing 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 Hearing Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Hearing Panel may require parties to present testimony through affidavits and to
conducted cross-examination through interrogatories.

(f) The Hearing Official or Hearing 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 Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Hearing Panel may examine witnesses.

(j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Hearing 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 Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Hearing Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Hearing Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p) The Hearing Official or Hearing Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings.

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

§ 300.182 Initial decision; final decision.

(a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under §300.179 including any amendments to or further clarifications of the issues, under §300.181(c)(7).

(b) The initial decision of a Hearing Panel is made by a majority of Panel members.

(c) The Hearing Official or Hearing 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 Hearing Panel within 15 days of the date the party receives the Panel's decision.

(e) The Hearing Official or Hearing 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 Hearing Panel within seven days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Hearing Panel forwards the parties' initial and
§ 300.183 Filing requirements.

(a) Any written submission by a party under §§300.179 through 300.184 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, the Hearing Official, or the Hearing Panel, 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(d))

§ 300.184 Judicial review.

If a State is dissatisfied with the Secretary’s final decision 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 decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be 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 decision was based, as provided in 28 U.S.C. 2112.

(Authority: 20 U.S.C. 1416(e)(8))

§ 300.185 [Reserved]

§ 300.186 Assistance under other Federal programs.

Part B of the Act may not be construed to permit a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of FAPE for children with disabilities in the State.

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

BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS

§ 300.190 By-pass—general.

(a) If, on December 2, 1983, the date of enactment of the Education of the Handicapped Act Amendments of 1983, an SEA was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by section
§ 300.193 Request to show cause.

An SEA, LEA or other public agency in receipt of a notice under §300.192 that seeks an opportunity to show cause why a by-pass should not be implemented must submit a written request for a show cause hearing to the Secretary, within the specified time...
§ 300.194 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and affected LEA or other public agency, and other appropriate public and private school officials of the time and place for the hearing;

(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; and

(3) Notifies the SEA, LEA or other public agency, and representatives of private schools that they may be represented by legal counsel and submit oral or written evidence and arguments at the 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 has no authority to require or conduct discovery.

(e) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(f) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(g) Within 10 days after the hearing, the designee—

(1) Indicates that a decision will be issued on the basis of the existing record; or

(2) Requests further information from the SEA, LEA, other public agency, representatives of private schools or Department officials.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.195 Decision.

(a) The designee who conducts the show cause hearing—

(1) Within 120 days after the record of a show cause hearing is closed, 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 30 days of the date the party receives the designee’s decision.

(c) The Secretary adopts, reverses, or modifies the designee’s decision and notifies all parties to the show cause hearing 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))

§ 300.196 Filing requirements.

(a) Any written submission under §300.194 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.

(f) A party must show a proof of mailing to establish the filing date.
§ 300.197 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) through (D) of the Act.

(Authority: 20 U.S.C. 1412(f)(3))

§ 300.198 Continuation of a by-pass.

The Secretary continues a by-pass until the Secretary determines that the SEA, LEA or other public agency will meet the requirements for providing services to private school children.

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

STATE ADMINISTRATION

§ 300.199 State administration.

(a) Rulemaking. Each State that receives funds under Part B of the Act must—

(1) Ensure that any State rules, regulations, and policies relating to this part conform to the purposes of this part;

(2) Identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the Act and Federal regulations; and

(3) Minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the Act.

(b) Support and facilitation. State rules, regulations, and policies under Part B of the Act must support and facilitate LEA and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(Approved by the Office of Management and Budget under control number 1820-0039)

(Authority: 20 U.S.C. 1407)

§ 300.200 Condition of assistance.

An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§300.201 through 300.213.

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

§ 300.201 Consistency with State policies.

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 §§300.101 through 300.163, and §§300.165 through 300.174.

(Approved by the Office of Management and Budget under control number 1820-0600)

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

§ 300.202 Use of amounts.

(a) General. Amounts provided to the LEA under Part B of the Act—

(1) Must be expended in accordance with the applicable provisions of this part;

(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and

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

(b) Excess cost requirement—(1) General. (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.

(ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for non-disabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements under paragraph (b)(2) of this section as provided in 34 CFR 75.102(d).

(Authority: 20 U.S.C. 1412(f)(3))
§ 300.203

of this part in providing the education and services for these children.

(2)(i) 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.

(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.

(3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be.

(Approved by the Office of Management and Budget under control number 1820–0600)


§ 300.204

Exception to maintenance of effort.

Notwithstanding the restriction in §300.203(a), 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 any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(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.
§ 300.205 Adjustment to local fiscal efforts in certain fiscal years.

(a) Amounts in excess. Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.

(b) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) Special rule. The amount of funds expended by an LEA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

§ 300.206 Schoolwide programs under title I of the ESEA.

(a) General. Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, 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 ESEA, except that the amount used in any schoolwide program may not exceed—

1(i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by

(i) 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 §300.202(a)(2) and (a)(3).

2 The funds may be used without regard to the requirements of §300.202(a)(1).

(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act 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 Act.

§ 300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of
§ 300.208 Permissive use of funds.

(a) Uses. Notwithstanding §§ 300.202, 300.203(a), and 300.162(b), funds provided to an LEA under Part B of the Act may be used for the following activities:

(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) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with § 300.226.

(3) High cost special education and related services. To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

§ 300.209 Treatment of charter schools and their students.

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

(b) Charter schools that are public schools of the LEA. (1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must—

(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(ii) Provide funds under Part B of the Act to those charter schools—

(A) On the same basis as the LEA provides funds to the LEA’s other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(B) At the same time as the LEA distributes other Federal funds to the LEA’s other public schools, consistent with the State’s charter school law.

(2) If the public charter school is a school of an LEA that receives funding under § 300.705 and includes other public schools—

(i) 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

(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.

(c) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with § 300.28, that receives funding under § 300.705, 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.

(d) Public charter schools that are not an LEA or a school that is part of an LEA. (1) If the public charter school is not an LEA receiving funding under § 300.705, or a school that is part of an LEA receiving funding under § 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

(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 §300.149.

(Approved by the Office of Management and Budget under control number 1820–0600)

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

§ 300.210 Purchase of instructional materials.

(a) General. Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under §300.172.

(b) Rights of LEA. (1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.

(2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(Approved by the Office of Management and Budget under control number 1820–0600)

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

§ 300.211 Information for SEA.

The LEA must 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 §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820–0600)

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

§ 300.212 Public information.

The LEA must 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.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(8))

§ 300.213 Records regarding migratory children with disabilities.

The LEA must cooperate in the Secretary’s efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(9))

§§ 300.214–300.219 [Reserved]

§ 300.220 Exception for prior local plans.

(a) General. If an LEA or a State agency described in §300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of §300.200, including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the LEA or State agency to have met that requirement for purposes of receiving assistance under Part B of the Act.

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

(c) 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 Part B of the Act or State law, if—
§ 300.221 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, then the SEA must—
(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))

§ 300.222 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 subpart is failing to comply with any requirement described in §§300.201 through 300.213, the SEA must reduce or must 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 must, 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) Consideration. In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.

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

§ 300.223 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 will be ineligible under this subpart because the agency will 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 the charter school 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 §300.705 if the agencies were eligible for those payments.

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

§ 300.224 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 §§300.101 through 300.163, and §§300.165 through 300.174; 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 §§300.223 through 300.224, an educational service agency must provide
§ 300.225  [Reserved]

§ 300.226  Early intervening services.

(a) General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See appendix D for examples of how §300.205(d), regarding local maintenance of effort, and §300.226(a) affect one another.)

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

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

(d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on—

(1) The number of children served under this section who received early intervening services; and

(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.

(e) Coordination with ESEA. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(Approved by the Office of Management and Budget under control number 1820–0600)

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

§ 300.227  Direct services by the SEA.

(a) General. (1) An SEA must 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 LEA, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency—

(i) Has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of the Act;

(ii) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(iii) Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

(iv) 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.

(2) SEA administrative procedures. (i) In meeting the requirements in paragraph (a)(1) of this section, the SEA
§ 300.228  State agency eligibility.

Any State agency that desires to receive a subgrant for any fiscal year under §300.705 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(h))

§ 300.229  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.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary information included in, and transmitted with, the student records of nondisabled children.

(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 IEP and any statement of current or previous disciplinary action that has been taken against the child.

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

§ 300.230  SEA flexibility.

(a) Adjustment to State fiscal effort in certain fiscal years. For any fiscal year for which the allotment received by a State under §300.703 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding §§300.162 through 300.163 (related to State-level nonsupplanting and maintenance of effort), and §300.175 (related to direct services by the SEA) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

(b) Prohibition. Notwithstanding paragraph (a) of this section, if the Secretary determines that an SEA is unable to establish, maintain, or oversee programs of FAPE that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under §300.603, the Secretary prohibits the SEA from exercising the authority in paragraph (a) of this section.

(c) Education activities. If an SEA exercises the authority under paragraph (a) of this section, the agency must use funds from State sources, in an amount equal to the amount of the reduction under paragraph (a) of this section, to support activities authorized under the ESEA, or to support need-based student or teacher higher education programs.

(d) Report. For each fiscal year for which an SEA exercises the authority under paragraph (a) of this section, the SEA must report to the Secretary—

1. The amount of expenditures reduced pursuant to that paragraph; and

2. The activities that were funded pursuant to paragraph (c) of this section.

(e) Limitation. (1) Notwithstanding paragraph (a) of this section, an SEA...
may not reduce the level of expenditures described in paragraph (a) of this section if any LEA in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the LEA receive FAPE from the combination of Federal funds received under Part B of the Act and State funds received from the SEA.

(2) If an SEA exercises the authority under paragraph (a) of this section, LEAs in the State may not reduce local effort under §300.205 by more than the reduction in the State funds they receive.

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

Subpart D—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

§ 300.300 Parental consent.

(a) Parental consent for initial evaluation. (1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child’s parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.

(b) Parental consent for services. (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—

(i) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with
the special education and related services for which the parent refuses or fails to provide consent; and
(iii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;
(ii) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for further provision of special education and related services.

(c) Parental consent for reevaluations. Each public agency—

(1) Subject to paragraph (c)(2) of this section, must obtain informed parental consent, in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability.
(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(1) of this section.
(iii) The public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—

(i) It made reasonable efforts to obtain such consent; and
(ii) The child's parent has failed to respond.

(d) Other consent requirements.

(1) 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.

(2) In addition to the parental consent requirements described in paragraphs (a), (b), and (c) 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.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), (c), or (d)(2) 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.

(4) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

(i) The public agency is not required to consider the child as eligible for services under §§300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §300.322(d).

(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))

§ 300.301 Initial evaluations.

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.302 through 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures—

(i) To determine if the child is a child with a disability under § 300.8; and

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

(d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

(e) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child’s previous public agency as to whether the child is a child with a disability under § 300.8.

(f) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

(g) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

(h) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

(i) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

(j) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

§ 300.302 Screening for instructional purposes is not evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(E))

§ 300.303 Reevaluations.

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

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

§ 300.304 Evaluation procedures.

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child’s IEP, including information related to enabling the child to be involved in and
progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); (2) Not use any single measure or assessment 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; and (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. Each public agency must ensure that—(1) Assessments and other evaluation materials used to assess a child under this part—(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; (iii) Are used for the purposes for which the assessments or measures are valid and reliable; (iv) Are administered by trained and knowledgeable personnel; and (v) Are administered in accordance with any instructions provided by the producer of the assessments. (2) Assessments 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. (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment 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). (4) 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; (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children’s prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations. (6) In evaluating each child with a disability under §§300.304 through 300.306, 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. (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. (Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))

§ 300.305 Additional requirements for evaluations and reevaluations.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—(1) Review existing evaluation data on the child, including—(i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based 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)(A) Whether the child is a child with a disability, as defined in §300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to
§ 300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) Procedures for determining eligibility and educational need. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—

(2) have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed. (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child’s educational needs, the public agency must notify the child’s parents of—

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child’s educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child’s parents.

(e) Evaluations before change in eligibility. (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child’s eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.

[Authority: 20 U.S.C. 1414(c)]

§ 300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed. (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child’s educational needs, the public agency must notify the child’s parents of—

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child’s educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child’s parents.

(e) Evaluations before change in eligibility. (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child’s eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.

[Authority: 20 U.S.C. 1414(c)]

§ 300.307 Specific learning disabilities.  
(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);

(2) Must permit the use of a process based on the child’s response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1414(b)(4) and (5))


ADDITIONAL PROCEDURES FOR IDENTIFYING CHILDREN WITH SPECIFIC LEARNING DISABILITIES

§ 300.308 Additional group members.  
The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.8, 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: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

§ 300.309 Determining the existence of a specific learning disability.  
(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—

(1) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or State-approved grade-level standards:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading fluency skills.

(vi) Reading comprehension.

(vii) Mathematics calculation.

(viii) Mathematics problem solving.

(2)(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child’s response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age. State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and
§ 300.310 Observation.
(a) The public agency must ensure that the child is observed in the child’s learning environment (including the regular classroom setting) to document the child’s academic performance and behavior in the areas of difficulty.

§ 300.311 Specific documentation for the eligibility determination.
(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—
(1) Whether the child has a specific learning disability;
(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);
(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child’s academic functioning;
(4) The educationally relevant medical findings, if any;
(5) Whether—
(i) The child does not achieve adequately for the child’s age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and
(ii) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or
(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to

(b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—
(1) Use information from an observation in routine classroom instruction and monitoring of the child’s performance that was done before the child was referred for an evaluation; or
(2) Have at least one member of the group described in § 300.306(a)(1) conduct an observation of the child’s academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.306(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))
§ 300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—

(1) A statement of the child’s present levels of academic achievement and functional performance, including—

(i) How the child’s disability affects the child’s involvement and progress in the general education 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 academic and functional goals designed to—

(A) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and

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

(3) A description of—

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

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, 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 to enable the child—

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

(ii) To be involved in and make progress in the general education 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;

(5) 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)(4) of this section;

(b) Each group must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the group member must submit a separate statement presenting the member’s conclusions.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))
(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child;

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child’s rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520.

(d) Construction. Nothing in this section shall be construed to require—

(1) That additional information be included in a child’s IEP beyond what is explicitly required in section 614 of the Act; or

(2) 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)(1)(A) and (d)(6))

§ 300.321 IEP Team.

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

(1) The parents of the child;

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one special education teacher of the child, or where appropriate, not less than 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 education 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 (a)(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) Whenever appropriate, the child with a disability.

(b) Transition services participants. (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child’s IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b).

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

(3) To the extent appropriate, with the consent of the parents or a child
§ 300.322 Parent participation.

(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team 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 §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must—

(i) Indicate—

(A) That a purpose of the meeting will be the consideration of the post-secondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the student; and

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

(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls,
consistent with §300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP Team 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 keep 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.

(e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child’s IEP. The public agency must give the parent a copy of the child’s IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§ 300.323 When IEPs must be in effect.

(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) IEP or IFSP for children aged three through five. (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

(i) Consistent with State policy; and
(ii) Agreed to by the agency and the child’s parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must—

(i) Provide to the child’s parents a detailed explanation of the differences between an IFSP and an IEP; and
(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(c) Initial IEPs; provision of services. Each public agency must ensure that—

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.

(d) Accessibility of child’s IEP to teachers and others. Each public agency must ensure that—

1. The child’s IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

2. Each teacher and provider described in paragraph (d)(1) of this section is informed of—

(i) His or her specific responsibilities related to implementing the child’s IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency either—
§ 300.324 Development, review, and revision of IEP.

(a) Development of IEP—(1) General. In developing each child's IEP, the IEP Team must consider—
(i) The strengths of the child;
(ii) The concerns of the parents for enhancing the education of their child;
(iii) The results of the initial or most recent evaluation of the child; and
(iv) The academic, developmental, and functional needs of the child.

(2) Consideration of special factors. The IEP Team must—
(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, 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 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 communications 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 needs assistive technology devices and services.

(3) Requirement with respect to regular education teacher. A 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 of the IEP of the child, including the determination of—
(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

(4) Agreement. (i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and
the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child’s current IEP.

(ii) If changes are made to the child’s IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child’s IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs—(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

(i) Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child’s anticipated needs; or

(E) Other matters.

(2) Consideration of special factors. In conducting a review of the child’s IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) Failure to meet transition objectives—(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. 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 children with disabilities who meet the eligibility criteria of that agency.

(d) Children with disabilities in adult prisons—(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) of the Act and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement. The IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child’s IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(1), 1414(d)(3), (4)(B), and (7); and 1414(e))
§ 300.325 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 must initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.320 and 300.324.

(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must 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 must 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))

§ 300.326 [Reserved]

§ 300.327 Educational placements.

Consistent with § 300.501(c), each public agency must 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.

(Authority: 20 U.S.C. 1414(e))

§ 300.328 Alternative means of meeting participation.

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(Authority: 20 U.S.C. 1414(f))

Subpart E—Procedural Safeguards
Due Process Procedures for Parents and Children

§ 300.500 Responsibility of SEA and other public agencies.

Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500 through 300.536.

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

§ 300.501 Opportunity to examine records; parent participation in meetings.

(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to 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.

(2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) 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. 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 must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent’s child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(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 must 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 a parent, if the public agency is unable to obtain the parent’s participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

(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, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing 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 pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency’s evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation at public expense, the public agency may ask for the parent’s reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense
or shares with the public agency an evaluation obtained 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 by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, 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) and (d)(2)(A))

§ 300.503 Prior notice by the public agency; content of notice.

(a) Notice. 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—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(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 each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(4) 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;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language. (1) 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 must 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) and (4), 1415(c)(1), 1414(b)(1))

§ 300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

(1) Upon initial referral or parent request for evaluation;
(2) Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;

(3) In accordance with the discipline procedures in §300.530(h); and

(4) Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §§300.530 through 300.536 and §§300.610 through 300.625 relating to—

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including

(a) The time period in which to file a complaint;

(b) Procedures for students who are subject to placement in an interim alternative educational setting;

(c) Requirements for unilateral placement by parents of children in private schools at public expense;

(d) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

(e) State-level appeals (if applicable in the State);

(f) Civil actions, including the time period in which to file those actions; and

(g) Attorneys’ fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).

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

§ 300.506 Mediation.

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(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 hearing on the parent’s due process complaint, 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) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
§ 300.507 Filing a due process complaint.

(a) General. (1) A parent or a public agency may file a due process complaint 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) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency files a due process complaint under this section.

§ 300.508 Due process complaint.

(a) General. (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include—

(1) The name of the child;
(2) The address of the residence of the child;
(3) The name of the school the child is attending;
(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (20 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
(5) 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
(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint. (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.
(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.
(3) A party may amend its due process complaint only if—
(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or
(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

(e) LEA response to a due process complaint. (1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent’s due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—
(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;
(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
(iv) A description of the other factors that are relevant to the agency’s proposed or refused action.
(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent’s due process complaint was insufficient, where appropriate.
(3) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Authority: 20 U.S.C. 1415(b)(7), 1415(o)(2)

§ 300.509 Model forms.

(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.
(b) Parents, public agencies, and other parties may use the appropriate
§ 300.510 Resolution process.

(a) Resolution meeting. (1) Within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—
   (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
   (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if—
   (i) The parent and the LEA agree in writing to waive the meeting; or
   (ii) The parent and the LEA agree to use the mediation process described in §300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period. (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent’s due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515 starts the day after one of the following events:

   (1) Both parties agree in writing to waive the resolution meeting;
   (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
   (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—

   (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
   (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to
paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement’s execution.


§ 300.511 Impartial due process hearing.

(a) General. Whenever a due process complaint is received under § 300.507 or § 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process 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) Impartial hearing officer. (1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

2 A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) 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.

3 Each public agency must 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.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise.

(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—

1 Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

2 The LEA’s withholding of information from the parent that was required under this part to be provided to the parent.

(Approved by the Office of Management and Budget under control number 1820–0600)


§ 300.512 Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, 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, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;

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 five business days before the hearing;
§ 300.513 Hearing decisions.

(a) Decision of hearing officer on the provision of FAPE. (1) Subject to paragraph (a)(2) of this section, a hearing officer’s determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—

(i) Impeded the child’s right to a FAPE;

(ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.

(b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.

(c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must—

(1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and

(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

§ 300.514 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) Appeal of decisions; impartial review. (1) If the hearing required by §300.511 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) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
§ 300.516 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. 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) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court—

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at the request of a party; and
3. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) 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.

(e) 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 300.514 must be exhausted to the same extent as required under the Act.
§ 300.517 Attorneys’ fees.

(a) In general. (1) 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—
   (i) The prevailing party who is the parent of a child with a disability;
   (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
   (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent’s request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
   (2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Prohibition on use of funds. (1) Funds under Part B of the Act may not be used to pay attorneys’ fees or costs of a party related to any 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) Award of fees. A court awards reasonable attorneys’ fees under section 615(i)(3) of the Act consistent with the following:

(1) 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 paragraph.

(2)(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.
   (iii) A meeting conducted pursuant to § 300.510 shall not be considered—
   (A) A meeting convened as a result of an administrative hearing or judicial action; or
   (B) An administrative hearing or judicial action for purposes of this section.

(3) 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) Except as provided in paragraph (c)(2)(i) 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, or the parent’s attorney, 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; or

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.

(5) 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))

§ 300.519 Surrogate parents.

(a) General. Each public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in §300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include 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) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child’s case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents. (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(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 personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) 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.

(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent 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.

(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(Authority: 20 U.S.C. 1415(b)(2))

§ 300.520 Transfer of parental rights at age of majority.

(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

(1) The public agency must provide any notice required by this part to both the child and the parents; and

(2) All rights accorded to parents under Part B of the Act transfer to the child;

(3) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child’s eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child’s educational program.

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

§§ 300.521–300.529 [Reserved]

DISCIPLINE PROCEDURES

§ 300.530 Authority of school personnel.

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for 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 §300.536).

(2) After a child with a disability has been removed from his or her current placement for 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 paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to paragraph (e) of
this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services. (1) A child with a disability who is removed from the child’s current placement pursuant to paragraphs (c), or (g) of this section must—

(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal 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 it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child’s teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.

(5) If the removal is a change of placement under §300.536, the child’s IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine—

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or

(ii) If the conduct in question was the direct result of the LEA’s failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child’s disability if the LEA, the parent, and relevant members of the child’s IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child’s IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child’s disability, the IEP Team must—

(1) Either—

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
(g) **Special circumstances.** School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child—

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) **Notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

(i) **Definitions.** For purposes of this section, the following definitions apply:

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** means a controlled substance; but does not include a controlled 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. **Serious bodily injury** has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
4. **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) and (7))

§ 300.531 **Determination of setting.**

The child’s IEP Team determines the interim alternative educational setting for services under §§300.530(c), (d)(5), and (g).

(Authority: 20 U.S.C. 1415(k)(2))

§ 300.532 **Appeal.**

(a) **General.** The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

(b) **Authority of hearing officer.** (1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

2. In making the determination under paragraph (b)(1) of this section, the hearing officer may—

   1. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child’s behavior was a manifestation of the child’s disability; or
   2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

3. The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) **Expedited due process hearing.** (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and
§ 300.534 Protections for children not determined 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 a code of student conduct, may assert any of the protections provided for in this part if the public agency 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—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§ 300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge. (1) 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 a code of student conduct, may assert any of the protections provided for in this part if the public agency 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—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

§ 300.533 Placement during appeals.

When an appeal under § 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))
§ 300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents 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) Transmittal of records. (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency 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)(6))

§ 300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child’s current educational placement under §§300.530 through 300.535, a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern—

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

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

§ 300.537 State enforcement mechanisms.

Notwithstanding §§300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

§ 300.600 State monitoring and enforcement.

(a) The State must—

(1) Monitor the implementation of this part;

(2) Make determinations annually about the performance of each LEA using the categories in § 300.603(b)(1);

(3) Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and

(4) Report annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(i)(A) and (b)(2).

(b) The primary focus of the State’s monitoring activities must be on—

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Provision of FAPE in the least restrictive environment.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1437(a)(9).

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State’s identification of the noncompliance.

(Approved by the Office of Management and Budget under control number 1820–0624)

(Authority: 20 U.S.C. 1416(a))

§ 300.602 State use of targets and reporting.

(a) General. Each State must use the targets established in the State’s performance plan under §300.601 and the priority areas described in §300.600(d) to analyze the performance of each LEA.

(b) Public reporting and privacy—(1) Public report.

(i) Subject to paragraph (b)(1)(ii) of this section, the State must—

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State’s performance plan as soon as practicable but no later than 120 days following the State’s submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make each of the following items available through public means: the State’s performance plan, under §300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State’s annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the SEA’s Web site, and distribute the plan and reports to the media and through public agencies.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State’s performance plan.

(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

(Approved by the Office of Management and Budget under control number 1820–0624)

(Authority: 20 U.S.C. 1416(b)(2)(C))

§ 300.603 Secretary’s review and determination regarding State performance.

(a) Review. The Secretary annually reviews the State’s performance report submitted pursuant to §300.602(b)(2).

(b) Determination—(1) General. Based on the information provided by the State in the State’s annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—

(i) Meets the requirements and purposes of Part B of the Act;

(ii) Needs assistance in implementing the requirements of Part B of the Act;

(iii) Needs intervention in implementing the requirements of Part B of the Act; or

(iv) Needs substantial intervention in implementing the requirements of Part B of the Act.

(2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.

(ii) The hearing described in paragraph (b)(2) of this section consists of
an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1416(d))

§ 300.604 Enforcement.

(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under § 300.603(b)(1)(i) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

(1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include—

(i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

(2) Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.

(3) Identifies the State as a high-risk grantee and imposes special conditions on the State’s grant under Part B of the Act.

(b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under § 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the following shall apply:

(1) The Secretary may take any of the actions described in paragraph (a) of this section.

(2) The Secretary takes one or more of the following actions:

(i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.

(ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year.

(iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State’s funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seeks to recover funds under section 452 of GEPA.

(v) Withholds, in whole or in part, any further payments to the State under Part B of the Act.

(vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA’s or LEA’s eligibility under Part B of the Act, the Secretary takes one or more of the following actions:

(1) Recovers funds under section 452 of GEPA.

(2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.
(3) Refers the case to the Office of the Inspector General at the Department of Education.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) Report to Congress. The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

(Authority: 20 U.S.C. 1416(e)(1)–(e)(3), (e)(5))

§ 300.605 Withholding funds.

(a) Opportunity for hearing. Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§300.180 through 300.183.

(b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

(c) Nature of withholding. (1) If the Secretary determines that it is appropriate to withhold further payments under §300.604(b)(2) or (c)(2), the Secretary may determine—

(i) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary’s determination under §300.603(b)(1); or

(ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary’s determination under §300.603(b)(1).

(2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) Payments to the State under Part B of the Act must be withheld in whole or in part; and

(ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary’s determination under §300.603(b)(1), as the case may be.

(Authority: 20 U.S.C. 1416(e)(4), (e)(6))

§ 300.606 Public attention.

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to §300.604, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action pursuant to §300.604, including, at a minimum, by posting the notice on the SEA’s Web site and distributing the notice to the media and through public agencies.

(Authority: 20 U.S.C. 1416(e)(7))

§ 300.607 Divided State agency responsibility.

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act 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 §300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that—

(a) Any reduction or withholding of payments to the State under §300.604 must be 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 SEA; and

(b) Any withholding of funds under §300.604 must be limited to the specific
agency responsible for the failure to comply with Part B of the Act.

(Authority: 20 U.S.C. 1416(b))

§ 300.608 State enforcement.

(a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State’s performance plan, the SEA must prohibit the LEA from reducing the LEA’s maintenance of effort under § 300.203 for any fiscal year.

(b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.

(Authority: 20 U.S.C. 1416(f); 20 U.S.C. 1412(a)(11))

§ 300.609 Rule of construction.

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA, including the provisions in 34 CFR parts 76, 77, 80, and 81 to monitor and enforce the requirements of the Act, including the imposition of special conditions under 34 CFR 80.12.

(Authority: 20 U.S.C. 1416(g))

CONFIDENTIALITY OF INFORMATION

§ 300.610 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627.

(Authority: 20 U.S.C. 1417(c))

§ 300.611 Definitions.

As used in §§300.611 through 300.625—

(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, 20 U.S.C. 1232g (FERPA)).

(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))

§ 300.612 Notice to parents.

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, 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 FERPA 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))

§ 300.613 Access rights.

(a) Each participating agency must 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 must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to
§ 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, 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))

§ 300.614 Record of access.

Each participating agency must 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))

§ 300.615 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))

§ 300.616 List of types and locations of information.

Each participating agency must 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))

§ 300.617 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))

§ 300.618 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 to amend the information.

(b) The agency must 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 must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.619 Opportunity for a hearing.

The agency must, 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))

§ 300.620 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 must 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 must inform the parent of the parent’s right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(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))

§ 300.621 Hearing procedures.

A hearing held under § 300.619 must be conducted according to the procedures in 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.622 Consent.

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent’s residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent’s residence.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.623 Safeguards.

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must 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 §300.123 and 34 CFR part 99.

(d) Each participating agency must 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))

§ 300.624 Destruction of information.

(a) The public agency must 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))

§ 300.625 Children’s rights.

(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded
§ 300.626 Rights of privacy.

The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§ 300.611 through 300.625 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))

§ 300.627 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 the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§ 300.640 Annual report of children served—report requirement.

(a) The SEA must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The SEA must submit the report on forms provided by the Secretary.


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

§ 300.641 Annual report of children served—information required in the report.

(a) For purposes of the annual report required by section 618 of the Act and § 300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

(b) For the purpose of this reporting provision, a child’s age is the child’s actual age on the date of the child count.

(c) The SEA may not report a child under more than one disability category.

(d) If a child with a disability has more than one disability, the SEA must report that child 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.”

(Approved by the Office of Management and Budget under control numbers 1820–0030, 1820–0043, 1820–0621, 1820–0521, and 1820–0517)

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

§ 300.642 Data reporting.

(a) Protection of personally identifiable data. The data described in section 618(a) of the Act and in § 300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.
(b) **Sampling.** The Secretary may permit States and the Secretary of the Interior to obtain data in section 618(a) of the Act through sampling.

(Approved by the Office of Management and Budget under control numbers 1820–0030, 1820–0043, 1820–0518, 1820–0521, and 1820–0517)

(Authority: 20 U.S.C. 1418(b))

§ 300.643 Annual report of children served—certification.

The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under §300.640 is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0043)

(Authority: 20 U.S.C. 1418(a)(3))

§ 300.644 Annual report of children served—criteria for counting children.

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—

(a) Provides them with both special education and related services that meet State standards;

(b) Provides them only with special education, if a related service is not required, that meets State standards; or

(c) In the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet State standards under §§300.132 through 300.144.


(Authority: 20 U.S.C. 1418(a))

§ 300.645 Annual report of children served—other responsibilities of the SEA.

In addition to meeting the other requirements of §§300.640 through 300.644, the SEA must—

(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 §300.640(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§300.640 through 300.644; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.


(Authority: 20 U.S.C. 1418(a))

§ 300.646 Disproportionality.

(a) **General.** Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State 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;

2. The placement in particular educational settings of these children; and

3. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(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 must—
§ 300.700

(1) 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 the Act.

(2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and

(3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1418(d))

Subpart G—Authorization, Allotment, Use of Funds, and Authorization of Appropriations

ALLOTMENTS, GRANTS, AND USE OF FUNDS

§ 300.700 Grants to States.

(a) Purpose of grants. The Secretary makes grants to States, outlying areas, and freely associated States (as defined in §300.717), 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 amount. The maximum amount of the grant a State may receive under section 611 of the Act is—

(1) For fiscal years 2005 and 2006—

(i) The number of children with disabilities in the State who are receiving special education and related services—

(A) Aged three through five, if the State is eligible for a grant under section 619 of the Act; and

(B) Aged 6 through 21; multiplied by

(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in §300.717); and

(2) For fiscal years 2007 and subsequent fiscal years—

(i) The number of children with disabilities in the 2004-2005 school year in the State who received special education and related services—

(A) Aged three through five if the State is eligible for a grant under section 619 of the Act; and

(B) Aged 6 through 21; multiplied by

(ii) Forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States (as defined in §300.717);

(iii) Adjusted by the rate of annual change in the sum of—

(A) Eighty-five (85) percent of the State’s population 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

(B) Fifteen (15) percent of the State’s population of children described in paragraph (b)(2)(iii)(A) of this section who are living in poverty.

(Authority: 20 U.S.C. 1411(a) and (d))

§ 300.701 Outlying areas, freely associated States, and the Secretary of the Interior.

(a) Outlying areas and freely associated States—

(1) Funds reserved. From the amount appropriated for any fiscal year under section 611(i) of the Act, the Secretary reserves not more than one percent, which must be used—

(i) To provide assistance to the outlying areas in accordance with Part B of the Act.

(ii) To provide each freely associated State a grant in the amount that the freely associated State received for fiscal year 2003 under Part B of the Act, but only if the freely associated State—

(A) Meets the applicable requirements of Part B of the Act that apply to States.

(B) Meets the requirements in paragraph (a)(2) of this section.

(2) Application. Any freely associated State that wishes to receive funds under Part B of the Act must include, in its application for assistance—
§ 300.703 Allocations to States.

(a) General. After reserving funds for technical assistance under § 300.702, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under §300.701 (a) and (b) for a fiscal year, the Secretary allocates the remaining amount among the States in accordance with paragraphs (b), (c), and (d) of this section.

(b) Special rule for use of fiscal year 1999 amount. If a State received any funds under section 611 of the Act for fiscal year 1999 on the basis of children aged three through five, but does not make FAPE available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary computes the State’s amount for fiscal year 1999, solely for the purpose of calculating the State’s allocation in that subsequent year under paragraph (c) or (d) of this section, by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(c) Increase in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year 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:

1) Allocation of increase—(1) General. Except as provided in paragraph (c)(2) of this section, the Secretary allocates for the fiscal year—

(A) To each State the amount the State received under this section for fiscal year 1999;

(B) Eighty-five (85) percent of any remaining funds to States on the basis of the States’ 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

(C) Fifteen (15) percent of those remaining funds to States on the basis of the States’ relative populations of children described in paragraph (c)(1)(i)(B) of this section who are living in poverty.

(ii) Data. 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.
§ 300.704 State-level activities.

(a) State administration. (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and 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—

(i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or $800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and

(ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying

(2) Decrease in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year 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:

(1) Amounts greater than fiscal year 1999 allocations. If the amount available for allocations under paragraph (a) of this section is greater than the amount allocated to the States for fiscal year 1999, each State is allocated the sum of—

(i) 1999 amount. The amount the State received under section 611 of the Act for fiscal year 1999; and

(ii) Remaining funds. An amount that bears the same relation to any remaining funds as the increase the State received under section 611 of the Act for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(2) Amounts equal to or less than fiscal year 1999 allocations—(i) General. If the amount available for allocations under paragraph (d) of this section is equal to or less than the amount allocated to the States for fiscal year 1999, each State is allocated the amount it received for fiscal year 1999.

(ii) Ratable reduction. If the amount available for allocations under paragraph (d) of this section is insufficient to make the allocations described in paragraph (d)(2)(i) of this section, those allocations are ratably reduced.

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

§ 300.704 State-level activities.

(2) Limitations. Notwithstanding paragraph (c)(1) of this section, allocations under this section are subject to the following:

(i) Preceding year allocation. No State’s allocation may be less than its allocation under section 611 of the Act for the preceding fiscal year.

(ii) Minimum. No State’s allocation may be less than the greatest of—

(A) The sum of—

(1) The amount the State received under section 611 of the Act for fiscal year 1999; and

(2) One third of one percent of the amount by which the amount appropriated under section 611(i) of the Act for the fiscal year exceeds the amount appropriated for section 611 of the Act for fiscal year 1999;

(B) The sum of—

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by the percentage by which the increase in the funds appropriated for section 611 of the Act from the preceding fiscal year exceeds 1.5 percent; or

(C) The sum of—

(1) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(2) That amount multiplied by 90 percent of the percentage increase in the amount appropriated under section 611 of the Act from the preceding fiscal year.

(iii) Maximum. Notwithstanding paragraph (c)(2)(ii) of this section, no State’s allocation under paragraph (a) of this section may exceed the sum of—

(A) The amount the State received under section 611 of the Act for the preceding fiscal year; and

(B) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under section 611 of the Act from the preceding fiscal year.

(3) Ratable reduction. If the amount available for allocations to States under paragraph (c) of this section is insufficient to pay those allocations in full, those allocations are ratably reduced, subject to paragraph (c)(2)(i) of this section.

(4) Decrease in funds. If the amount available for allocations to States under paragraph (a) of this section for a fiscal year 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:

(1) Amounts greater than fiscal year 1999 allocations. If the amount available for allocations under paragraph (a) of this section is greater than the amount allocated to the States for fiscal year 1999, each State is allocated the sum of—

(i) 1999 amount. The amount the State received under section 611 of the Act for fiscal year 1999; and

(ii) Remaining funds. An amount that bears the same relation to any remaining funds as the increase the State received under section 611 of the Act for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(2) Amounts equal to or less than fiscal year 1999 allocations—(i) General. If the amount available for allocations under paragraph (d) of this section is equal to or less than the amount allocated to the States for fiscal year 1999, each State is allocated the amount it received for fiscal year 1999.

(ii) Ratable reduction. If the amount available for allocations under paragraph (d) of this section is insufficient to make the allocations described in paragraph (d)(2)(i) of this section, those allocations are ratably reduced.

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

§ 300.704 State-level activities.

(a) State administration. (1) For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and 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—

(i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or $800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and

(ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying
area receives under §300.701(a) for the fiscal year or $35,000, whichever is greater.

(2) For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts—

(i) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004; and

(ii) $800,000, by 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.

(3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the Act are current.

(4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part.

(b) Other State-level activities. (1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows:

(i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10 percent of the State’s allocation under §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State’s allocation for fiscal year 2006 adjusted cumulatively for inflation.

(iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to $850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10.5 percent of the State’s allocation under §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State’s allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.

(iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, nine percent of the State’s allocation under §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State’s allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.

(ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10.5 percent of the State’s allocation under §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State’s allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.

(iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than $850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, nine and one-half percent of the State’s allocation under §300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State’s allocation for fiscal year 2006 under §300.703 adjusted cumulatively for inflation.

(3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation; and

(ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel;

(4) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities:
(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;

(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process;

(iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities;

(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning;

(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

(vii) To assist LEAs in meeting personnel shortages;

(viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and

(xi) To provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA.

(c) Local educational agency high cost fund. (1) In general—

(i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section—

(A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and

(B) To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section.

(ii) For purposes of paragraph (c) of this section, local educational agency includes a charter school that is an LEA, or a consortium of LEAs.

(2)(i) A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs.

(ii) A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.

(3)(i) The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and
amend as necessary, a State plan for the high cost fund. Such State plan must—

(A) Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum—

(1) Addresses the financial impact a high need child with a disability has on the budget of the child’s LEA; and

(2) Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the ESEA) in that State;

(B) Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA;

(C) Establish criteria to ensure that placements supported by the fund are consistent with the requirements of §§ 300.114 through 300.118;

(D) Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph (c)(3)(i)(B) of this section;

(E) Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and

(F) If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) of this section, describe how these funds will be used.

(ii) The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site.

(iii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section.

(5) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child.

(6) Nothing in paragraph (c) of this section—

(i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or

(ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability.

(7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(i)(A) of this section.

(8) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act.
§ 300.705  Subgrants to LEAs.

(a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under §300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective with funds that become available on the July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

(b) Allocations to LEAs. For each fiscal year for which funds are allocated to States under §300.703, each State shall allocate funds as follows:

1. Base payments. The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect.

2. Base payment adjustments. For any fiscal year after 1999—

(i) If a new LEA is created, the State must 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 §300.703(b), currently provided special education by each of the LEAs;

(ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs;

(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 must 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 §300.703(b), currently provided special education by each affected LEA; and
(iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must 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 LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

(3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must—

(i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA’s jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(c) Reallocation of LEA funds. (1) 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 this paragraph that are not needed by that LEA 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 served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.704.

(Approved by the Office of Management and Budget under control number 1820–0030)

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


§ 300.706 [Reserved]

SECRETARY OF THE INTERIOR

§ 300.707 Use of amounts by Secretary of the Interior.

(a) Definitions. For purposes of §§300.707 through 300.716, the following definitions apply:

(1) Reservation means Indian Country as defined in 18 U.S.C. 1151.

(2) Tribal governing body has the definition given that term in 25 U.S.C. 2021(19).

(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 schools 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 section 611(b)(2) of the Act for that fiscal year. Of the amount described in the preceding sentence, after the Secretary of the Interior reserves funds for administration under §300.710, 80 percent must be allocated to such schools by July 1 of that
fiscal year and 20 percent must be allocated to such schools by September 30 of that fiscal year.

(c) Additional requirement. With respect to all other children aged 3 to 21, inclusive, on reservations, the SEA of the State in which the reservation is located must ensure that all of the requirements of Part B of the Act are implemented.

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

§ 300.708 Submission of information.

The Secretary may provide the Secretary of the Interior amounts under §300.707 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) through (9), (10)(B) through (C), (11) through (12), (14) through (16), (18), and (21) through (25) 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)(i), (7) through (9) and section 613(i) of the Act (references to LEAs in these sections must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior);

(d) Meets the requirements of section 616 of the Act that apply to States (references to LEAs in section 616 of the Act must be read as references to elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior).

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

(f) 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;

(g) 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 related to the requirements described in paragraphs (a) through (d) of this section;

(h) Includes an assurance that the Secretary of the Interior provides the information that the Secretary may require to comply with section 618 of the Act;

(i)(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 (where appropriate) equipment and medical or personal supplies, as needed for a child with a disability to remain in a school or program; and

(j) 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 §§300.709 through 300.711 and §§300.713 through 300.716, 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. The Secretary withholds payments under §300.707 with respect to the requirements described in this section in the same manner as the Secretary withholds payments under section 616(e)(6) of the Act.

(Authority: 20 U.S.C. 1411(h)(2) and (3))

§ 300.709 Public participation.

In fulfilling the requirements of §300.708 the Secretary of the Interior must provide for public participation consistent with §300.165.

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

§ 300.710 Use of funds under Part B of the Act.

(a) The Secretary of the Interior may reserve five percent of its payment
§ 300.712 Payments for education and services for Indian children with disabilities aged three through five.

(a) General. With funds appropriated under section 611(i) 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 tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by elementary schools 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 shall be equal to 20 percent of the amount allotted under § 300.701(b).

(b) Distribution of funds. The Secretary of the Interior must distribute the total amount of the payment under paragraph (a) of this section by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged three through five 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 must 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 three through five, 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 tribe or tribal organization, as appropriate, must 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 must provide to the Secretary of the Interior a biennial report of activities undertaken under this section, including the number of contracts and cooperative agreements entered
§ 300.713 Plan for coordination of services.

(a) The Secretary of the Interior must develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior.

(b) The plan must provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, other Federal agencies, State educational agencies, and State, local, and tribal juvenile and adult correctional facilities.

(c) In developing the plan, the Secretary of the Interior must consult with all interested and involved parties.

(d) The plan must be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities.

(e) The plan also must be distributed upon request to States; to SEAs, LEAs, and other agencies providing services to infants, toddlers, and children with disabilities; to tribes; and to other interested parties.

§ 300.714 Establishment of advisory board.

(a) To meet the requirements of section 612(a)(21) of the Act, the Secretary of the Interior must establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such 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 must—

(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 of the Interior’s responsibilities described in section 611(h) 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 early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and

(5) Provide assistance in the preparation of information required under §300.708(h).

§ 300.715 Annual reports.

(a) In general. The advisory board established under §300.714 must prepare and submit to the Secretary of the Interior and to Congress an annual report.
containing a description of the activities of the advisory board for the preceding year.

(b) Availability. The Secretary of the Interior must make available to the Secretary the report described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(h)(7))

§ 300.716 Applicable regulations.

The Secretary of the Interior must comply with the requirements of §§ 300.103 through 300.108, 300.110 through 300.124, 300.145 through 300.154, 300.156 through 300.160, 300.165, 300.170 through 300.186, 300.606, 300.610 through 300.646, and 300.707 through 300.716.

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

DEFINITIONS THAT APPLY TO THIS SUBPART

§ 300.717 Definitions applicable to allotments, grants, and use of funds.

As used in this subpart—

(a) Freely associated States means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau;

(b) Outlying areas means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(c) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(d) Average per-pupil expenditure in public elementary schools and secondary schools in the United States means—

(1) Without regard to the source of funds—

(i) 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

(ii) Any direct expenditures by the State for the operation of those agencies; divided by (2) 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. 1401(22), 1411(b)(1) (C) and (g))

ACQUISITION OF EQUIPMENT AND CONSTRUCTION OR ALTERATION OF FACILITIES

§ 300.718 Acquisition of equipment and construction or alteration of facilities.

(a) General. If the Secretary determines that a program authorized under Part B of the Act will 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 Standards for Buildings and Facilities”); or


(Authority: 20 U.S.C. 1404)

Subpart H—Preschool Grants for Children with Disabilities

§ 300.800 In general.

The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act—

(a) To children with disabilities aged three through five years; and

(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))

§§ 300.801–300.802 [Reserved]

§ 300.803 Definition of State.

As used in this subpart, State means each of the 50 States, the District of
§ 300.804 Eligibility.

A State is eligible for a grant under section 619 of the Act if the State—
(a) Is eligible under section 612 of the Act to receive a grant under Part B of the Act; and
(b) Makes FAPE available to all children with disabilities, aged three through five, residing in the State.

(Authority: 20 U.S.C. 1419(i))

§ 300.805 Eligibility for financial assistance.

No State or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children aged three through five, unless the State is eligible to receive a grant under section 619(b) of the Act.

(Authority: 20 U.S.C. 1419(b))

§ 300.806 Allocations to States.

The Secretary allocates the amount made available to carry out section 619 of the Act for a fiscal year among the States in accordance with §§ 300.808 through 300.810.

(Authority: 20 U.S.C. 1419(c)(1))

§ 300.807 Increase in funds.

If the amount available for allocation to States under § 300.807 for a fiscal year 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 § 300.809, the Secretary—
(1) Allocates to each State the amount the State received under section 619 of the Act for fiscal year 1997; and
(2) Allocates 85 percent of any remaining funds to States on the basis of the States’ relative populations of children aged three through five; and
(3) Allocates 15 percent of those remaining funds to States on the basis of the States’ relative populations of all children aged three through five 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))

§ 300.808 Limitations.

(a) Notwithstanding § 300.808, allocations under that section are subject to the following:
(1) No State’s allocation may be less than its allocation under section 619 of the Act for the preceding fiscal year.
(2) No State’s allocation may be less than the greatest of—
(i) The sum of—
(A) The amount the State received under section 619 of the Act 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 for the fiscal year exceeds the amount appropriated for section 619 of the Act for fiscal year 1997;
(ii) The sum of—
(A) The amount the State received under section 619 of the Act for the preceding fiscal year; and
(B) That amount multiplied by the percentage by which the increase in the funds appropriated under section 619 of the Act from the preceding fiscal year exceeds 1.5 percent; or
(iii) The sum of—
(A) The amount the State received under section 619 of the Act for the preceding fiscal year; and
(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated under section 619 of the Act from the preceding fiscal year.
(b) Notwithstanding paragraph (a)(2) of this section, no State’s allocation under § 300.808 may exceed the sum of—
(1) The amount the State received under section 619 of the Act 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 under section 619 of the Act from the preceding fiscal year.

(c) If the amount available for allocation to States under §300.808 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. 1419(c)(2)(B) and (c)(2)(C))

§ 300.810 Decrease in funds.

If the amount available for allocations to States under §300.807 for a fiscal year 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 the State received under section 619 of the Act for fiscal year 1997; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received under section 619 of the Act for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(b) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State is allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

(Authority: 20 U.S.C. 1419(c)(3))

§ 300.811 [Reserved]

§ 300.812 Reservation for State activities.

(a) Each State may reserve not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§300.813 and 300.814.

(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))

§ 300.813 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), a State may use not more than 20 percent of the maximum amount the State may reserve under §300.812 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.

(Authority: 20 U.S.C. 1419(e))

§ 300.814 Other State-level activities.

Each State must use any funds the State reserves under §300.812 and does not use for administration under §300.813—

(a) For 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 three or older than five as long as those services also benefit children with disabilities aged three through five;

(b) For direct services for children eligible for services under section 619 of the Act;

(c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the Act;

(d) To supplement other funds used to develop and implement a statewide coordinated services system designed
§ 300.815 Subgrants to LEAs.

Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under §300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act. Effective with funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs that are responsible for providing education to children aged three through five years, including public charter schools that operate as LEAs, even if the LEA is not serving any preschool children with disabilities.

(Authority: 20 U.S.C. 1419(f))

[73 FR 73028, Dec. 1, 2008]

§ 300.816 Allocations to LEAs.

(a) Base payments. The State must first award each LEA described in §300.815 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 such section was then in effect.

(b) Base payment adjustments. For fiscal year 1998 and beyond—

(1) If a new LEA is created, the State must 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 three through five currently provided special education by each of the LEAs;

(2) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs;

(3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages three through five changes, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA; and

(4) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities aged three through five years. The State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities aged three through five years now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities aged three through five years currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

(c) Allocation of remaining funds. After making allocations under paragraph (a) of this section, the State must—

(1) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA’s jurisdiction; and

(2) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of
(d) Use of best data. 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))


§ 300.817 Reallocation of LEA funds.

(a) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five years residing in the area served by the LEA 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 LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to §300.812.

(Authority: 20 U.S.C. 1419(g)(2))

[73 FR 73028, Dec. 1, 2008]

§ 300.818 Part C of the Act inapplicable.

Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under section 619 of the Act.

(Authority: 20 U.S.C. 1419(h))

APPENDIX A TO PART 300—EXCESS COSTS CALCULATION

Except as otherwise provided, 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. Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate. An LEA must spend at least the average annual per student expenditure on the education of an elementary school or secondary school child with a disability before funds under Part B of the Act are used to pay the excess costs of providing special education and related services.

Section 602(3) of the Act and §300.16 require the LEA to compute the minimum average amount separately for children with disabilities in its elementary schools and for children with disabilities in its secondary schools. LEAs may not compute the minimum average amount it must spend on the education of children with disabilities based on a combination of the enrollments in its elementary schools and for children with disabilities in its secondary schools. The following example shows how to compute the minimum average amount an LEA must spend for the education of each of its elementary school children with disabilities under section 602(3) of the Act before it may use funds under Part B of the Act.

a. First the LEA must determine the total amount of its expenditures for elementary school students from all sources—local, State, and Federal (including Part B)—in the preceding school year. Only capital outlay and debt services are excluded.

Example: The following is an example of a computation for children with disabilities enrolled in an LEA’s elementary schools. In this example, the LEA had an average elementary school enrollment for the preceding school year of 800 (including 190 children
with disabilities. The LEA spent the following amounts last year for elementary school students (including its elementary school children with disabilities):

(1) From State and local tax funds. $6,500,000
(2) From Federal funds ........ 600,000

Total expenditures .... 7,100,000

Of this total, $60,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures.

(1) Total Expenditures ...... $7,100,000
(2) Less capital outlay and debt.

Total expenditures for elementary school students less capital outlay and debt. $7,040,000

b. Next, the LEA must subtract from the total expenditures amounts spent for:
(1) IDEA, Part B allocation,
(2) ESEA, Title I, Part A allocation,
(3) ESEA, Title III, Parts A and B allocation,
(4) State and local funds for children with disabilities, and
(5) State or local funds for programs under ESEA, Title I, Part A, and Title III, Parts A and B.

These are funds that the LEA actually spent, not funds received last year but carried over for the current school year.

Example: The LEA spent the following amounts for elementary school students last year:

(1) From funds under IDEA, Part B allocation. $ 200,000
(2) From funds under ESEA, Title I, Part A allocation. 250,000
(3) From funds under ESEA, Title III, Parts A and B allocation. 50,000
(4) From State funds and local funds for children with disabilities. 500,000
(5) From State and local funds for programs under ESEA, Title I, Part A, and Title III, Parts A and B. 150,000

Total ......................... 1,150,000

(1) Total expenditures less capital outlay and debt.

7,040,000

c. Except as otherwise provided, the LEA next must determine the average annual per student expenditure for its elementary schools dividing the average number of students enrolled in the elementary schools of the agency during the preceding year (including its children with disabilities) into the amount computed under the above paragraph. The amount obtained through this computation is the minimum amount the LEA must spend (on the average) for the education of each of its elementary school children with disabilities. Funds under Part B of the Act may be used only for costs over and above this minimum.

(1) Amount from Step b ..... $5,890,000
(2) Average number of students enrolled.
(3) $5,890,000/800 Average annual per student expenditure. $ 7,362

d. Except as otherwise provided, to determine the total minimum amount of funds the LEA must spend for the education of its elementary school children with disabilities in the LEA (not including capital outlay and debt service), the LEA must multiply the number of elementary school children with disabilities in the LEA times the average annual per student expenditure obtained in paragraph c above. Funds under Part B of the Act can only be used for excess costs over and above this minimum.

(1) Number of children with disabilities in the LEA’s elementary schools. 100
(2) Average annual per student expenditure. $ 7,362
(3) $7,362 x 100. Total minimum amount of funds the LEA must spend for the education of children with disabilities enrolled in the LEA’s elementary schools before using Part B funds. $ 736,200

APPENDIX B TO PART 300—
PROPORTIONATE SHARE CALCULATION

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to—
The following is an example of how the proportionate share is calculated:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Flow-Through Funds to Flintstone School District</td>
<td>$152,500</td>
</tr>
<tr>
<td>Total allocation to Flintstone</td>
<td>152,500</td>
</tr>
<tr>
<td>Divided by total number of eligible children</td>
<td>320</td>
</tr>
<tr>
<td>Average allocation per eligible child</td>
<td>476.5625</td>
</tr>
<tr>
<td>Multiplied by the number of parentally-placed children with disabilities</td>
<td>20</td>
</tr>
<tr>
<td>Amount to be expended for parentally-placed children with disabilities</td>
<td>9,531.25</td>
</tr>
</tbody>
</table>

Proportionate Share Calculation for Parentally-Placed Private School Children with Disabilities

Number of eligible children with disabilities in public schools in the LEA: 300
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA: 20

The following outlines the calculations for the example of how the proportionate share is calculated:

Consistent with section 612(a)(10)(A)(i) of the Act and §300.133 of these regulations, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.

(1) A proportionate share of the LEA’s subgrant under section 611(f) of the Act for children with disabilities aged 3 through 21. This is an amount that is the same proportion of the LEA’s total Part B subgrant under section 611(f) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 21 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3 through 21; and

(2) A proportionate share of the LEA’s subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5. This is an amount that is the same proportion of the LEA’s total subgrant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.

The following is an example of how the proportionate share is calculated:

There are 300 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities. The proportionate share for parentally-placed private school children is based on total children eligible, not children served. The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA’s subgrant must be spent for the group of eligible parentally-placed children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. Flintstone School District receives $152,500 in Federal flow through funds. Therefore, the LEA must spend $9,531.25 on special education or related services to the group of parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. (Note: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any early intervening activities in §300.226).
NIMAS. Under section 674(e)(4) of the Act, the NIMAS applies to print instructional materials published after July 19, 2006. The purpose of the NIMAS is to help increase the availability and timely delivery of print instructional materials in accessible formats to blind or other persons with print disabilities in elementary and secondary schools.

**Technical Specifications—The Baseline Element Set**

The Baseline Element Set details the minimum requirement that must be delivered to fulfill the NIMAS. It is the responsibility of publishers to provide this NIMAS-conformant XML content file, a package file (OPF), a PDF-format copy of the title page (or whichever page(s) contain(s) ISBN and copyright information), and a full set of the content’s images. All of the images included within a work must be provided in a folder and placeholders entered in the relevant XML document indicating their location (all images must be included). The preferred image type is SVG, next is either PNG or JPG format. Images should be rendered in the same size/proportion as their originals at 300 dpi. Images should be named with relative path filenames in XML files (example: img id="staricon4" src="./images/U10C02/staricon4.jpg" alt="star icon").

NIMAS-conformant content must be valid to the NIMAS 1.1 [see ANSI/NISO Z39.86 2005 or subsequent revisions]. In addition, files are required to use the tags from the Baseline Element Set when such tags are appropriate. Publishers are encouraged to augment the required Baseline Element Set with tags from the Optional Element Set (elements not included in the Standard) as applicable. For the purposes of NIMAS, appropriate usage of elements, both baseline and optional, is defined by the DAISY Structure Guidelines. Files that do not follow these guidelines in the selection and application of tags are not conformant to this Standard. Both optional elements and appropriate structure guidelines may be located within Z39.86-2002 and Z39.86-2005 available from [http://www.daisy.org/z3986/](http://www.daisy.org/z3986/). Use of the most current standard is recommended.

### The Baseline Element Set

<table>
<thead>
<tr>
<th>Element</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>head</td>
<td>Contains metainformation about the book but no actual content of the book itself, which is placed in &lt;book&gt;.</td>
</tr>
<tr>
<td>book</td>
<td>Surrounds the actual content of the document, which is divided into &lt;frontmatter&gt;, &lt;bodymatter&gt;, and &lt;rearmatter&gt;, which contains metadata, precedes &lt;book&gt;.</td>
</tr>
<tr>
<td>meta</td>
<td>Indicates metadata about the book. It is an empty element that may appear repeatedly only in &lt;head&gt;. For the most current usage guidelines, please refer to <a href="http://www.daisy.org/z3986/">http://www.daisy.org/z3986/</a>.</td>
</tr>
</tbody>
</table>

#### a. Document-level tags

<table>
<thead>
<tr>
<th>Element</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>frontmatter</td>
<td>Usually contains &lt;doctype&gt; and &lt;docauthor&gt;, as well as preliminary material that is often enclosed in appropriate &lt;level&gt; or &lt;level1&gt; etc. Content may include a copyright notice, a foreword, an acknowledgements section, a table of contents, etc. &lt;frontmatter&gt; serves as a guide to the content and nature of a &lt;book&gt;.</td>
</tr>
<tr>
<td>bodymatter</td>
<td>Consists of the text proper of a book, as contrasted with preliminary material &lt;frontmatter&gt; or supplementary information in &lt;rearmatter&gt;.</td>
</tr>
<tr>
<td>rearmatter</td>
<td>Contains supplementary material such as appendices, glossaries, bibliographies, and indices. It follows the &lt;bodymatter&gt; of the book.</td>
</tr>
<tr>
<td>level1</td>
<td>The highest-level container of major divisions of a book. Used in &lt;frontmatter&gt;, &lt;bodymatter&gt;, and &lt;rearmatter&gt; to mark the largest divisions of the book (usually parts or chapters), inside which &lt;level2&gt; subdivisions (often sections) may nest. The class attribute identifies the actual name (e.g., part, chapter) of the structure it marks. Contrast with &lt;level&gt;.</td>
</tr>
<tr>
<td>level2</td>
<td>Contains subdivisions that nest within &lt;level1&gt; divisions. The class attribute identifies the actual name (e.g., section, subpart, subsection) of the structure it marks.</td>
</tr>
<tr>
<td>level3</td>
<td>Contains further subdivisions that nest within &lt;level2&gt; subdivisions (e.g., sub-subsections within sections). The class attribute identifies the actual name (e.g., section, subpart, subsubpart) of the subordinate structure it marks.</td>
</tr>
<tr>
<td>level4</td>
<td>Contains further subdivisions that nest within &lt;level3&gt; subdivisions. The class attribute identifies the actual name of the subordinate structure it marks.</td>
</tr>
<tr>
<td>level5</td>
<td>Contains further subdivisions that nest within &lt;level4&gt; subdivisions. The class attribute identifies the actual name of the subordinate structure it marks.</td>
</tr>
<tr>
<td>level6</td>
<td>Contains further subdivisions that nest within &lt;level5&gt; subdivisions. The class attribute identifies the actual name of the subordinate structure it marks.</td>
</tr>
<tr>
<td>h1</td>
<td>Contains the text of the heading for a &lt;level1&gt; structure.</td>
</tr>
<tr>
<td>h2</td>
<td>Contains the text of the heading for a &lt;level2&gt; structure.</td>
</tr>
<tr>
<td>h3</td>
<td>Contains the text of the heading for a &lt;level3&gt; structure.</td>
</tr>
<tr>
<td>h4</td>
<td>Contains the text of the heading for a &lt;level4&gt; structure.</td>
</tr>
</tbody>
</table>

| level5      | Contains further subdivisions that nest within <level4> subdivisions. The class attribute identifies the actual name of the subordinate structure it marks. |
| level6      | Contains further subdivisions that nest within <level5> subdivisions. The class attribute identifies the actual name of the subordinate structure it marks. |
| h1          | Contains the text of the heading for a <level1> structure. |
| h2          | Contains the text of the heading for a <level2> structure. |
| h3          | Contains the text of the heading for a <level3> structure. |
| h4          | Contains the text of the heading for a <level4> structure. |
1. THE OPTIONAL ELEMENTS AND GUIDELINES FOR USE

Publishers are encouraged to apply mark-up beyond the baseline (required) elements. The complete DTBook Element Set reflects the tags necessary to create the six types of Digital Talking Books and Braille output. Because of the present necessity to subdivide the creation of alternate format materials into distinct phases, the Panel determined that baseline elements would be provided by publishers, and optional elements would be added to the NIMAS-conformant files by third party conversion entities. In both circumstances the protocols for tagging digital files should conform to the most current ANSI/NISO Z39.86 specification. Content converters are directed to the most current DAISY Structure Guidelines (http://www.daisy.org/z3986/) for guidance on their use.

Since the publication of the original National File Format report from which the NIMAS technical specifications were derived, ANSI/NISO Z39.86-2002 was updated and is now ANSI/NISO Z39.86-2005. It may be best to avoid using the following optional elements which are no longer included in ANSI/NISO Z39.86-2005: style, notice, hr, and levelhd.

Also, the following new elements were introduced by ANSI/NISO Z39.86-2005 and should be considered optional elements for the NIMAS: bridgehead, byline, covertitle, dateline, epigraph, linegroup, and poem. Please refer to ANSI/NISO Z39.86-2005 for additional information regarding these elements. To access the ANSI/NISO Z39.86-2005 specification, go to http://www.daisy.org/z3986/.

2. PACKAGE FILE

A package file describes a publication. It identifies all other files in the publication and provides descriptive and access information about them. A publication must include a package file conforming to the NIMAS. The package file is based on the Open eBook Publication Structure 1.2 package file specification (For most recent detail please see http://www.openbook.org/obeps/obeps1.2/download/ob12-zhtml.htm#sec2). A NIMAS package file must be an XML-valid OeB PS 1.2 package file instance and must meet the following additional standards:

The NIMAS Package File must include the following Dublin Core (dc:):metadata:
dc:Title.
dc:Creator (if applicable).
dc:Publisher.
dc:Date (Date of NIMAS-compliant file creation—yyyy-mm-dd).
dc:Format ("=‘NIMAS 1.0’").
dc:Identifier (a unique identifier for the NIMAS-compliant digital publication, e.g., print ISBN + "-NIMAS"—exact format to be determined).
dc:Language (one instance, or multiple in the case of a foreign language textbook, etc.).
dc:Rights (details to be determined).

And the following x-metadata items:
nimas-SourceEdition (the edition of the print textbook).
nimas-SourceDate (date of publication of the print textbook).

The following metadata were proposed also as a means of facilitating recordkeeping, storage and file retrieval:
dc:Subject (Lang Arts, Soc Studies, etc.).
nimas-grade (specific grade level of the print textbook, e.g.; Grade 6).
nimas gradeRange (specific grade range of the print textbook, e.g.; Grades 4–5).

An additional suggestion references the use of:
dc:audience:educationLevel (for the grade and gradeRange identifiers, noting that Dublin Core recommends using
educationLevel with an appropriate controlled vocabulary for context, and recommends the U.S. Department of Education's Level of Education vocabulary online at http://www.ed.gov/admin/reference/index.jsp. Using educationLevel obviates the need for a separate field for grade. An element that can repeat more than once. A book used in more than one grade would therefore have two elements, one with value “Grade 4” and another with value “Grade 5.”

A final determination as to which of these specific metadata elements to use needs to be clarified in practice. The package manifest must list all provided files (text, images, etc.). (Note: For purposes of continuity and to minimize errors in transformation and processing, the NIMAS-compliant digital text should be provided as a single document.)

3. MODULAR EXTENSIONS

The most current DAISY/NISO standard, formally the ANSI/NISO Z39.86, Specifications for the Digital Talking Book defines a comprehensive system for creating Digital Talking Books. A part of this standard is DTBook, an XML vocabulary that provides a core set of elements needed to produce most types of books. However, DTBook is not intended to be an exhaustive vocabulary for all types of books.

Guidelines for the correct approach to extend the DAISY/NISO standard have been established. Mathematics, video support, testing, workbooks, music, dictionaries, chemistry, and searching are some of the extensions that have been discussed. Visit http://www.daisy.org/z3986/ to learn more about modular extensions.

APPENDIX D TO PART 300—MAINTENANCE OF EFFORT AND EARLY INTERVENCING SERVICES

LEAs that seek to reduce their local maintenance of effort in accordance with §300.205(d) and use some of their Part B funds for early intervening services under §300.226 must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds that it uses for one purpose affect the amount that it may use for the other. Below are examples that illustrate how §§300.205(d) and 300.226(a) affect one another.

Example 1: In this example, the amount that is 15 percent of the LEA’s total grant (see §300.226(a)), which is the maximum amount that the LEA may use for early intervening services (EIS), is greater than the amount that may be used for local maintenance of effort (MOE) reduction (50 percent of the increase in the LEA’s grant from the prior year’s grant) (see §300.205(a)).

- Prior Year’s Allocation $900,000.
- Current Year’s Allocation $1,000,000.
- Increase $100,000.
- Maximum Available for MOE Reduction $50,000.
- Maximum Available for EIS $150,000.

If the LEA chooses to set aside $150,000 for EIS, it may not reduce its MOE (MOE maximum $50,000 less $150,000 for EIS means $0 can be used for MOE).

If the LEA chooses to set aside $100,000 for EIS, it may not reduce its MOE (MOE maximum $50,000 less $100,000 for EIS means $0 can be used for MOE).

If the LEA chooses to set aside $50,000 for EIS, it may not reduce its MOE (MOE maximum $50,000 less $50,000 for EIS means $0 can be used for MOE).

If the LEA chooses to set aside $0 for EIS, it may reduce its MOE by $50,000 (MOE maximum $50,000 less $0 for EIS means $50,000 can be used for MOE).

Example 2: In this example, the amount that is 15 percent of the LEA’s total grant (see §300.226(a)), which is the maximum amount that the LEA may use for EIS, is less than the amount that may be used for MOE reduction (50 percent of the increase in the LEA’s grant from the prior year’s grant) (see §300.205(a)).

- Prior Year’s Allocation $1,000,000.
- Current Year’s Allocation $2,000,000.
- Increase $1,000,000.
- Maximum Available for MOE Reduction $500,000.
- Maximum Available for EIS $300,000.

If the LEA chooses to use no funds for MOE, it may set aside $300,000 for EIS (EIS maximum $300,000 less $0 means $300,000 for EIS).

If the LEA chooses to use $100,000 for MOE, it may set aside $200,000 for EIS (EIS maximum $300,000 less $100,000 means $200,000 for EIS).

If the LEA chooses to use $150,000 for MOE, it may set aside $150,000 for EIS (EIS maximum $300,000 less $150,000 means $150,000 for EIS).

If the LEA chooses to use $300,000 for MOE, it may not set aside anything for EIS (EIS maximum $300,000 less $300,000 means $0 for EIS).

If the LEA chooses to use $500,000 for MOE, it may not set aside anything for EIS (EIS maximum $300,000 less $500,000 means $0 for EIS).
ACCESS TO
• Access rights (Parents) ................................................. 300.613.
• Assistive technology devices in child’s home ............... 300.105(b).
• Disciplinary records .................................................. 300.229.
• Education records (Procedural safeguards notice) ....... 300.504(c)(4).
• General curriculum (Ensure access to) ...................... 300.39(b)(3)(ii).
• Instructional materials (see §§300.172, 300.210).
• List of employees who may have access to records ..... 300.623(d).
• Parent’s private insurance proceeds ........................ 300.154(e).
• Record of access (Confidentiality) ............................. 300.614.

ACCESSIBILITY STANDARDS (Regarding construction)
• Americans with Disabilities Accessibility Standards for Buildings and Facilities. 300.718(b)(1).
• Uniform Federal Accessibility Standards ......................... 300.718(b)(2).

ACCOMMODATIONS
• In assessments .............................................................. 300.320(a)(6)(i).
• State level activities in support of ............................... 300.704(b)(4)(x).

ACT (Definition) .............................................................. 300.4.

ADD AND ADHD (See “Attention deficit disorder” and “Attention deficit hyperactivity disorder”)

ADDITIONAL DISCLOSURE OF INFORMATION REQUIREMENT. 300.512(b).

ADULT CORRECTIONAL FACILITIES (See “Correctional facilities”)

ADULT PRISONS (Children with disabilities in)
• Divided State agency responsibility .............................. 300.607.
• FAPE requirements:
  O Exception to FAPE ................................................ 300.102(a)(2).
  O Modifications of IEP or placement ......................... 300.324(d)(2).
  O Requirements that do not apply ............................ 300.324(d)(1).
• Governor ................................................................. 300.149(d).
• Other public agency responsibility .............................. 300.149(d).

ADVERSELY AFFECTS EDUCATIONAL PERFORMANCE (See “Child with a disability,” §300.8(c)(1)(1), (c)(3), (c)(4)(i), (c)(5), (c)(6), (c)(8), (c)(9)(ii), (c)(11), (c)(12))

ADVISORY BOARD
(Secretary of the Interior) .............................................. 300.714.

ADVISORY PANEL (See “State advisory panel”)

AGE-APPROPRIATE CLASSROOM ...................................... 300.116(e).

ALLOCATION(S)
• By-pass for private school children (see § 300.191(d)).
• To LEAs (see §§300.705(b), 300.816)
• To Outlying areas ....................................................... 300.701(a).
• To Secretary of the Interior ........................................ 300.707.
• To States (see §§300.703, 300.807 through 300.810).

ALLOWABLE COSTS
(By SEA for State administration) ................................. 300.704(a).

ALTERATION OF FACILITIES ........................................ 300.718(b).

ALTERNATE ASSESSMENTS
• Aligned with alternate academic achievement standards. 300.320(a)(2)(ii).
• Development and provision of in accordance with ESEA. 300.704(b)(4)(x).
• Participation determined by IEP Team 300.320(a)(6)(ii).

ALTERNATIVE PLACEMENTS (Continuum) 300.115.

ALTERNATIVE STRATEGIES to meet transition objectives. 300.324(c)(1).

AMENDMENTS
• To LEA policies and procedures 300.220(b).
• To State policies and procedures:
  O Made by State 300.176(b).
  O Required by the Secretary 300.176(c).

ANNUAL GOALS (IEPs)
• FAPE for children suspended or expelled (see §§300.101(a), 300.530(d))
  • IEP content:
    O How progress will be measured 300.320(a)(3).
    O Special education and related services 300.320(a)(4).
    O Statement of measurable annual goals 300.320(a)(2)(1).
  • Review and revision of IEP 300.324(b)(1).
  • Review of existing evaluation data 300.305(a).

ANNUAL REPORT
Of children served (see §§300.640 through 300.646) 300.715.
On education of Indian children 300.647.

APPENDICES TO PART 300 (A through E)
Excess Costs Calculation (see appendix A)
Proportionate Share Calculation (see appendix B)
National Instructional Materials Accessibility Standard (NIMAS) (see appendix C)
Maintenance of Effort and Early Intervening Services (see appendix D)
Index for IDEA—Part B Regulations (This appendix E)

APPLICABILITY OF THIS PART to State, local, and private agencies. 300.2.

APPLICATION
• Initial admission to public school 300.518(b).
• Initial services 300.518(c).

ASSESSMENT(S)
• For specific learning disability (see §300.309(a)(2)(ii), (b)(2))
  • Functional behavioral assessment (see §300.530(d)(1)(ii), (f)(1)(i))
• In evaluation (see §§300.304(b), (c), 300.305(a)(1)(ii), (c), (d))
• Of leisure function (in “Recreation”) 300.34(c)(11)(i).

ASSESSMENTS—STATE and DISTRICT-WIDE
Alternate assessments (see §300.320 (a)(2)(ii), (a)(6)(ii))
Performance indicators 300.157.

ASSISTANCE UNDER OTHER FEDERAL PROGRAMS 300.186.

ASSISTIVE TECHNOLOGY (AT)
• AT devices 300.5.
• AT services 300.6.
• Consideration of special factors 300.324(a)(2)(v).
• Hearing aids 300.113.
• Requirement:
  O Ensure availability of 300.105(a).
  O Use of AT in child’s home 300.105(b).
• Surgically implanted medical devices (see §§300.5, 300.34(b), 300.113(b))

ASTHMA ................................................................. 300.8(c)(9).
ATTENTION DEFICIT DISORDER (ADD) ...................... 300.8(c)(9).
ATTENTION DEFICIT HYPERACTIVITY DISORDER (ADHD).

ATTORNEYS’ FEES ....................................................... 300.517.
• Award of fees ......................................................... 300.517(c).
• Prohibition on use of funds for ................................ 300.517(b).
• When court reduces fee awards .............................. 300.517(c)(4).

AUDIOLOGY .............................................................. 300.34(c)(1).

AUTHORITY (A–O)
• Of guardian ............................................................. 300.30(a)(3).
• Of hearing officer (Discipline) ................................. 300.532(b).
• Of school personnel (Discipline) ............................. 300.530.
• Of Secretary to monitor and enforce ....................... 300.609.

AUTHORITY (P–Z)
• Parental authority to inspect and review records ...... 300.613.
• State complaint procedures .................................... 300.151(b).
• Waiver request (Signed by person with authority) .... 300.164(c)(1).

AUTISM ................................................................. 300.8(c)(1).

AVERAGE PER-PUPIL EXPENDITURE (Definition) .......... 300.717(d).

BASE PAYMENTS (to LEAs) (See §300.705(b)(1), (b)(2))

BENCHMARKS OR SHORT TERM OBJECTIVES ........... 300.320(a)(2)(ii).

BENEFITS TO NONDISABLED (Permissive use of funds).

BIA (See “Bureau of Indian Affairs”)

BLINDNESS: Under “Visual impairment”

• Access to instructional materials (see §§300.172, 300.210(b)(3))
• Consideration of special factors by IEP Team .......... 300.324(a)(2). 

BRaille (see §§300.29(b), 300.324(a)(2)(III))

BUREAU OF INDIAN AFFAIRS (BIA)

• BIA funded schools ................................................ 300.28(c).
• In definition of “LEA” ............................................... 300.28(c).
• See also §§300.21(c), 300.713(b), (d), 300.714
• Use of funds ......................................................... 300.712(d).

BUSINESS DAY
• Definition ............................................................. 300.11(b).
• See “Timelines,” “Timelines—Discipline”

BY-PASS: Private school children with disabilities (see §§300.190 through 300.198)
CALENDAR DAY
• Definition ................................................................. 300.11(a).
• See “Timelines,” “Timelines—Discipline”

CERTIFICATION
• Annual report of children served ............................ 300.643.

CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS.

CHARTER SCHOOLS
• Applicability of this part to ........................................ 300.2(b)(1)(ii).
• Definition ................................................................. 300.7.
• Exception: joint establishment of eligibility .............. 300.22(b).
• In definition of “Elementary school” ......................... 300.13.
• In definition of “LEA” ............................................... 300.28(b)(2).
• In definition of “Public agency” ................................. 300.33.
• In definition of “Secondary school” ........................... 300.36.
• State-level activities regarding charter schools .......... 300.704(b)(4)(ix).
• Treatment of charter schools and their students ........ 300.209.

CHIEF EXECUTIVE OFFICER (CEO)
• Adult prisons (Assigned by Governor) ...................... 300.149(d).
• Methods of ensuring services (see §300.154(a), (c))

CHILD COUNT
• Annual report of children served (see §§ 300.640 through 300.646)
• Certification ............................................................. 300.643.
• Criteria for ............................................................... 300.644.
• Dates for count ......................................................... 300.641(a).
• Indian children ......................................................... 300.712(b).
• LEA records of private school children ..................... 300.132(c).
• Procedures for counting children served .................... 300.645(a).

CHILD FIND
• Basic requirement ..................................................... 300.111(a).
• Children advancing from grade to grade .................. 300.111(c)(1).
• Developmental delay ................................................ 300.111(b).
• Highly mobile children ............................................. 300.111(c)(2).
• Homeless children ................................................... 300.111(c)(1)(i).
• Indian children aged 3 through 5 .............................. 300.712(d)(1).
• Migrant children ....................................................... 300.111(c)(2).
• Private school children ............................................. 300.131(b).
• Protections for children not determined eligible ........ 300.534.
• Secretaries of the Interior and Health and Human Services (Memo of agreement).
• Adversely affects educational performance (see §300.8(c)(1)(1), (c)(3), (c)(4)(1), (c)(5), (c)(6), (c)(8), (c)(9)(ii), (c)(11), (c)(12), (c)(13))
• Children experiencing developmental delay(s) ........... 300.8(b)(1).
• Children who need only a related service ................. 300.8(a)(2).
• Definition ............................................................... 300.8(a)(1).
• Individual disability terms (Defined) ......................... 300.8(c).
• Requirement ........................................................... 300.111(b).
• See “Developmental delay(s)”

CHILD’S STATUS DURING PROCEEDINGS
• Discipline (see §§300.530(f)(2), 300.533)
• Pendency (Stay put) .................................................. 300.518.

CHILDREN ADVANCING FROM GRADE TO GRADE
• Child find ............................................................... 300.111(c)(1).
• FAPE ................................................................. 300.101(c).
CHILDREN EXPERIENCING DEVELOPMENTAL DELAY(S) (See “Developmental delay(s)”)

CHILDREN’S RIGHTS (Confidentiality) .......................... 300.625.

CIVIL ACTION—PROCEEDINGS ................................ 300.516.
- Finality of review decision ....................................... 300.514(d).
- Mediation .............................................................. 300.506(b)(6)(i).
- Procedural safeguards notice ................................... 300.504(c)(12).
- See “Court(s)”

COCHLEAR IMPLANT (See “Surgically implanted medical device”).

CODE OF CONDUCT
- Case-by-case determination .................................. 300.530(a).
- Manifestation determination review ....................... 300.530(e).
- Protections for children not determined eligible ....... 300.534(a).

COMMINGLING—PROHIBITION AGAINST ................. 300.162(b).

COMMUNITY-BASED WAIVERS (Public benefits or insurance).

COMPLAINT(S): DUE PROCESS
- Attorneys’ fees ..................................................... 300.517(a)(1).
- Civil action ........................................................... 300.516(a).
- Pendency .............................................................. 300.518(a).
- Private school children (Complaints) ....................... 300.140(c).
- See “Due process hearing(s) and reviews”

COMPLAINT(S): STATE COMPLAINT PROCEDURES (A–P)
- Adoption of State complaint procedures ............... 300.151(a).
- Complaint investigations (SEA allocations for) ........ 300.704(b)(3)(i).
- Filing a complaint .................................................. 300.153(a).
- Minimum State complaint procedures ..................... 300.152.
- Private schools (State complaints) ......................... 300.140.
- Procedural safeguards notice .................................. 300.504(c).
- Provisions for services under by-pass ..................... 300.191(d).
- Public agency failure to implement hearing decision .. 300.152(c)(3).

COMPLAINT(S): STATE COMPLAINT PROCEDURES (Q–Z)
- See also §§ 300.151 through 300.153
- Time limit ............................................................ 300.152(a).
- Waiver of nonsupplanting requirement ..................... 300.163(c)(2).

COMPLIANCE—COMPLY (A–M)
- Child find requirements ........................................ 300.111(a).
- Department procedures (If failure to comply) .......... 300.604(c).
- FAPE requirement ............................................... 300.101(a).
- LEA and State agency compliance ......................... 300.222(a).
- LRE (State funding mechanism) .............................. 300.114(b).
- Modifications of policies:
  O Made by LEA or State agency .......................... 300.176(b).
  O Required by SEA ........................................... 300.220(c).
  O Required by Secretary .................................... 300.176(c).
- Monitoring (See “Monitor; Monitoring activities”);

COMPLIANCE—COMPLY (N–Z)
- Physical education ............................................. 300.108.
- Private school placement by parents ....................... 300.148(e).
- Private school placements by public agencies:
  O IEP requirement ............................................... 300.325(c).
  O SEA (Monitor compliance) ................................. 300.147(a).
- Public participation requirements ......................... 300.165.
- SEA responsibility if LEA does not comply ............. 300.227(a).
• State funding mechanism (LRE) .................................. 300.114(b).
• COMPREHENSIVE EVALUATION .................................. 300.304(c)(6).

CONDITION OF ASSISTANCE
• LEA eligibility ............................................................. 300.200.
• State eligibility ............................................................ 300.100.

CONFIDENTIALITY (A–C)
• Access rights ................................................................. 300.613.
• Children’s rights ........................................................... 300.625.
• Consent ......................................................................... 300.622.

CONFIDENTIALITY (D–E)
Definitions:
  O Destruction of information ................................... 300.611(a).
  O Education records .................................................. 300.611(b).
  O Participating agency ............................................. 300.611(c).
• Department use of personally identifiable information 300.627.
• Disciplinary information .............................................. 300.229.
• Enforcement by SEA .................................................... 300.626.

CONFIDENTIALITY (F–Z)
• Family Educational Rights and Privacy Act:
  O Children’s rights .................................................... 300.625.
  O Disciplinary records .............................................. 300.535(b)(2).
  O In definition of “Education records” ..................... 300.611(b).
  O Notice to parents ................................................... 300.612(a)(3).
 • Fees .............................................................................. 300.617.
 • Hearing procedures .................................................. 300.621.
 • List of types and location of information .................. 300.616.
 • Notice to parents ........................................................ 300.612(a).
 • Opportunity for a hearing ....................................... 300.619.
 • Parental authority to inspect and review records ...... 300.613(b).
 • Record of access ........................................................ 300.614.
 • Records on more than one child ............................. 300.615.
 • Result of hearing ........................................................ 300.620.
 • Safeguards ............................................................... 300.623.
 • State eligibility requirement ..................................... 300.123.

CONSENT (A–I)
• Confidentiality (Records to non-agency officials) ...... 300.622(a).
• Definition ..................................................................... 300.9.
• IEP vs. IFSP .................................................................. 300.323(b)(2)(ii).
• Initial evaluations ........................................................ 300.300(a).
• Initial provision of services ........................................ 300.300(b).

CONSENT (J–Z)
• Not required:
  O Before administering a test or other evaluation to all children.
  O Before reviewing existing data ................................. 300.300(d)(1)(i).
  O When screening for instructional purposes ............... 300.302.
• Private insurance (Accessing) ..................................... 300.154(e)(1).
• Reasonable efforts to obtain consent:
  O For initial evaluation .............................................. 300.300(a)(1)(iii).
  O For initial evaluations for wards of the State ........... 300.300(a)(2).
  O For initial provision of services .............................. 300.300(b)(2).
  O Reasonable efforts requirements ............................ 300.300(d)(5).
• Reevaluations ............................................................... 300.300(c)(2).
• Release of information from education records .......... 300.622.

CONSIDERATION OF SPECIAL FACTORS (by IEP Team).

CONSISTENCY WITH STATE POLICIES: LEA ................. 300.201.
CONSTRUCTION
• Accessibility standards ................................................ 300.718(b).
• Exception to maintenance of effort (Termination of costly expenditures for construction) ........................................... 300.204(d).
• Private schools (No funds may be used for) .................. 300.144(e).

CONSTRUCTION CLAUSES (A–I)
• Child find (Nothing requires classifying children by disability) ........................................................... 300.111(d).
• Civil action (Exhaust administrative remedies under Part B before filing a civil action). ........................................... 300.226(c).
• Funding mandated by State law ........................................... 300.166.
• Hearing: right of parent to appeal decision ................. 300.513(b).
• Highly qualified SEA or LEA staff ........................................... 300.156(e).
• Highly qualified teacher ........................................................... 300.18(f).
• IEP (Inclusion of additional information beyond explicit requirements) ........................................... 300.320(d)(1).
• IEP (Information in more than one component not required) ........................................... 300.320(d)(2).

CONSTRUCTION CLAUSES (J–Z)
• Prohibition on mandatory medication ........................................... 300.174(b).
• Referral to and action by law enforcement and judicial authorities ........................................................... 300.609.
• Secretary’s authority to monitor enforcement under GEPA ........................................................... 300.154(h).
• State Medicaid agency (Nothing alters requirements imposed under Titles XIX or XXI or other public benefits or insurance program). ........................................................... 300.324(c)(2).

CONSUMER PRICE INDEX For All Urban Consumers (regarding rate of inflation) (See §§ 300.702(b), 300.704(a)(2)(i)(II), (b)(2), 300.812(b)(2))

CONTENT OF IEP ........................................................... 300.320(a).

CONTINUUM OF ALTERNATIVE PLACEMENTS (See “Least restrictive environment”).

CONTROLLED SUBSTANCE (Definition) ................................................... 300.530(1)(1).

COORDINATION OF SERVICES
• Methods of ensuring services ........................................... 300.154(a).
• Secretary of the Interior ........................................................... 300.708(i)(1).
• O Advisory board (Service coordination within BIA) ................. 300.714(b)(1).
• O Payments for children aged 3 through 5 ................. 300.712(a).
• O Plan for coordination of services .............................. 300.713.

• See “Interagency agreements,” “Interagency coordination.”

• State advisory panel (Advise SEA on) ........................................... 300.169(e).
• Use of LEA funds for early intervening services .............. 300.208(a)(2).
• Use of SEA allocations for transition .............................. 300.704(b)(4)(vi).  

CO-PAY OR DEDUCTIBLE (Public benefits or insurance).

CORE ACADEMIC SUBJECTS
• Definition ........................................................... 300.10.
• See “Highly qualified special education teachers” ....... 300.18.

CORRECTIONAL FACILITIES
• Applicability of this part to ........................................... 300.2(b)(1)(iv).
• Divided State agency responsibility ........................................... 300.607.
• Exception to FAPE (Children in adult facilities) .......... 300.102(a)(2).
• See also “Adult prisons”
• State advisory panel (Representatives on) ................... 300.168(a)(11).
• State juvenile-adult correctional facilities .................. 300.2(b)(1)(iv).
• Transfer of rights to children in ................................. 300.520(a)(2).

CORRECTIVE ACTION (PLAN)
• Corrective actions to achieve compliance (see §§300.152(b)(2)(ii), 300.607)
• Monitoring activities .................................................. 300.120(b)(2).
• Needs intervention by Secretary ................................. 300.604(b)(2)(i).

COUNSELING SERVICES (Definition) ....................... 300.34(c)(2).

COUNT (See “Child count”) .......................... 300.644.

COURT(S)
• Attorneys’ fees ....................................................... 300.517.

CRIME (See “Reporting a crime”) ...................... 300.535.

CRITERIA (A–I)
• Child count ................................................................... 300.614.
• Child eligibility (Determinant factor) .......................... 300.306(b)(1).
• IEP Team (Public agency representative) .................... 300.321(a)(4).
• Independent educational evaluation ........................... 300.502.

CRITERIA (J–Z)
• Specific learning disability (see §§ 300.307, 300.309)
• Surrogate parents ...................................................... 300.519(d).

CURRENT PLACEMENT (Discipline)
• Authority of hearing officer ................................. 300.532(b).
• Placement during appeals ........................................ 300.533.

DATA (A–L)
• Allocation of remaining funds to LEAs ...................... 300.816(d).
• Average per-pupil expenditure (Definition) ................ 300.717(d).
• By-pass (Provision of services under) ....................... 300.191(c)(2).
• Determination of needed evaluation data .................. 300.305(c).

DATA (M–Z)
• Evaluation data: ............................................................. 300.306(c).
• Procedures for determining eligibility and placement.
• Review of existing data ........................................ 300.305(a)(1).

DAY
• Business day (Definition) ........................................ 300.11(b).
• Day (Calendar) .............................................................. 300.11(a).

DISCIPLINE (See “Timelines—Discipline”)
• School day (Definition) ........................................... 300.11(c).
DECREASE IN ENROLLMENT (Exception to LEA maintenance of effort) 300.204(b).
DECREASE IN FUNDS (To States) 300.703(d).
DEDUCTIBLE OR CO-PAY (Public benefits or insurance) 300.154(d)(2)(ii).

DEFINITIONS (A–D)

- Act 300.4.
- Assistive technology device 300.5.
- Assistive technology service 300.6.
- At no cost 300.39(b)(1).
- Audiology 300.34(c)(1).
- Autism 300.8(c)(1).
- Average per-pupil expenditure in public elementary and secondary schools in the United States 300.717(d).
- Business day 300.11(b).
- Charter school 300.7.
- Child with a disability 300.8(a)(1).
- Consent 300.9.
- Controlled substance 300.530(i)(1).
- Core academic subjects 300.10.
- Counseling services 300.34(c)(2).
- Day; business day; school day 300.11.
- Deaf-blindness 300.8(c)(2).
- Deafness 300.8(c)(3).
- Destruction (Of information) 300.611(a).
- Developmental delays 300.8(b).

DEFINITIONS (E–H)

- Early identification and assessment 300.34(c)(3).
- Education records 300.611(b).
- Educational service agency 300.12.
- Elementary school 300.13.
- Emotional disturbance 300.8(c)(4).
- Equipment 300.14.
- Evaluation 300.15.
- Excess costs 300.16.
- Extended school year services 300.106(b).
- Free appropriate public education 300.17.
- Freely associated States 300.717(a).
- Hearing impairment 300.8(c)(5).
- Highly qualified special education teacher 300.18(b).
- Homeless children 300.19.

DEFINITIONS (I)

- IEP Team 300.23.
- Illegal drug 300.530(1)(2).
- Include 300.20.
- Independent educational evaluation 300.502(a)(3)(i).
- Indian 300.21(a).
- Indian tribe 300.21(b).
- Individualized education program (IEP) 300.22.
- Individualized family service plan 300.24.
- Infant or toddler with a disability 300.25.
- Institution of higher education 300.26.
- Interpreting services 300.34(c)(4).

DEFINITIONS (J–O)

- Limited English proficient (LEP) 300.27.
- Local educational agency (LEA) 300.28.
- Medical services 300.34(c)(5).

- Mental retardation ........................................ 300.8(c)(6).
- Multiple disabilities ...................................... 300.8(c)(7).
- Native language .............................................. 300.29(a).
- Occupational therapy ...................................... 300.34(c)(6).
- Orientation and mobility services ...................... 300.34(c)(7).
- Orthopedic impairment .................................... 300.8(c)(8).
- Other health impairment .................................. 300.8(c)(9).
- Outlying areas ................................................. 300.717(b).

DEFINITIONS (P–R)
- Parent ................................................................. 300.30(a).
- Parent counseling and training ............................ 300.34(c)(8).
- Parent training and information center .................. 300.31.
- Parentally-placed private school children with dis-
  abilities. ............................................................... 300.130.
- Party or parties (Regarding procedures) .............. 300.181(a).
- Personally identifiable ....................................... 300.32.
- Physical education .............................................. 300.39(b)(2).
- Physical therapy .................................................. 300.34(c)(9).
- Psychological services ........................................ 300.34(c)(10).
- Public agency ..................................................... 300.33.
- Public expense .................................................... 300.502(a)(3)(ii).
- Recreation ............................................................. 300.34(c)(11).
- Rehabilitation counseling services ...................... 300.34(c)(12).
- Related services .................................................. 300.34(a).

DEFINITIONS (S)
- School day ......................................................... 300.11(c).
- School health services ....................................... 300.34(c)(13).
- School nurse services ........................................ 300.34(c)(13).
- Scientifically based research .............................. 300.35.
- Secondary school .............................................. 300.36.
- Secretary ............................................................. 300.38.
- Serious bodily injury ......................................... 300.530(1)(3).
- Services plan ...................................................... 300.37.
- Social work services .......................................... 300.34(c)(14).
- Special education .............................................. 300.39(a).
- Specially designed instruction ............................ 300.39(b)(3).
- Specific learning disability ............................... 300.8(c)(10).
- Speech-language pathology services .................. 300.34(c)(15).
- Speech or language impairment .......................... 300.8(c)(11).
- State ................................................................. 300.40.
- State educational agency (SEA) ......................... 300.717(c).
- State educational agency (SEA) ......................... 300.41.
- Supplementary aids and services ...................... 300.42.

DEFINITIONS (T–Z)
- Transition services ........................................... 300.43.
- Transportation .................................................... 300.34(c)(16).
- Traumatic brain injury ...................................... 300.8(c)(12).
- Travel training .................................................... 300.38(b)(4).
- Universal design .................................................... 300.44.
- Visual impairment including blindness ............... 300.8(c)(13).
- Vocational education ......................................... 300.39(b)(5).
- Ward of the State ............................................... 300.45.
- Weapon .............................................................. 300.530(1)(4).

DEPARTMENT OF LABOR, Bureau of Labor Statistics (Regarding rate of inflation) (see §§ 300.702(b), 300.704(a)(2)(i), (b)(2), 300.812(b)(2))

DEPARTMENT (U.S. Department of Education)
Pt. 300, App. E  34 CFR Ch. III (7–1–12 Edition)

• Enforcement: hearing procedures (see §§300.178 through 300.184)
• Monitoring (Regarding Secretary of the Interior) ........ 300.708(a).
• Personally identifiable information (Use of) ............. 300.627.
DESTRUCTION OF INFORMATION ........................................... 300.624(b).
• Definition ..................................................................... 300.611(a).

DETERMINANT FACTOR for eligibility determination
• Lack of instruction in reading or math (see §300.306(b)(1)(i), (b)(1)(ii))
• Limited English proficiency ........................................ 300.306(b)(1)(iii).
DEVELOPMENT, REVIEW, AND REVISION OF IEP ...... 300.324.

DEVELOPMENTAL DELAY(S)
• In definition of “Child with a disability’’ ............... 300.8(b).
• Requirements for using “Developmental delay” ……… 300.111(b).
• State definition ............................................................ 300.111(b).
• Using specified disability categories ............................ 300.111(d).

DIABETES ...................................................................... 300.8(c)(9)(i).

DIRECT SERVICES
• For children in private schools (see §§300.132(a); 300.133(a); 300.134(d)(1))
• Nature and location of services .................................. 300.227(b).
• Payment by Secretary of the Interior .......................... 300.712(d).
• SEA (Additional information) ...................................... 300.175(a).
• State-level activities .................................................... 300.704(b)(4)(i).
• Use of LEA allocations for ........................................... 300.227(a).

DISABILITY: ADVERSELY AFFECTS EDUCATIONAL PERFORMANCE (See “Adversely affects educational performance”)

DISAGGREGATED DATA
• Assessment results for subgroup of children with dis-
abilities. ........................................................................ 300.704(b)(4)(xii).
• For suspension and expulsion by race and ethnicity ... 300.170(a).

DISCIPLINE (A–B)
• Alternative educational setting (see §§300.530(d)(1), (d)(2), (d)(4), (g), 300.531, 300.533)
• Appeal ........................................................................... 300.532(a).
• Behavioral interventions—intervention plan ............. 300.530(f).

DISCIPLINE (C–H)
• Change of placements for disciplinary removals ........ 300.536.
• Child’s status during due process hearings ............... 300.518.
• Determination of setting ............................................ 300.531.
• Expedited due process hearings ................................. 300.532(c).
• Functional behavioral assessment (see §300.530(d)(1)(ii), (f)(1)(i)).
• Hearing officer (authority of) (see §§300.532(b), 300.533).

DISCIPLINE (I–Z)
• IEP Team (relevant members) (see §§300.530(e)(1), (f), 300.531).
• Interim alternative educational setting (see §§300.530(b), (d)(2), (g), 300.531, 300.532(b)(2)(ii), 300.533).
• Manifestation determination ....................................... 300.530(e).
• Placement during appeals .......................................... 300.533.
• Protections for children not determined eligible ......... 300.534.
• Referral to and action by law enforcement and judicial authorities.
• School personnel (Authority of) ................................. 300.530(b).
• See “Timelines—Discipline”. 134
DISCLOSURE
• Additional disclosure of information requirement ................................. 300.512(b).
  Consent required before disclosing:
  O Education records to public benefits or insurance agencies .................. 300.154(d)(2)(iv).
  O Personal information to non-agency officials ..................................... 300.622(a).
• Notice on disclosure of evaluation results ............................................. 300.504(d)(2)(iv).
• Policies on disclosing information to 3rd parties ................................... 300.612(a)(3).
• Prohibit evidence not disclosed .............................................................. 300.512(a)(3).

DISPROPORTIONALITY .............................................................................. 300.646.

DISPUTES
• Interagency disputes (Methods of ensuring services):
  O Ensure services during pendency of dispute ........................................ 300.154(a).
  O Procedures for resolving .................................................................... 300.154(a)(3).
• Mediation (see also § 300.532(c)(3)) ..................................................... 300.506.
  O Attorneys’ fees for ............................................................................. 300.517(c)(2)(ii).
  O During discipline appeal process ....................................................... 300.532(c)(3).
  O During resolution process (see § 300.510(b)(3), (c)(3)) .............. 300.506.
  O Enforcement of agreement (see §§ 300.506(b)(7), 300.510(d)(2), 300.537) 300.607.
DUE PROCESS HEARING(S) AND REVIEWS (A–E)
• Agency responsible for conducting hearing ............................................. 300.511(b).
• Appeal of decisions; impartial review .................................................... 300.514(b).
• Attorneys’ fees .................................................................................... 300.517(a).
• Basic requirements (see §§ 300.507 through 300.514) ......................... 300.518.
• Child’s status during proceedings (Pendency) ....................................... 300.518.
  O Parent request for hearing (Discipline) .............................................. 300.532(a).
• Civil action ......................................................................................... 300.516(a).
• Evaluations disclosed at least 5 business days before hearing .................. 300.512(a)(3).
• Expedited due process hearings (Discipline) ......................................... 300.532(c).

DUE PROCESS HEARING(S) AND REVIEWS (F–J)
• Failure to implement a due process hearing decision ............................... 300.150(c)(3).
• Finality of decision; appeal; impartial review ......................................... 300.514.
• Findings of fact and decisions (see § 300.512(a)(5), (c)(3)):
  O To State advisory panel (see §§ 300.513(d), 300.514(c)) .................. 300.512(a).
• Hearing rights ...................................................................................... 300.512(a).
• Impartial hearing officer ....................................................................... 300.511(c).
  O See “Hearing officer(s)”

DUE PROCESS HEARING(S) AND REVIEWS (J–Z)
• Parental rights at hearings ..................................................................... 300.512(c).
• Party notice to other party ..................................................................... 300.508(c).
  O Model form to assist parents .............................................................. 300.509.
• Pendency (Stay put) .............................................................................. 300.518.
• Prohibit evidence not introduced 5 business days before hearing .......... 300.512(a)(3).
• Record of hearing .................................................................................. 300.512(c)(3).
• See “Civil action—proceedings,” “Court(s)” “Procedural safeguards,” “Timelines”
Pt. 300, App. E  34 CFR Ch. III (7–1–12 Edition)

- Timelines and convenience of hearings—reviews (see §§300.506(b)(5), 300.511(e), 300.516(b))  

EARLY IDENTIFICATION AND ASSESSMENT (Definition)  

EARLY INTERVENING SERVICES  

- Adjustment to local fiscal efforts  
- Do not limit/create right to FAPE  
- For children not currently identified as needing special education or related services.  
- Permissive use of funds  
- Scientifically based literacy instruction  
- Use of funds:  
  O By LEA  
  O By Secretary of the Interior  

EDUCATION RECORDS (Definition)  

EDUCATIONAL PLACEMENTS (LRE)  

EDUCATIONAL SERVICE AGENCY (ESA)  

- Definition  
- In definition of “LEA”  
- Joint establishment of eligibility (Regarding ESAs)  
- O Additional requirements (Regarding LRE)  

ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (ESEA)  

- Coordination of early intervening services  
- Excess cost requirement  
- Schoolwide programs  

ELIGIBILITY (CHILD—STUDENT) (A–G)  

- Additional eligibility requirements (see §§300.121 through 300.124, 300.307 through 300.311)  
- Children with disabilities in adult prisons  
- Children with specific learning disabilities (Documentation of eligibility determination).  
- Determinant factor for  
- Determination of eligibility (Non-use of term by LEA if not adopted by State).  
- Developmental delay (Non-use of term by LEA if not adopted by State).  
- Documentation of eligibility (To parent)  
- Graduation with regular diploma: termination (see §§300.122(a)(3), 300.305(e)(2)).  

ELIGIBILITY (CHILD—STUDENT) (H–Z)  

- Lack of instruction in reading or math  
- Limited English proficiency  
- Public benefits or insurance (Risk loss of eligibility)  
- Termination of eligibility (see §§300.20(d)(3), 300.306(e)(2))  
- Transfer of rights (Special rule)  

ELIGIBILITY (PUBLIC AGENCIES)  

- Hearings related to (See “Hearings—Hearing procedures”)  
- Joint establishment of (see §§300.202(b)(3), 300.223(a), 300.224(a))  
- LEA (See “LEA eligibility”)  
- State (See “State eligibility”)  
- State agency eligibility  
- O See “State agencies”  

EMOTIONAL DISTURBANCE (Definition)  

ENFORCEMENT  

136
• Department procedures (see §§ 300.600, 300.604, 300.605)
• Referral to law enforcement authorities ...................... 300.535.
• State policies and procedures:
  O Enforcement mechanisms ........................................ 300.537.
  O LEA not meeting requirements .............................. 300.608.
  O Regarding confidentiality ..................................... 300.626.
EPILEPSY ....................................................................... 300.8(c)(9)(i).

EQUIPMENT
• Acquisition of ............................................................... 300.718(a).
• Definition ..................................................................... 300.14.
• Exception to maintenance of effort .............................. 300.204(d).
• Placement in private school ......................................... 300.144.

EVALUATION (A–G)
• Assessments in (see §§ 300.304(b), (c) 300.305(c)).
• Basic requirements (see §§ 300.301, 300.303, 300.324)
• Comprehensive (Identify all special education needs) .. 300.304(c)(6).
• Definition of ................................................................. 300.15.
• Evaluation procedures .................................................. 300.304.
• Evaluation report to parents ....................................... 300.306(a)(1).
• Graduation (Evaluation not required for) ...................... 300.305(e)(2).

EVALUATION (H–Z)
• Independent educational evaluation (IEE) ................. 300.502.
• Initial evaluation (see §§ 300.301, 300.305)
• Observation in determining SLD ................................ 300.310.
• Parent consent ............................................................. 300.300.
• Parent right to evaluation at public expense ............... 300.502(b).
• Reevaluation ............................................................... 300.303.

EXCEPTION
• Charter schools exception (Joint eligibility) ............... 300.223(b).
• For prior local policies and procedures ...................... 300.220.
• For prior State policies and procedures ...................... 300.176(a).
• To FAPE:
  O For certain ages ..................................................... 300.102.
  O For graduating with a regular diploma ..................... 300.102(a)(3)(i).
  O For children in adult prisons (see §§ 300.102(a)(2),
   300.224(d)). .......................................................... 300.102.
• To maintenance of effort .............................................. 300.204.
• To reimbursement for parental placement .................. 300.148(e).

EXCESS COSTS
• Calculation of (see appendix A—Excess Costs Calcula-
  tion) ........................................................................ 300.16.
• Excess cost requirement ............................................. 300.202(b).
• Joint establishment of eligibility ................................. 300.202(b)(3)
• LEA requirement ........................................................ 300.202(b).
• Limitation on use of Part B funds ............................... 300.202(b).
• Meeting the excess cost requirement ......................... 300.202(b)(2).
• See also §§ 300.163(a), 300.175(b), 300.202(a),
  300.202(a)(2)(i) ......................................................... 300.202(b).

EXISTING EVALUATION DATA (Review of) ................. 300.305(a)(1).

EXPEDITED DUE PROCESS HEARINGS ....................... 300.532(c).
• Authority of hearing officer ........................................ 300.532(b).
• Party appeal (Hearing requested by parents) .............. 300.532(a).

EXPULSION (See “Suspension and expulsion”)

EXTENDED SCHOOL YEAR SERVICES .......................... 300.106.

EXTRACURRICULAR
• IEP content ................................................................. 300.320(a)(4)(ii).
• In supplementary aids and services ........................................ 300.42.
• Nonacademic services ..................................................... 300.107.
• Nonacademic settings ..................................................... 300.117.

FACILITIES
• Alteration of ................................................................. 300.718.
• Children in private schools or facilities (see §§ 300.130, 300.142(a), 300.144(b), (c), 300.147(c)) .................................................. 300.718.
• Construction of ............................................................. 300.718.
• Physical education (In separate facilities) ........................................ 300.108(d).
• Private schools and facilities ................................................ 300.2(c).
• See also “Correctional facilities”
• Termination of expenses for construction of ......................... 300.204(d).

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) (See “Confidentiality”)

FAPE (A–G)
• Definition ................................................................. 300.17.
• Exception to FAPE: O For certain ages ........................................ 300.102(a)
O For children receiving early intervention services ................ 300.102(a)(4).
O For children graduating with a regular diploma .................... 300.102(a)(3).
O For children in adult correctional facilities .......................... 300.102(a)(2).
• For children: O Advancing from grade to grade .................... 300.101(c).
O Beginning at age 3 .................................................... 300.101(b).
O On Indian reservations ................................................. 300.101(b).
O Suspended or expelled from school .................................... 300.101(a).
• General requirement ................................................... 300.101(a).

FAPE (H–Z)
• Methods and payments .................................................. 300.103.
• Private school children with disabilities:
O Placed by parents when FAPE is at issue ......................... 300.148.
O Placed in or referred by public agencies (see §§ 300.145 through 300.147)
• Reallocation of LEA funds (FAPE adequately provided) .... 300.705(c).
• Services (and placement) for FAPE:
O Based on child’s needs (Not disability category) .............. 300.304(c)(6).
• State eligibility condition ............................................. 300.100.

FAS (Freely associated States) ........................................... 300.717(a).

FAX (FACSIMILE TRANSMISSION)
• Department procedures (see §§ 300.183, 300.196(a) through (e)) 300.717(a).

FERPA (Family Educational Rights and Privacy Act) (See “Confidentiality”)

FILING A CLAIM (Private insurance) .................................. 300.154(e).

FILING A COMPLAINT (State complaint procedures) ........ 300.153.

FILING REQUIREMENTS
• By-pass (Regarding private school children) ....................... 300.196.
• Department procedures .............................................. 300.183.
• See §§ 300.178 through 300.186.

FINALITY OF DECISION ................................................ 300.514.

FORMULA
• Allocations to LEAs ................................................... 300.705(b).
• Allocations to States .................................................. 300.705.
• Allocation to States when by-pass is implemented ............. 300.191.

- Allocation to States regarding section 619 (see §§ 300.807, 300.810).
- Parentally-placed private school children 300.133.
- SEA set aside funds 300.704(b).
- See also §300.171(a).

FOSTER PARENT 300.30(a)(2).
- See also §300.45(b).

FREELY ASSOCIATED STATES AND OUTLYING AREAS
- Funding for 300.701(a).
- Purpose of grants 300.700(a).

FULL EDUCATIONAL OPPORTUNITY GOAL 300.109.

FUNCTIONAL BEHAVIORAL ASSESSMENT (see §300.530(d)(1)(ii), (f)(1)(i))

FUNDING MECHANISM: LRE 300.114(b).

FUNDS (See “Use of funds”)

GENERAL CURRICULUM
- Discipline (Continue participating in) 300.530(d)(1)(i).
- Evaluation procedures:
  - O Be involved and progress in 300.304(b)(1)(ii).
  - O Review of existing evaluation data 300.305(a)(1).
- IEPs:
  - O Measurable annual goals 300.320(a)(2)(i).
  - O Present levels of educational performance 300.320(a)(1).
  - O Review and revision of IEPs 300.324(b)(1)(ii).
  - O Special education and related services 300.320(a)(4)(ii).
- IEP Team 300.321(a)(4)(ii).
- Specially designed instruction (Definition) 300.39(b)(3).

GOALS
- Annual goals (See “IEP” and “Annual goals”).
  - Performance goals and indicators 300.157.
    - O State and local activities to meet 300.814(c).
    - O Use of State-level funds to meet 300.704(b)(4)(x).
- GOVERNOR (Adult prisons) 300.149(d).
- See also “Chief executive officer”.

GRADUATION
- Evaluation not required for 300.305(e)(2).
- Exception to FAPE 300.102(a)(3)(i).
- Graduation rates as performance indicators 300.157(a)(3).
- Written prior notice required 300.102(a)(3)(iii).

GRANDPARENT OR STEPPARENT (In definition of “Parent”).

GRANTS
- Grants to States: 300.700.
  - O Maximum amount 300.700(b).
  - O Purpose of 300.700(a).
- See “Subgrants”.

GUARDIAN (In definition of “Parent”) 300.30(a)(3).

GUARDIANSHIP, SEPARATION, AND DIVORCE (Regarding parent’s authority to review records).

HEALTH AND HUMAN SERVICES (Secretary of) 300.708(i)(1).

HEARING AIDS: Proper functioning of 300.113(a).

HEARING IMPAIRMENT
- Definition 300.8(c)(5).
- Related services, audiology 300.34(c)(1).

HEARING OFFICER(S) (A-B)
Pt. 300, App. E  34 CFR Ch. III (7–1–12 Edition)

• Additional disclosure of information requirement 300.512(b).
• Attorneys’ fees 300.517(c)(2)(i).
• Authority of (Discipline) 300.532(b).
  O Basis of decisions 300.513(a).

HEARING OFFICER(S) (C–Z)
• Change of placement:
  O Hearing officer decision agrees with parents 300.518(d).
  O Hearing officer may order 300.532(b)(2)(i).
• Expedited due process hearing (Discipline) 300.533.
• Impartial hearing officer 300.511(c).
• Parent appeal (Discipline) 300.532(b).
• Placement during appeals 300.533.
• Private school placement when FAPE is at issue 300.148(b).
• Reimbursement for private school placement by parents.
  O Requests for evaluations by 300.502(d).

HEARING RIGHTS 300.512.

HEARINGS—HEARING PROCEDURES
• Due process (See “Due process hearings”).
• Public hearings on policies and procedures 300.165(a).
• State and local eligibility:
  O LEA eligibility 300.155.
  O Notification in case of LEA or State ineligibility
  O State eligibility (Notice and hearing) (see §§ 300.178, 300.179, 300.181).

HEART CONDITION 300.8(c)(9)(i).

HEIGHTENED ALERTNESS TO ENVIRONMENTAL STIMULI (In “Other health impairment”).

HIGH COST FUND (LEA) 300.704(c).

HIGHLY MOBILE CHILDREN (e.g., homeless and migrant children).

HIGHLY QUALIFIED TEACHER (A–Q)
• Alternative route to certification 300.18(b)(2).
• Definition of 300.18.
• Private school teachers 300.18(h).

HIGHLY QUALIFIED TEACHER (R–Z)
• Requirements for in general 300.18(b).
• Requirements for teaching to alternate academic achievement standards.
  O Requirements for teaching multiple subjects 300.18(d).
  O Personnel qualifications 300.156(c).

HIGH NEED CHILD 300.704(c)(3)(i).

HOMELESS CHILDREN
• Child find 300.111(a)(1)(i).
• Definition of 300.19.
• McKinney-Vento Homeless Assistance Act (see §§ 300.19, 300.149(a)(3), 300.153(b)(4)(iii), 300.168(a)(5),
  300.508(b)(4)).
• Surrogate parents for 300.519(a)(4).

HYPERACTIVITY (Attention deficit hyperactivity disorder).

INAPPLICABILITY (Of requirements that prohibit commingling and supplanting of funds).

IEE (See “Independent educational evaluation”)

IEP (A–I)
• Agency responsibilities for transition services 300.324(c)(1).
• Basic requirements (see §§ 300.320 through 300.324).
• Child participation when considering transition .......... 300.321(b)(1).
• Consideration of special factors ................................ 300.324(a)(2).
• Consolidation of IEP Team meetings ............................ 300.324(a)(5).
• Content of IEPs ............................................................ 300.320(a).
• Definition (see §§ 300.22, 300.320).
• Development, review, and revision of ......................... 300.324.
• IEP or IFSP for children aged 3 through 5 .................... 300.323(b).
• IEP Team ..................................................................... 300.321.

IEP (J–Z)
• Modifications of IEP or placement (FAPE for children in adult prisons).
• Modify/Amend without convening meeting (see § 300.324(a)(4), (a)(6)).
• Parent participation ..................................................... 300.322.
• Alternative means ........................................................ 300.328.
• Part C coordinator involvement ................................. 300.321(f).
• Private school placements by public agencies ............... 300.325(a)(1).
• Regular education teacher (See “IEP Team”).
• Review and revision of IEPs ........................................... 300.324(b).
• SEA responsibility regarding private school ................ 300.323(c).
• State eligibility requirement ...................................... 300.112.
• Transition services ....................................................... 300.320(b).
• When IEPs must be in effect ........................................ 300.323.

IEP TEAM ................................................................. 300.321.
• Alternative educational setting (Determined by) .......... 300.331.
• Consideration of special factors ................................... 300.324(a)(2).
• O Assistive technology ................................................ 300.324(a)(2)(v).
• O Behavioral interventions ......................................... 300.324(a)(2)(i).
• O Braille needs .......................................................... 300.324(a)(2)(iii).
• O Communication needs (Deafness and other needs) .. 300.324(a)(2)(iv).
• O Limited English proficiency ................................... 300.324(a)(2)(ii).
• Determination of knowledge or special expertise ........ 300.321(c).
• Discipline procedures (see §§ 300.530(e), 300.531).
• Manifestation determination ....................................... 300.530(e).
• Other individuals who have knowledge or special expertise (At parent or agency discretion).
• Participation by private school (public agency placement).
• Regular education teacher (see §§ 300.321(a)(2), 300.324(a)(3)).

IFSP (INDIVIDUALIZED FAMILY SERVICE PLAN)
• Definition ................................................................. 300.24.
• Transition from Part C ............................................... 300.124.
• IFSP vs. IEP ............................................................... 300.323(b).

ILLEGAL DRUG (Definition—discipline) ....................... 300.530(i)(2).

IMPARTIAL DUE PROCESS HEARING .............................. 300.511.
• See “Due process hearings and reviews”.

IMPARTIAL HEARING OFFICER ..................................... 300.511(c).
IMPARTIALITY OF MEDIATOR ..................................... 300.506(b)(1).
INCIDENTAL BENEFITS (Permissive use of funds) .......... 300.206.
INCIDENTAL FEES (In definition of “at no cost” under “Special education”).
• See “Due process hearings and reviews”.

INCLUDE (Definition) .................................................. 300.20.

INDEPENDENT EDUCATIONAL EVALUATION (IEE) ... 300.502.
• Agency criteria (see §§ 300.502(a)(2), (b)(2)(i), (c)(1), (e)).
• Definition ................................................................. 300.502(a)(3)(1).
• Parent-initiated evaluations ........................................ 300.502(c).
• Parent right to ................................................................ 300.502(a)(1).
• Procedural safeguards notice ........................................ 300.504(c)(1).
• Public expense (Definition under IEE) ........................... 300.502(a)(3)(ii).
• Request by hearing officers .......................................... 300.502(d).
• Use as evidence at hearing ........................................... 300.502(c)(2).

INDIAN; INDIAN CHILDREN
• Child find for Indian children aged 3 through 5 ............ 300.712(d).
• Definition of “Indian” .................................................. 300.21(a).
• Definition of “Indian tribe” ......................................... 300.21(b).
• Early intervening services .......................................... 300.711.
• Payments and use of amounts for:
  O Education and services for children aged 3 through 5. 300.712(a).
  O Education of Indian children ................................. 300.707.
• Plan for coordination of services .................................. 300.713.
• Submission of information by Secretary of Interior .... 300.708.

INDICATORS ................................................................... 300.157(b).
• See “Performance goals and indicators”

INDIVIDUALIZED EDUCATION PROGRAM (See “IEP”)

INDIVIDUALIZED FAMILY SERVICE PLAN (See “IFSP”)

INFORMED CONSENT (See “Consent”)

INITIAL EVALUATION .................................................. 300.301.
• Consent before conducting ........................................... 300.300(a)(1)(i).
  O For ward of State .................................................. 300.300(a)(2).
  O Not construed as consent for initial placement ... 300.300(a)(1)(ii).
  O When not required ................................................. 300.300(a)(2).
• Review of existing evaluation data ................................ 300.305(a).

INSTITUTION OF HIGHER EDUCATION
• Definition ................................................................. 300.26.

INSTRUCTIONAL MATERIALS
• Access to .................................................................... 300.172.
• Audio-visual materials ............................................... 300.14(b).
• NIMAC:
  O SEA coordination with .......................................... 300.172(c).
  O SEA rights and responsibilities if not coordinating ... 300.172(b).

INSURANCE
• Community-based waivers (see §300.154(d)(2)(iii)(D)).
• Financial costs ............................................................ 300.154(f)(2).
• Financial responsibility of LEA/SEA ............................ 300.154(d)(1).
• Out-of-pocket expense ................................................. 300.154(d)(2)(ii).
• Private insurance ....................................................... 300.154(e).
• Public benefits or insurance ........................................ 300.154(d).
• Risk of loss of eligibility (see §300.154(d)(2)(iii)(D)).

INTERAGENCY AGREEMENTS
• FAPE methods and payments (Joint agreements) ...... 300.103(a).
• LRE (Children in public/private institutions) ............... 300.114(a)(2)(i).
• Methods of ensuring services ...................................... 300.154(a).
• SEA responsibility for general supervision .................. 300.149.
• Secretary of Interior—with Health and Human Serv-
  ices Secretary. ......................................................... 300.708(i)(1).
  O Cooperative agreements (BIA and other agencies) 300.712(d).
INTERAGENCY COORDINATION (See “Coordination of services,” “Interagency agreements”)

INTERAGENCY DISPUTES ............................................ 300.154(a)(3).
INTERAGENCY RESPONSIBILITIES (Transition services). 300.320(b).

INTERIM ALTERNATIVE EDUCATIONAL SETTING
(See §§300.530(b), 300.531, 300.532(b)(2)(i), 300.533)

INTERPRETING SERVICES
• As a related service ...................................................... 300.34(a).
• Definition ..................................................................... 300.34(c)(4).

JOINT ESTABLISHMENT OF ELIGIBILITY (LEAs) ...... 300.223.
• See also §§300.202(b)(3), 300.224.

JUDICIAL
• Authorities (Referral to) .............................................. 300.535.
• Finding of unreasonableness ........................................ 300.148(d)(3).
• Proceeding (During pendency) ...................................... 300.518(a).
• Review .......................................................................... 300.197.
• See also:
  O Civil action (see §§300.504(c)(12), 300.514(d), 300.516).
  O Court(s) (see §§300.102(a)(1), 300.184, 300.148(c),
   (d)(3), 300.197, 300.516(a), (c), (d), 300.517(a), (c)).

JUVENILE-ADULT CORRECTIONS FACILITIES (See “Correctional facilities”)

LAW ENFORCEMENT AND JUDICIAL AUTHORITIES
• Referral to ................................................................. 300.535.

LEA (LOCAL EDUCATIONAL AGENCY) (A–C)
• Allocations to LEAs ..................................................... 300.705(b).
  O Reallocation of funds (If LEA is adequately providing FAPE). 300.705(c).
• Charter schools and LEAs (See “Charter schools”).
• Child count—LEAs:
  O Parentally-placed private school children with disabilities. 300.133(c).
  O See also “Child count”.
• Child find—LEAs:
  O Parentally-placed private school children with disabilities. 300.131.
  O See also “Child find”.
• Compliance (LEA and State agency) ............................... 300.222.
• Consistency of LEA policies with State policies .......... 300.201.

LEA (D–G)
• Definition of LEA .......................................................... 300.28.
• Developmental delay: Use of term by LEAs (see §300.111(b)(2) through (b)(4)).
• Direct services by SEA (If LEA is unable or unwilling to serve CWDs, etc.). 300.227.
• Discipline and LEAs (See “Discipline”).
• Eligibility of LEA:
  O Condition of assistance (see §§300.200 through 300.213).
  O Exception for prior local plans. ................................. 300.220.
  O Ineligibility of LEA (Notice by SEA) ....................... 300.221.
  O SEA hearings on LEA eligibility ............................ 300.155.
• Excess cost requirement—LEA: .................................. 300.202(b).
  O Use of amounts for excess costs .............................. 300.202(a)(2).
LEA (H–L)
- Hearings relating to LEA eligibility .................. 300.155.
- Information for SEA ........................................ 300.211.
- Joint establishment of eligibility (By two or more LEAs).
  O See also §§ 300.223, 300.224.
- LEA and State agency compliance ....................... 300.222.
- LEA policies (Modification of) ............................ 300.220(b).
  O See “LEA eligibility,” “Eligibility of LEA”.

LEA (M–P)
- Maintenance of effort regarding LEAs (See “Maintenance of effort”).
- Methods of ensuring services—LEAs (see §300.154(a)(1) through (a)(4), (b)).
- Migratory children with disabilities (Linkage with records under ESEA).
- Modification of policies by LEA .......................... 300.220(b).
- Noncompliance of LEA (SEA determination) ............ 300.222(a).
- Notice requirement (On LEA) .............................. 300.222(b).
- Personnel shortages (Use of funds to assist LEAs in meeting).
  O See “LEA allocations (Regarding LEAs)”.
- Public information (By LEA) .............................. 300.212.

LEA (R–T)
- Reallocation of LEA funds (If LEA is adequately providing FAPE).
  O See “Permissive use of funds”).
- Reimbursement of LEAs by other agencies (See “Methods of ensuring services,” §300.154(a)(2) through (a)(3), (b)(2)).
- Review and revision of policies ........................... 300.170(b).
- SEA reduction in payments to LEA ....................... 300.222(a).
- SEA use of LEA allocations for direct services .......... 300.227.
- Show cause hearing (By-pass requirement) ............... 300.194.
- State-level nonsupplanting ................................ 300.162(c).
- Subgrants to LEAs ............................................ 300.705(a).
- Suspension and expulsion rates—LEAs .................... 300.170(a)(1).
- Transition planning conferences (Part C to B) .......... 300.124(c).

LEA (U–Z)
- Use of amounts (by LEA) .................................. 300.202.
  O (See “Permissive use of funds”).
- Use of SEA allocations (Regarding LEAs) ............... 300.704.
  O For capacity-building, etc. (see §300.704(b)(4)(vi)).
  O To assist in meeting personnel shortages (see §300.704(b)(4)(vi)).

LEA ELIGIBILITY (A–I)
- Adjustment to local fiscal efforts in certain fiscal years.
- Charter schools—public:
  O Rights of children with disabilities who attend public charter schools.
  O That are public schools of the LEA .................... 300.209(b).
  O That are LEAs ............................................. 300.209(c).
  O That are not an LEA or a school that is part of an LEA.
  O Treatment of charter schools and their students .. 300.209.
Off. of Spec. Educ. and Rehab. Services, Education  

Pt. 300, App. E

O See also “Charter schools”.

- Condition of assistance ........................................... 300.200.
  O See §§ 300.201 through 300.213.
- Consistency with State policies .................................. 300.201.
- Information for SEA .................................................. 300.211.

LEA ELIGIBILITY (M–Z)

- Maintenance of effort .............................................. 300.203.
  O Exception to .......................................................... 300.204.
- Migratory children with disabilities—records regarding .............................................. 300.213.
- Permissive use of funds .............................................. 300.208.
  O Administrative case management ......................... 300.208(b).
  O Early intervening services ..................................... 300.208(a)(2).
  O High cost special education and related services .. 300.208(a)(3).
  O Services and aids that also benefit nondisabled children. .............................................. 300.208(a)(1).
- Personnel development .............................................. 300.207.
- Records regarding migratory children with disabilities. .............................................. 300.213.
- State prohibition (If LEA is unable to establish/maintain programs of FAPE). .............................................. 300.205(c).
- Treatment of charter schools and their students ........ 300.209.

LEAD POISONING (Other health impairment) ............ 300.8(c)(9)(i).

LEAST RESTRICTIVE ENVIRONMENT (LRE)

- Children in public or private institutions .................. 300.118.
- Continuum of alternative placements ......................... 300.115.
- Educational service agency (Additional requirement regarding LRE). .............................................. 300.224(c).
- Monitoring activities .............................................. 300.120.
- Nonacademic settings .............................................. 300.117.
- Placements ............................................................ 300.116.
- State eligibility requirements ................................... 300.114.
- Additional requirement: State funding mechanism .............................................. 300.114(b).
- Technical assistance and training ................................ 300.119.

LEISURE EDUCATION (Recreation) .............................. 300.34(c)(11)(iv).

LEP (See “Limited English proficient”)  
LEUKEMIA (Other health impairment) .......................... 300.8(c)(9)(i).

LIMITED ENGLISH PROFICIENT (LEP)

- Definition of .......................................................... 300.27.
- Determinant factor in eligibility determination ........ 300.306(b)(1)(iii).
- In development, review, and revision of IEP ............... 300.324(a)(2)(i).
- In “native language” (Definition) ................................. 300.29(a).
- Special rule—LEP not determinant factor ................. 300.306(b)(1)(iii).

LOCAL EDUCATIONAL AGENCY (See “LEA”)  

LRE (See “Least restrictive environment”)

MAINTENANCE OF EFFORT (MOE–LEA) (A–R)

- Amounts in excess (Reduce level) ................................. 300.205(a).
- Exception to ............................................................ 300.204.
- Maintenance of effort and early intervening services (see appendix D). .............................................. 300.203.
- Non-reduction of (State enforcement) ......................... 300.608.
- Public benefits or insurance proceeds are not MOE .... 300.154(g)(2).
  O See “Methods of ensuring services”.

MAINTENANCE OF EFFORT (MOE–LEA) (S–Z)

- SEA flexibility .......................................................... 300.230(a).
• State enforcement (SEA must prohibit LEA from reducing MOE) 300.608.

MARTEN OF STATE FINANCIAL SUPPORT 300.163.
• Reduction of funds for failure to maintain support 300.163(b).
• Subsequent years (Regarding a waiver) 300.163(d).
• Waivers: Exceptional or uncontrollable circumstances 300.163(c).

MANIFESTATION DETERMINATION (See “Discipline”) 300.530(e).

MCKINNEY-VENTO HOMELESS ASSISTANCE ACT 300.19.
• In definition of “Homeless children” 300.19.
• In filing a State complaint 300.153(b)(4)(iii).
• SEA responsibility for general supervision (Regarding homeless children) 300.149(a)(3).
• State advisory panel (Membership) 300.168(a)(5).
• Surrogate parents (Homeless child’s rights protected) 300.519(a)(4).

MEDIATION (A–O) 300.506.
• Benefits of (Meeting to explain) 300.506(b)(2)(ii).
• Confidential discussions 300.506(b)(6)(i).
• Cost of (Borne by State) 300.506(b)(4).
• Disinterested party (To meet with parents and schools) 300.506(b)(2).
• Disputes (Resolve through mediation) 300.506(a).
• Legally binding agreement 300.506(b)(6).
• Mediation procedures (By public agency to allow parties to resolve disputes) 300.506(a).
• Mediators:
  O Impartiality of 300.506(c).
  O List of 300.506(b)(3)(i).
  O Qualified and impartial (see §300.506(b)(1)(iii)).
• Meeting to explain benefits of 300.506(b)(2)(ii).
• Not used as evidence in hearing 300.506(b)(8).
• Not used to deny/delay right to hearing 300.506(b)(1)(ii).
• Opportunity to meet 300.506(b)(2).

MEDIATION (P–Z) 300.704.
• Parent training and information center 300.506(b)(2)(i).
• Procedural safeguards notice 300.506(b)(3)(ii).
• Random selection of mediators 300.506(b)(3)(ii).
• Use of SEA allocations to establish 300.704(b)(3)(ii).
• Voluntary 300.506(b)(1)(i).
• Written mediation agreement 300.506(b)(7).

MEDICAID 300.154.
• Children covered by public benefits or insurance 300.154(d)(1).
• Construction (Nothing alters requirements imposed under Titles XIX or XXI) 300.154(h).
• Financial responsibility of each non-educational public agency (e.g., State Medicaid) 300.154(a)(1).
• LEA high cost fund (Disbursements not medical assistance under State Medicaid) 300.704(c)(8).
• Medicaid reimbursement not disqualified because service in school context 300.154(b)(1)(ii).
• Methods of ensuring services (see §300.154(a)(1), (b)(1)(ii), (d), (g)(2), (h)).
• Proceeds from public or private insurance 300.154(g)(1).
• Public agency may use Medicaid 300.154(a)(1).
• State Medicaid, etc., must precede financial responsibility of LEA 300.154(a)(1).

MEDICAL (A–L) 300.186.
• Assistance under other Federal programs 300.186.
• Assistive technology device (Does not include a surgically implanted medical device).
• LEA high cost fund (Disbursements not medical assistance under State Medicaid).

MEDICAL (M–Q)
• Medical services in (‘‘Related services’’):
  O Audiology (Referral for) .......................... 300.34(c)(1)(ii).
  O Definition of ........................................... 300.3(d)(5).
  O For diagnostic purposes ................................... 300.3(d)(a).
  O Speech-language pathology (Referral for) .......................... 300.34(c)(15)(iii).
• Medical supplies, etc. (Memo of agreement between HHS and Interior) .................................................. 300.708(i)(2).
• Non-medical (Residential placement) .......................... 300.104.

MEDICAL (R–Z)
• Referral for medical services:
  O Audiology .............................................................. 300.34(c)(1)(ii).
  O Speech-language pathology services ........................... 300.34(c)(15)(iii).
• Related services: Exception; surgically implanted devices (‘‘Cochlear implants’’) .......................... 300.34(b).
• Routine checking of hearing aids and other devices .......................... 300.113.
• SLD: Educationally relevant medical findings, if any .......................................................... 300.311(a)(4).

MEDICATION
• Prohibition on mandatory medication ........................................... 300.174.

MEETING(S)
• Alternative means of meeting participation .......................... 300.328.
• Consolidation of IEP Team meetings ........................................... 300.324(a)(5).
• Equitable services determined (Parentally-placed private school CWDs) ........................................... 300.137.
• IEP Team meetings (See ‘‘IEP’’). .......................................................... 300.506(b)(2).
• Opportunity to examine records; participation in IEP Team meetings .................................................. 300.501.
• Parent participation in meetings (see §300.506(b)(2), (b)(4)). .......................................................... 300.325.
• Reviewing and revising IEPs (Private school placements). .......................................................... 300.329(b).
• Services plan for private school children (Meetings) .......................................................... 300.137(c)(1).

MENTAL RETARDATION (Definition) ........................... 300.8(c)(6).

METHODS OF ENSURING SERVICES ........................... 300.154.

MIGRANT CHILDREN
• Child find .......................................................... 300.111(c)(2).
• Records regarding migratory children (Linkage with ESEA) .......................................................... 300.213.

MINIMUM STATE COMPLAINT PROCEDURES .......................... 300.152.
• See ‘‘Complaints,’’ ‘‘State complaint procedures’’.

MONITOR; MONITORING ACTIVITIES (A–N)
• Allowable costs for monitoring ................................................ 300.704(b)(3)(1).
• Children placed in private schools by public agencies .......................................................... 300.147(a).
• Implementation by SEA .......................................................... 300.147(a).
• LRE (SEA monitoring activities) .......................................................... 300.120.
• Monitoring activities (LRE) .......................................................... 300.120.
• Monitoring—Enforcement (Subpart F) ........................................... 300.600.
  O Rule of construction (Use any authority under GEPA to monitor) .................................................. 300.609.
  O Secretary’s review and determination regarding State performance .......................................................... 300.609(b)(1).
MONITOR; MONITORING ACTIVITIES (O–Z)

- Outlying areas, etc. (see §300.701(a)(1)(i)).
- Private school children: SEA monitoring 300.147(a).
- SEA responsibility for general supervision 300.149(a).
- Secretary of the Interior 300.706.
- State advisory panel functions (Advise SEA on corrective action plans).
- Use of SEA allocations for monitoring 300.704(b)(3)(i).
- Waiver (State’s procedures for monitoring) 300.164(c)(2)(ii)(B).
- O Summary of monitoring reports 300.164(c)(3).
- MULTIPLE DISABILITIES (Definition) 300.8(c)(7).

NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARDS (NIMAS).

- See also appendix C.

NATIVE LANGUAGE

- Confidentiality (Notice to parents) 300.612(a)(1).
- Definition 300.29.
- Definition of “Consent” 300.9.
- Evaluation procedures (Tests in native language) 300.304(c)(1)(ii).
- Notice to parents: Confidentiality (In native language) 300.612(a)(1).
- Prior notice:
  - O Notice in native language 300.503(c)(1)(ii).
  - O Notice translated orally 300.503(c)(2)(i).
  - O Steps if not a written language 300.503(c)(2).

NATURE/LOCATION OF SERVICES (Direct services by SEA).

NEPHRITIS (In “Other health impairment”) 300.8(c)(9)(i).

NIMAC (See “National Instructional Materials Access Center”)

NIMAS (See “National Instructional Materials Accessibility Standard”)

NONACADEMIC

- Activities: Participate in (IEP content) 300.320(a)(4)(ii).
- Services and extracurricular activities (Equal opportunity to participate in).
- Settings 300.117.
- NONCOMMINGLING 300.162(b).

NONDISABLED (Children; students) (A–P)

- At no cost (In definition of “special education”) 300.39(b)(1).
- Disciplinary information 300.229(a).
- Excess cost requirement 300.202(b).
- IEP (definition) (see §300.320(a)(1)(i), (a)(4)(iii), (a)(5)).
- LRE (General requirement) 300.114.
- Nonacademic settings 300.117.
- Placement 300.116.
- Program options 300.110.

NONDISABLED (Children; students) (R–Z)

- Regular physical education 300.108(b).
- Services and aids that also benefit nondisabled children.
- Special education (Definition: In definition of “at no cost”) 300.39(b)(1).

- Supplementary aids and services ........................................ 300.42.
- Suspension and expulsion rates ........................................ 300.170(a)(2).

**NONEDUCATIONAL (Public agency)**

- Medicaid service (May not be disqualified because in school context) ........................................ 300.154(b)(1)(ii).
- Methods of ensuring services (see § 300.154(a), (b)) ........................................ 300.154(b).
- Obligation of ........................................................................ 300.154(b).
- Reimbursement for services by ........................................ 300.154(b)(2).

**NON-MEDICAL CARE (Residential placement)** ........................................ 300.104.

**NONSUPPLANTING**

- Excess cost requirement (Regarding children aged 3 through 5 and 18 through 21) ......................... 300.202(b)(1)(ii).
- LEA nonsupplanting ........................................ 300.202(b)(1)(ii).
- SEA flexibility ........................................ 300.230(a).
- State-level activities (Inapplicability of certain provisions) ........................................ 300.704(d).
- State-level nonsupplanting ........................................ 300.162(c).
- Waiver of requirement ........................................ 300.164.

**NOTICES:** By parents or parties

- Attorneys’ fees: When court reduces fee award regarding due process request notice ......................... 300.517(c)(4)(iv).
- Children enrolled by parents in private schools when FAPE is at issue ........................................ 300.148(d)(1)(i).
- Due process complaint (Notice before a hearing on a complaint) ........................................ 300.508(c).
- Private school placement by parents (When FAPE is at issue) ........................................ 300.148(d)(1)(i).

**NOTICES:** Public agency (A–M)

- By-pass (Judicial review) ........................................ 300.197.
- Children’s rights (Transfer of rights) ......................... 300.625(c).
- Confidentiality (Notice to parents) ......................... 300.612.
- Department procedures (Notice to States) ......................... 300.179.
- Discipline (Notification) ........................................ 300.530(h).
- Exception to FAPE (Graduation) ........................................ 300.102(a)(3).
- Hearings relating to LEA eligibility ........................... 300.155.
- IEP meetings (Parent participation) ......................... 300.322(b).
- Judicial review: If State dissatisfied with eligibility determination ........................................ 300.184.
- LEA and State agency compliance ........................................ 300.222.
- Notification in case of ineligibility ........................................ 300.221(b).

**NOTICES:** Public agency (N–P)

- Notice before a hearing on a due process complaint ........................................ 300.508(c).
- Notice and hearing before State ineligible ........................................ 300.179.
- Notice in understandable language ........................................ 300.503(c).
- Notification of LEA in case of ineligibility ........................................ 300.221(b).
- Parent participation in meetings ........................................ 300.501(b)(2).
- Prior notice by public agency ........................................ 300.503.
- Private school placement by parents when FAPE is at issue (Public agency notice) ........................................ 300.148(d)(2).
- Procedural safeguards notice ........................................ 300.504.
- Public attention ........................................ 300.606.
- Public participation (Notice of hearings) ........................................ 300.165(a).

**NOTICES:** Public agency (Q–Z)

- Secretary of the Interior (Submission of information) ........................................ 300.708(g).
- Secretary’s review and determination of State performance ........................................ 300.603(b)(2).
- Transfer of parental rights ........................................ 300.520(a)(1)(i).
Pt. 300, App. E  34 CFR Ch. III (7–1–12 Edition)

• Use of electronic mail .................................................. 300.505.
• Withholding funds ........................................................ 300.605.

OCCUPATIONAL THERAPY ........................................... 300.34(c)(6).

OPPORTUNITY TO EXAMINE RECORDS 300.501.

ORIENTATION AND MOBILITY SERVICES .......... 300.34(c)(7).

ORTHOPEDIC IMPAIRMENT 300.8(c)(8).

OTHER HEALTH IMPAIRMENT 300.8(c)(9).

OTHER INDIVIDUALS ON IEP TEAM 300.321(a)(6).

OUT-OF-POCKET EXPENSE (Public benefits or insurance) 300.154(d)(2)(ii).

PARAPROFESSIONALS
In “Personnel qualifications” 300.156(b).

PARENT (Definition) 300.30.

PARENT: RIGHTS AND PROTECTIONS (A–G)
• Appeal (Manifestation determination) 300.532.
• Confidentiality (Authority to inspect and review records).
• Consent (See “Consent”)
• Counseling and training (Definition) 300.30.
• Definition of “Parent” 300.30.
O Foster parent 300.30(a)(2).
O Grandparent or stepparent 300.30(a)(4).
O Guardian 300.30(a)(3).

PARENT: RIGHTS AND PROTECTIONS (H–N)
• Independent educational evaluation 300.502.
O Parent-initiated evaluations 300.502(c).
O Parent right to evaluation at public expense 300.502(h).
• IEP and parent involvement:
O Copy of child’s IEP 300.322(f).
O Informed of child’s progress 300.322(a)(3)(ii).
O Option to invite other individuals 300.322(a)(6).
O Participation in meetings 300.322.
O Team member 300.322(a)(1).
• Informed consent (Accessing private insurance) 300.154(e)(1).
• Involvement in placement decisions 300.501(c).
• Meetings (Participation in) 300.501(b).
• Notice to public agency:
O Before a hearing on a due process complaint 300.508(c).
O Before removing child from public school 300.148(d)(1)(ii).
O Timeline for requesting a hearing 300.511(e).
• Exceptions to timeline 300.511(f).
O Opportunity to examine records 300.501(a).

PARENT: RIGHTS AND PROTECTIONS (O–Z)
• Parent counseling and training 300.34(c)(8).
• Placement decisions (Involvement in) 300.501(c).
• Request for hearing (Discipline) 300.532(a).
• Right to an independent educational evaluation 300.502(b).
PARENTAL CONSENT (See “Consent”)

PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES (A–E)

- Annual count of the number of ........................................ 300.133(c).
- Bypass (see §§300.190 through 300.198) ............................ 300.131.
- Child find for ................................................................... 300.133(b).
- Calculating proportionate amount ...................................... 300.136.
- Compliance ..................................................................... 300.134.
- Consultation with private schools ........................................ 300.135.
- Definition of ..................................................................... 300.130.
- Due process complaints and State complaints ..................... 300.140.
- Equitable services determined ........................................... 300.137.
- Equitable services provided ................................................ 300.138.
- Expenditures .................................................................... 300.133(a).
- Formula .......................................................................... 300.133(b).

PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES (F–R)

- No individual right to special education and related services.
- Property, equipment, and supplies ...................................... 300.144.
- Proportionate share of funds ............................................. 300.134(b).
- Provision of equitable services ......................................... 300.138(a).
- Religious schools (see §§300.131(a), 300.137(c), 300.139(a))
- Requirement that funds not benefit a private school ............ 300.141.

PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES (S–T)

- Separate classes prohibited ............................................. 300.134.
- Services on private school premises .................................. 300.139(a).
- Services plan (Definition) .................................................. 300.137(c).
- For each child served under §§300.130 through 300.144 ...
- State eligibility requirement ............................................. 300.139(b).
- Transportation (Cost of) .................................................... 300.139(b)(2).

PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES (U–Z)

- Use of personnel:
  - Private school personnel ............................................. 300.142(b).
  - Public school personnel .............................................. 300.142(a).
- Written affirmation .......................................................... 300.135.
- Written explanation by LEA regarding services .................... 300.134(e).

PARTICIPATING AGENCY

- Confidentiality provisions:
  - Definition of participating agency .................................. 300.611(c).
- IEP requirements (Transition services) ............................... 300.623.

PENDENCY (Stay put)

- Child’s status during due process proceedings ..................... 300.518.
- Placement during appeals (Discipline) .............................. 300.533.
- Procedural safeguards notice .......................................... 300.504(c)(7).

PERFORMANCE GOALS AND INDICATORS

- Assess progress toward achieving goals ............................ 300.157(c).
- Establishment of goals .................................................... 300.157.
- Other State level activities .............................................. 300.814(c).
- Performance goals and indicators .................................... 300.157.
Pt. 300, App. E 34 CFR Ch. III (7–1–12 Edition)

- State monitoring and enforcement ............................................. 300.600(c).
- State performance plans and data collection .......................... 300.601.

PERFORMANCE; PERFORMANCE PLANS (STATE)
- Enforcement ............................................................................. 300.604.
- Public reporting and privacy ..................................................... 300.602(b).
- Secretary’s review and determination regarding State performance.
  - State performance plans and data collection .......................... 300.601.
  - State performance report ....................................................... 300.602(b)(2).
  - State use of targets and reporting ........................................ 300.602.
  - Public reporting ................................................................. 300.602(b)(1).
  - State performance report ....................................................... 300.602(b)(2).

PERMISSIVE USE OF FUNDS (LEAs)
- Administrative case management ............................................ 300.208(b).
- Early intervening services ....................................................... 300.208(a)(2).
- High cost education and related services ................................. 300.208(a)(3).
- Permissive use of funds ........................................................... 300.208.
- Services and aids that also benefit nondisabled children.

PERSONALLY IDENTIFIABLE (PI) INFORMATION
(A–H)
- Confidentiality of (State eligibility requirement) ..................... 300.123.
- Consent (confidentiality) .......................................................... 300.622(a).
- Data collection (State performance plans) ................................. 300.601(b)(3).
- Definition of “personally identifiable” ...................................... 300.32.
- Department use of information ............................................... 300.627.
- Destruction:
  - Definition of ........................................................................ 300.611(a).
  - Destruction of information .................................................... 300.624.
- Hearing decisions to advisory panel and the public .................. 300.513(d).

PERSONALLY IDENTIFIABLE (PI) INFORMATION (I–Z)
- Notice to parents (Confidentiality):
  - Children on whom PI information is maintained .... 300.612(a)(2).
  - Policies and procedures regarding disclosure to third parties, etc.
    .................................................................................. 300.612(a)(3).
- Participating agency (Definition) .............................................. 300.611(c).
- Protection of PI information .................................................... 300.612(a).
- See also §300.610.
- Safeguards (Protect PI information) ......................................... 300.623.

PERSONNEL QUALIFICATIONS .................................. 300.156.

PERSONNEL SHORTAGES
- Use of SEA allocations to meet ............................................. 300.704(b)(4)(vii).

PHYSICAL EDUCATION.
- Definition ................................................................................. 300.39(b)(2).
- State eligibility requirement .................................................... 300.106.

PHYSICAL THERAPY (Definition) ........................................... 300.34(c)(9).

PLACEMENTS (A–Co)
- Adult prisons (CWDs in):
  - Last educational placement before incarceration ........................ 300.102(a)(2)(i).
  - Modifications to IEPs and placements ................................. 300.324(d)(2).
- Alternative means of meeting participation (Regarding “Placement meetings”).
- Change in placement: Graduation ........................................... 300.102(a)(3)(iii).
- Child’s placement during pendency of any complaint .
  - See also “Pendency” (Child’s status during proceedings) .... 300.518.
Children with disabilities in adult prisons: Placements regarding (see §§ 300.102(a)(2)(1), 300.324(d)(2)), 300.115.

Continuum of alternative placements (Continuum—LRE).

PLACEMENT(S) (Cu–L)

Current placement (see § 300.530(b)(2), (d))

Current “Educational placement:”

Change of placements because of disciplinary removals. 300.536.

Child’s status during proceedings 300.518(a).

Disciplinary changes in placement 300.530(c).

Discipline procedures and placements (see §§ 300.530 through 300.536).

Educational placements (Parents in any group that makes placement decisions), 300.327.

Graduation: A change in placement (Exception to FAPE). 300.102(a)(3)(iii).

Last educational placement (Before incarceration) 300.102(a)(2)(i).

Least restrictive environment (LRE) (see §§ 300.114 through 300.120)

Notification: LEA must notify parents of decision to change placement. 300.530(h).

PLACEMENT(S) (O–Z)

Pendency (Child’s status during proceedings) 300.518.

Placement of children by parents if FAPE is at issue 300.148.

Placements (LRE) 300.116.

Requirements for unilateral placement by parents of CWDs in private schools (In “Procedural safeguards notice”). 300.504(c)(9).

State funding mechanism (Must not result in placements that violate LRE). 300.114(b)(1).

POLICY: POLICIES AND PROCEDURES

Condition of assistance (LEA eligibility) 300.200.

Consistency with State policies 300.201.

See also §§ 300.200 through 300.213

Eligibility for assistance (State) 300.100.

Exception for prior policies on file:

With the SEA 300.220.

With the Secretary 300.176(a).

FAPE policy 300.101(a).

Joint establishment of eligibility (Requirements) 300.223.

Modifications of:

LEA or State agency policies 300.220(b).

Required by Secretary 300.176(c).

State policies (By a State) 300.176(b).

Public participation 300.165.

Secretary of the Interior 300.708.

O Required by Secretary 300.709.

Submission of information 300.708.

PREPONDERANCE OF EVIDENCE

Civil action 300.516(c)(3).

PRESCHOOL GRANTS

Allocations to LEAs 300.816.

O Subgrants to LEAs 300.815.

Other State-level activities 300.814.

Provide early intervention services in accordance with Part C of the Act. 300.814(e).

O Service coordination or case management 300.814(f).
### Pt. 300, App. E  
34 CFR Ch. III (7-1-12 Edition)

- State administration .................................................... 300.813.
- Use of funds for administration of Part C 300.813(b).

#### PRIOR NOTICE
- By public agency ....................................................... 300.503.
- Notice required before a hearing on a due process complaint.
- Procedural safeguards notice 300.504.

#### PRIOR NOTICE
- By public agency ....................................................... 300.503.
- Notice required before a hearing on a due process complaint.
- Procedural safeguards notice 300.504.

#### PRIOR NOTICE
- By public agency ....................................................... 300.503.
- Notice required before a hearing on a due process complaint.
- Procedural safeguards notice 300.504.

#### PRISONS (See “Adult prisons”)

#### PRIVATE INSURANCE
- Children with disabilities who are covered by .......... 300.154(e).
  - Proceeds from public benefits or insurance or private insurance. 300.154(g).
  - Use of Part B funds 300.154(f).

#### PRIVATE SCHOOLS AND FACILITIES
- Applicability of this part to State and local agencies:
  - CWDs placed in private schools by parents under §300.148.
  - CWDs referred to or placed in private schools by public agency.

#### PRIVATE SCHOOL CHILDREN ENROLLED BY THEIR PARENTS
- Placement of children by parents when FAPE is at issue.
- See “Parentally-placed private school children with disabilities”

#### PRIVATE SCHOOL PLACEMENTS BY PUBLIC AGENCIES (A–D)
- Applicability of this part to private schools 300.2(c)(1).
- Applicable standards (SEA to disseminate to private schools involved).

#### PRIVATE SCHOOL PLACEMENTS BY PUBLIC AGENCIES (E–Z)
- Implementation by SEA (Must monitor, provide standards, etc.). 300.147.
- Monitor compliance 300.147(a).
- Input by private schools (Provide for) 300.147(b).
- Responsibility of SEA 300.146.

#### PROCEDURAL SAFEGUARDS: DUE PROCESS PROCEDURES (A–C)
- Additional disclosure of information (5 business days before hearing).
- Agency responsible for conducting hearing 300.511(b).
- Appeal of hearing decisions; impartial review 300.514(b).
- Attorneys’ fees 300.517.
- Child’s status during proceedings 300.518.
- Civil action 300.516.
- Consent (Definition) 300.9.
- Court (See “Court(s)”) 300.512.

#### PROCEDURAL SAFEGUARDS: DUE PROCESS PROCEDURES (D–H)
- Electronic mail (Parent may elect to receive notices by).
- Evaluation (Definition) 300.15.
- Evaluations: Hearing officer requests for 300.502(d).
- Finality of decision; appeal; impartial review 300.514.
- Findings and decision to advisory panel and public 300.513(d).
- Hearing rights 300.512.
PROCEDURAL SAFEGUARDS: DUE PROCESS PROCEDURES (I–Pa)
• Impartial due process hearing ................................. 300.511.
• Impartial hearing officer ......................................... 300.511(c).
• Impartiality of mediator ........................................... 300.506(c).
• Independent educational evaluation .......................... 300.502.
  O Definition .......................................................... 300.502(a)(3)(1).
• Jurisdiction of district courts .................................... 300.516(d).
  O See “Court(s)”
• Mediation .............................................................. 300.506.
  O Opportunity to meet with a disinterested party ... 300.506(b)(2).
• Model form to assist parties in filing a due process or
  State complaint.
• Notice required before a hearing on a due process
  complaint.
• Opportunity to examine records ............................... 300.501(a).
• Parental consent ..................................................... 300.300.
• Parent-initiated evaluations ...................................... 300.502(c).
• Parent involvement in placement decisions ................. 300.501(c).
• Parent participation in meetings of the IDEA ... 300.501(b).
• Parental rights at hearings ....................................... 300.512(c).
• Parent right to evaluation at public expense ............... 300.502(b).
  O Public expense (Definition) ................................. 300.502(a)(3)(ii).
PROCEDURAL SAFEGUARDS: DUE PROCESS PROCEDURES (Pe–Z)
• Pendency .................................................................... 300.518.
• Personally identifiable (Definition) ......................... 300.32.
• Prior notice by public agency ................................. 300.503.
• Procedural safeguards notice ................................. 300.504.
• Prohibition on introduction of undisclosed evidence 5
  business days before hearing.
• Record of hearing ................................................... 300.512(a)(4).
• Resolution process .................................................. 300.510.
• SEA implementation of . ........................................... 300.150.
• See “Civil Action Proceedings,” “Court(s),” “Hearing
  Officer(s),” “Timelines”
• Surrogate parents ................................................... 300.519.
• Timelines and convenience of hearings ..................... 300.515.
• Transfer of parental rights at age of majority ............ 300.520.
PROCEDURAL SAFEGUARDS NOTICE .......................... 300.504.
• Internet Web site (Notice on) ................................... 300.504(b).
PROCEEDS FROM PUBLIC BENEFITS OR INSURANCE OR PRIVATE INSURANCE.
• Program income (Not treated as proceeds from
  insurance). .............................................................. 300.154(g.)
PROTOCOL MODIFICATIONS OR SUPPORTS (IEP content).
• Proportionate share calculation (See appendix B) .... 300.320(a)(4).
PROTECTIONS FOR CHILDREN NOT DETERMINED ELIGIBLE (Discipline).
• Psychological services (Definition) ......................... 300.34(c)(10).
PUBLIC AGENCY (Definition) ........................................ 300.33.
PUBLIC BENEFITS OR INSURANCE ............................. 300.154(d).
PUBLIC BENEFITS OR INSURANCE OR PRIVATE INSURANCE (Proceeds from).
PUBLIC CHARTER SCHOOLS (See “Charter schools”)
PUBLIC EXPENSE (Definition under IEE) .......................... 300.502(a)(3)(ii).
PUBLIC HEARINGS (On policies)
• State eligibility ...................................................... 300.165(a).
• Secretary of the Interior ......................................... 300.708(g).
PUBLIC INFORMATION (LEA) ....................................... 300.212.
PUBLIC NOTICE
• LEA and State agency compliance .............................. 300.222(b).
• Public attention (If State has received a notice under § 300.603).
PURPOSES (Of this Part 300) .......................................... 300.1.
QUALIFIED PERSONNEL ............................................. 300.156.
• Related services definitions (see § 300.34(c)(2), (c)(5), (c)(6), (c)(7), (c)(9), (c)(12), (c)(13)).
RATE OF INFLATION (In the Consumer Price Index for All Urban Consumers) (see §§ 300.702(b), 300.704(a)(2)(ii), 300.704(b)(2), 300.812(b)(2)).
REALLOCATION OF LEA FUNDS (If SEA determines LEA adequately providing FAPE) (see §§ 300.705(c), 300.817).
RECORDS (A–D)
• Access rights (Parents' right to inspect) ...................... 300.613.
  O Fees for records .................................................. 300.617.
  O Records on more than one child ............................. 300.615.
• Civil action (Court shall receive records) .................... 300.516(c)(1).
• Conducting IEP Team meetings without parents (Records of attempts to convince parents).
Confidentiality (See "Confidentiality")
• Consent to release records ........................................ 300.622(b).
Disciplinary records:
  O Determination that behavior not manifestation ... 300.530(e).
  O Disciplinary information ........................................ 300.229(c).
  O Referral to and action by law enforcement and judicial authorities. 300.535.
RECORDS (E–Z)
• Education records (Definition) ................................. 300.611(b).
• Of parentally-placed private school CWDs (LEA to SEA). 300.132(c).
• Opportunity to examine records ................................. 300.501(a).
• Procedural safeguards notice (Access to education records).
• Record of access ..................................................... 300.614.
• See also "Transfer during academic year"
RECREATION (Definition) ........................................... 300.34(c)(11).
REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.
REEVALUATION
• Frequency of occurrence ........................................... 300.303(b).
• Parental consent required before conducting .............. 300.300(c)(1).
  O If parent fails to consent ..................................... 300.300(c)(1)(ii).
• Parental consent not required for:
  O Administering a test that all children take .......... 300.300(d)(1)(i).
  O Reviewing existing data ..................................... 300.300(d)(1)(i).
• Parent refusal to consent ......................................... 300.300(c)(1)(ii).
• Review of existing evaluation data ............................ 300.305(a).
• Revision of IEP (To address reevaluation) .................. 300.324(b)(1)(ii).
REFERRAL (A–M)
• Discipline:
Referral to and action by law enforcement and judicial authorities

Enforcement (Referral for) 300.535.

Indian children (Referral for services or further diagnosis) 300.604(b)2(vi).

Medical attention (Referral for):
- Audiology 300.34(c)(1)(ii).
- Speech-language pathology services 300.34(c)(15)(iii).

Nonacademic and extracurricular services (Referral to agencies regarding assistance to individuals with disabilities) 300.107(b).

Prior notice (If not initial referral for evaluation) 300.503(b)(4).

Private school placement when FAPE is at issue (Reimbursement when no referral by public agency) 300.148(c).

Procedural safeguards notice (Upon initial referral for evaluation) 300.504(a)(1).

Referral to and action by law enforcement and judicial authorities 300.535.

Access to IEP 300.323(d).

IEP Team member 300.321(a)(2).

Participate in IEP development 300.324(a)(3).
- Behavioral interventions 300.324(a)(3)(i).
- Supplementary aids and services 300.324(a)(3)(ii).

Applicable regulations (Secretary of the Interior) 300.716.

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

Assistive technology service (see § 300.6(d), (f)) 300.34(c)(12).

Rehabilitation Act of 1973 (see §§ 300.34(c)(12), 300.516(e)) 300.34(c)(12).

Rehabilitation counseling services:
- Definition 300.34(c)(12).
- In vocational rehabilitation (VR) programs 300.34(c)(12).

Transition services (State VR agency responsibility) 300.324(c)(2).

Reimbursement when FAPE is at issue:
- Limitation on reimbursement 300.148(d).
- Reimbursement for private school placement 300.148(b).
- Subject to due process procedures 300.148(b).
- Reimbursement by non-educational public agency 300.154(b)(2).
- Reimbursement by SEA to LEA 300.704(c)(7).

Definition 300.34.

Observations by teachers and related services providers regarding existing evaluation data 300.305(a)(1)(ii).

Definition 300.34.

Observations by teachers and related services providers regarding existing evaluation data 300.305(a)(1)(ii).

Religious schools
- Child find for parentally-placed private school children 300.131(a).
Pt. 300, App. E  34 CFR Ch. III (7-1-12 Edition)

• Child find for out-of-State children ........................................ 300.131(f).
• Formula for LEA expenditures on ........................................ 300.139(a).
• See “Parentally-placed private school children with disabilities”
• Services plan for each child served ..................................... 300.137(c).
• Services provided on-site .................................................. 300.139(a).

REPORTS FOR DENIAL OF APPROPRIATE SERVICES.

REMEDIES FOR DENIAL OF APPROPRIATE SERVICES.

REMEDIES FOR DENIAL OF APPROPRIATE SERVICES.

REPORTS (A–C)
• Annual report of children served ..................................... 300.640.
  O See also §§ 300.641 through 300.646
• Annual report to Secretary of Interior by advisory board on Indian children.
• Biennial report (Indian tribes) ........................................ 300.712(e).
• Child count (Annual report of children served) .................. 300.641.

REPORTS (D–Z)
• Evaluation reports to parents .......................................... 300.306(a)(2).
• Monitoring compliance of publicly placed children in private schools (e.g., written reports).
• Monitoring reports (Waiver of nonsupplanting requirement).
• Performance goals (Progress reports) ............................. 300.157(c).
• Secretary’s report to States regarding 25% of funds .......... 300.812(b).

REPORT CARDS ............................................................. 300.320(a)(3)(ii).

REPORTING A CRIME to law enforcement and judicial authorities.

RESIDENTIAL PLACEMENTS ........................................ 300.104.

REVOKE CONSENT AT ANY TIME (In definition of “Consent”).

RHEUMATIC FEVER .................................................. 300.8(c)(9)(i).

RISK OF LOSS OF ELIGIBILITY FOR INSURANCE .... 300.154(d)(2)(I)(I)(D).

SCHOOL DAY
• Definition ......................................................... 300.11(c).
• See “Timelines,” “Timelines—Discipline”

SCHOOL HEALTH SERVICES AND SCHOOL NURSE SERVICES.

SCHOOL PERSONNEL
• Content of IEP .................................................. 300.320(a)(4).
• Development, review, and revision of IEP ......................... 300.324(a)(4).
• Disciplinary authority .................................................. 300.530.
• Use of private school personnel .................................... 300.142(b).
• Use of public school personnel .................................... 300.142(a).

SCHOOLWIDE PROGRAMS ........................................ 300.206.

SEA RESPONSIBILITY
• For all education programs ........................................ 300.149.
• For direct services ..................................................... 300.227.
• For each parentally-placed private school child designated to receive services.
• For impartial review ................................................... 300.514(b)(2).
• Prohibition of LEA from reducing maintenance of effort.

SECRETARY
• Determination that a State is eligible ........................... 300.178.
• Notice and hearing before determining that a State is not eligible.
• Waiver of nonsupplanting requirement ........................... 300.164.
SECRETARY OF THE INTERIOR

- Advisory board establishment ........................................ 300.714.
- Annual report by advisory board ........................................ 300.715.
- Biennial report (By tribe or tribal organization) ...................... 300.712(e).
- Eligibility (see §§ 300.708 through 300.716)
- Payments for:
  - Child aged 3 through 5 ............................................... 300.712.
  - Child find and screening ................................................ 300.712(d).
- Plan for coordination of services ........................................ 300.712.
- Use of funds for early intervening services .......................... 300.711.
- SEPARATION—DIVORCE (Authority to review records) ......... 300.613(c).
- SERVICES PLAN for parentally-placed private school children (see §§ 300.132(b), 300.137(c) 300.138(b))
- SERVICES THAT ALSO BENEFIT NONDISABLED CHILDREN.
- SHORTAGE OF PERSONNEL (Policy to address) ............... 300.704(b)(4)(vii).
- SHORT TERM OBJECTIVES OR BENCHMARKS ................. 300.320(a)(2)(ii).
- SHOULD HAVE KNOWN (Regarding due process complaint) .... 300.511(e).
- SHOW CAUSE HEARING .................................................... 300.194.
- Decision ........................................................................... 300.195.
- Right to legal counsel ...................................................... 300.194(a)(3).
- SICKLE CELL ANEMIA ..................................................... 300.8(c)(9)(1).
- SLD (See “Specific Learning Disability’’)
- SOCIAL WORK SERVICES IN SCHOOLS (Definition) .... 300.34(b)(15).
- SPECIAL FACTORS (IEP Team) ....................................... 300.324(a)(2).
- SPECIAL EDUCATION (Definition) .................................. 300.39.
- SPECIAL EDUCATION PROVIDER ..................................... 300.321(a)(3).
- SPECIAL EDUCATION TEACHER
  - IEP accessible to .......................................................... 300.323(d).
  - On IEP Team ................................................................ 300.321(a)(3).
  - Requirements regarding highly qualified .......................... 300.18.
- SPECIAL RULE
  - Adjustments to local efforts ........................................... 300.205(d).
  - For child’s eligibility determination .................................. 300.306(b).
  - For increasing funds ...................................................... 300.704(e).
  - Methods of ensuring services .......................................... 300.154(c).
  - LEA high cost fund ....................................................... 300.704(c).
  - Regarding outlying areas and freely associated States ...... 300.703(a)(3).
  - Regarding transfer of rights .......................................... 300.520(b).
  - Regarding use of FY 1999 amount .................................. 300.703(b).
  - State advisory panel (Parent members) ........................... 300.158(b).
- SPECIFIC LEARNING DISABILITY
  - Definition ...................................................................... 300.8(c)(10).
  - Evaluation requirements and report (see §§ 300.306(a), 300.307 through 300.311)
  - Other alternative research-based procedures .................... 300.307(a)(3).
  - Response to scientific, research-based intervention (see §§ 300.307(a)(2), 300.309(a)(2)(i), 300.311(a)(7))
  - Scientifically based research:
    - O Definition .......................................................... 300.35.
    - O Enforcement ......................................................... 300.604(a)(1)(ii).
  - Severe discrepancy ...................................................... 300.307(a)(1).
- SPEECH-LANGUAGE PATHOLOGY SERVICES
  - Definition ..................................................................... 300.34(b)(15).
• Speech or language impairment (Definition) .......... 300.8(c)(11).

STATE
• Definition ................................................................. 300.40.
• Special definition for grants ........................................ 300.717(c).
• Sovereign immunity ..................................................... 300.177.

STATE ADMINISTRATION (Use of funds for) (see §§300.704(a), 300.812(a)).

STATE ADVISORY PANEL ............................................ 300.167
• Due process hearings (Findings and decisions to State advisory panel) (see §§300.513(d)(1), 300.514(c)(1))
• Duties ................................................................. 300.169.
• Establishment ......................................................... 300.167.
• Membership ........................................................... 300.168.
• Waiver of nonsupplant requirement (State has consulted with advisory panel regarding provision of FAPE). 300.164(c)(4).

STATE AGENCIES
• Applicability of Part B to other State agencies ....... 300.2(b)(1)(iii).
• Compliance (LEA and State agency) ......................... 300.222.
• Eligibility (LEA and State agency):
  General conditions (see §§300.200 through 300.213) 300.221.
• Notification of LEA or State agency in case of ineligibility. 300.221.
• State advisory panel (Membership) ......................... 300.168.
• State agency eligibility ........................................... 300.228.
• State Medicaid agency ........................................... 300.154(a)(1), (h).

STATE COMPLAINT PROCEDURES (see §§300.151 through 300.153)
• See “Complaint(s): State complaint procedures”

STATE ELIGIBILITY
• Condition of assistance ............................................. 300.100.
• Department procedures (see §§300.178 through 300.186)
• Determination of eligibility (By the Secretary) .......... 300.178.
• General conditions .................................................. 300.100.
• Notice and hearing before determining that a State is not eligible. 300.179.
• Specific conditions (see §§300.101 through 300.176)

STATE JUVENILE AND ADULT CORRECTIONAL FACILITIES.
• See also “Correctional facilities,” “Adult prisons”

STATE-LEVEL ACTIVITIES (With Part B funds) ........ 300.704.
STATE-LEVEL NONSUPPLANTING ............................. 300.162(c).
• Waiver by Secretary ................................................ 300.162(c)(2).
• Waiver of requirement ............................................. 300.164.

STATE MAINTENANCE OF EFFORT ............................. 300.163.

SUBGRANT(S)
• State agency eligibility ........................................... 300.228.
• To LEAs .............................................................. 300.705(a).

STATE MEDICAID AGENCY
• Methods of ensuring services ................................... 300.154(a)(1).
• See also “Medicaid”

STATE SCHOOLS
• Applicability of this part to schools for children with deafness or blindness. 300.2(b)(1)(iii).

STATE VOCATIONAL REHABILITATION AGENCY
(See “Rehabilitation”)

160
STAY-PUT (Child’s status during proceedings) .................................................. 300.518.
• See also “Pendency”

SUBSTANTIAL LIKELIHOOD OF INJURY (Discipline) .......................... 300.532(a).

SUPPORT SERVICES (see §§ 300.704(b)(4)(i), 300.814(a))

SUPPORT SERVICES (see §§ 300.704(b)(4)(i), 300.814(a))
O Disclose evaluations before hearings (5 business days).

TIMELINES (E–H)

• Hearing procedures (State eligibility: 30 days) ............ 300.179(b)(3).

• Hearing rights:
  O Disclosure of evaluations (At least 5 business days before hearing).
  O Prohibit introduction of evidence not disclosed (At least 5 business days before hearing).
  O Reviews (Decision not later than 30 days) .............. 300.512(a)(3).

TIMELINES (I–Z)

• IEP (Initial meeting: 30 days) ................................. 300.323(c)(1).
• Initial evaluation (60 days) ...................................... 300.301(c)(1).
• Parent notice before private placement (At least 10 business days).
• Show cause hearing .............................................. 300.194(g).
• Decision ............................................................... 300.195(a)(1).
• State eligibility: Department hearing procedures (see §§ 300.179(b)(3), 300.181(b), 300.182(d), (e), (g), (k), 300.184).
• Timelines and convenience of hearings and reviews .... 300.515.

TIMELINES—DISCIPLINE (A–P)

• Authority of hearing officer (May order change of placement for not more than 45 school days).

• Authority of school personnel:
  O Change of placement for not more than 45 consecutive days for weapons or drugs.
  O Removal of a child for not more than 10 school days.

• Change of placement for disciplinary removals:
  O Of more than 10 consecutive school days ............ 300.536(a)(1).
  O Because series of removals total more than 10 school days.

• Due process hearing request .................................. 300.507(a)(2).

• Expedited due process hearings:
  O Conducted within 20 days ................................. 300.532(c)(2).
  O Decision within 10 days ................................. 300.532(c)(3)(i).

• Hearing officer (Order change of placement for not more than 45 days).
  O Manifestation determination review (Conducted in no more than 10 school days).
  O Placement during appeals (Not longer than 45 days) 300.532(b)(2)(ii).

TIMELINES—DISCIPLINE (Q–Z)

• Removals for not more than:
  O 10 school days (By school personnel) ............... 300.530(b).
  O 45 days (To interim alternative educational setting).
    By hearing officer (For substantial likelihood of injury to child or others).
    By school personnel (For weapons or drugs) (see § 300.530(g)(1), (g)(2)).

TIMETABLE: Full educational opportunity goal (FEOG).

TRAINING

• Assistive technology services (see §300.6(e), (f))
• Confidentiality procedures (Personnel using personally identifiable information must receive training).
• Parent counseling and training .............................. 300.34(b)(8).
• Technical assistance and training for teachers and administrators.
• Travel training (see §300.39(a)(2)(ii), (b)(4))

TRANSFER DURING ACADEMIC YEAR
• Assessments coordinated between public agencies ...... 300.304(c)(5).
• New school district responsibilities (see §300.323(e), (f))
• Transmittal of records .................................................. 300.323(g).

TRANSFER OF PARENTAL RIGHTS ............................. 300.520.
• IEP requirement ........................................................... 300.320(c).
• Special rule ................................................................. 300.520(b).
• To children in correctional institutions ...................... 300.520(a)(2).

TRANSITION FROM PART C TO PART B ...................... 300.124.

TRANSITION SERVICES (NEEDS)
• Agency responsibilities for (see §§300.321(b)(3), 300.324(c)(2))
• Alternative strategies .................................................. 300.324(c)(1).
• Child participation in IEP Team meetings .................. 300.321(b)(1).
• Definition ................................................................. 300.43.
• IEP requirement (Statement of)
  O Transition service needs ........................................ 300.320(b).
  O Needed transition services ...................................... 300.43(b).
• State rehabilitation agency ........................................... 300.324(c)(2).

TRANSMITTAL OF RECORDS TO LAW ENFORCE-
MENT AND JUDICIAL AUTHORITIES.

TRANSPORTATION
• Definition ................................................................. 300.34(c)(16).
• Nonacademic services ................................................... 300.107(b).
• Of private school children ............................................ 300.139(b).

TRAUMATIC BRAIN INJURY (Definition) ..................... 300.8(c)(12).

TRAVEL TRAINING (see §300.39(a)(2)(ii), (b)(4))
• Definition ................................................................. 300.39(b)(4).

TREATMENT OF CHARTER SCHOOLS AND THEIR
STUDENTS.

TREATMENT OF FEDERAL FUNDS IN CERTAIN
YEARS.

UNIVERSAL DESIGN
• Definition ................................................................. 300.44.
• Support technology with universal design principles .. 300.704(b)(4)(v).

USE OF AMOUNTS (LEA) .................................................. 300.202.

USE OF FUNDS BY LEAs
• Coordinated services system ........................................ 300.208(a)(2).
• For school-wide programs ............................................ 300.206.
• For services and aids that also benefit nondisabled
  children. ................................................................. 300.208(a)(1).
• For use in accordance with Part B ............................... 300.705.

USE OF FUNDS BY STATES (SEAs) (A–C)
• Administering Part B State activities ........................... 300.704(a)(1).
• Administering Part C (If SEA is Lead Agency) ............ 300.704(a)(4).
• Administrative costs of monitoring and complaint in-
  vestigations. ........................................................... 300.704(b)(3)(i).
• Allowable costs ......................................................... 300.704(b)(3).
• Amount for State administration ................................. 300.704(a).
• Annual description of use of Part B funds ................. 300.171.
• Assist LEAs in meeting personnel shortages .............. 300.704(b)(4)(vii).
• Complaint investigations ............................................. 300.704(b)(3)(i).
• Coordination of activities with other programs .......... 300.704(b)(1).

USE OF FUNDS BY STATES (SEAs) (D–Z)
<table>
<thead>
<tr>
<th>Topic</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct and support services</td>
<td>300.704(b)(4)(i)</td>
</tr>
<tr>
<td>High cost fund</td>
<td>300.704(c)</td>
</tr>
<tr>
<td>Mediation process</td>
<td>300.704(b)(3)(ii)</td>
</tr>
<tr>
<td>Monitoring</td>
<td>300.704(b)(3)(i)</td>
</tr>
<tr>
<td>Personnel preparation, professional development and training (see §300.704(b)(4)(i), (b)(4)(xi))</td>
<td></td>
</tr>
<tr>
<td>State plan</td>
<td>300.704(c)(3)(i)</td>
</tr>
<tr>
<td>Statewide coordinated services system</td>
<td>300.814(d)</td>
</tr>
<tr>
<td>Support and direct services</td>
<td>300.704(b)(4)(i)</td>
</tr>
<tr>
<td>Technical assistance:</td>
<td></td>
</tr>
<tr>
<td>O To LEAs</td>
<td>300.704(b)(4)(xi)</td>
</tr>
<tr>
<td>O To other programs that provide services</td>
<td>300.704(a)(1)</td>
</tr>
<tr>
<td>USE OF FUNDS BY SECRETARY OF THE INTERIOR (see §§ 300.707 through 300.716)</td>
<td></td>
</tr>
<tr>
<td>By Indian tribes:</td>
<td></td>
</tr>
<tr>
<td>O For child find for children aged 3 through 5</td>
<td>300.712(d)</td>
</tr>
<tr>
<td>O For coordination of assistance for services</td>
<td>300.712(a)</td>
</tr>
<tr>
<td>For administrative costs</td>
<td>300.710(a)</td>
</tr>
<tr>
<td>USE OF SEA ALLOCATIONS</td>
<td>300.704</td>
</tr>
<tr>
<td>Inapplicability of requirements that prohibit commingling and supplanting of funds</td>
<td>300.704(d)</td>
</tr>
<tr>
<td>VISUAL IMPAIRMENT INCLUDING BLINDNESS (Definition)</td>
<td>300.8(c)(13)</td>
</tr>
<tr>
<td>VOCATIONAL EDUCATION</td>
<td></td>
</tr>
<tr>
<td>Definition</td>
<td>300.39(b)(5)</td>
</tr>
<tr>
<td>In definition of “Special education”</td>
<td>300.39(a)(2)(iii)</td>
</tr>
<tr>
<td>Program options</td>
<td>300.110</td>
</tr>
<tr>
<td>Transition services</td>
<td>300.320(b)(1)</td>
</tr>
<tr>
<td>VOCATIONAL REHABILITATION (See “Rehabilitation”)</td>
<td></td>
</tr>
<tr>
<td>VOLUNTARY DEPARTURE OF PERSONNEL (Exception to LEA maintenance of effort)</td>
<td>300.204(a)</td>
</tr>
<tr>
<td>WAIVER(S)</td>
<td></td>
</tr>
<tr>
<td>For exceptional and uncontrollable circumstances (State maintenance of effort)</td>
<td>300.163(c)</td>
</tr>
<tr>
<td>“In whole or in part”</td>
<td>300.164(e)</td>
</tr>
<tr>
<td>Public benefits or insurance (Risk of loss of eligibility for home and community-based waivers)</td>
<td>300.154(d)(2)(iii)(D)</td>
</tr>
<tr>
<td>State-level nonsupplanting</td>
<td>300.162(c)</td>
</tr>
<tr>
<td>State maintenance of effort</td>
<td>300.163</td>
</tr>
<tr>
<td>State’s procedures for monitoring</td>
<td>300.164(c)(2)(ii)(B)</td>
</tr>
<tr>
<td>Waiver procedures</td>
<td>300.164</td>
</tr>
<tr>
<td>WARD OF THE STATE</td>
<td></td>
</tr>
<tr>
<td>Appointment of surrogate parent</td>
<td>300.519(c)</td>
</tr>
<tr>
<td>Definition</td>
<td>300.45</td>
</tr>
<tr>
<td>See definition of “Parent”</td>
<td>300.30(a)(3)</td>
</tr>
<tr>
<td>See “Surrogate parents”</td>
<td>300.519(a)(3)</td>
</tr>
<tr>
<td>WEAPON (Definition)</td>
<td>300.530(1)(4)</td>
</tr>
<tr>
<td>WHEN IEPS MUST BE IN EFFECT</td>
<td>300.323</td>
</tr>
</tbody>
</table>
PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

Subpart A—General

PURPOSE AND APPLICABLE REGULATIONS

Sec.
303.1 Purpose of the early intervention program for infants and toddlers with disabilities.
303.2 Eligible recipients of an award and applicability of this part.
303.3 Applicable regulations.

DEFINITIONS USED IN THIS PART

303.4 Act.
303.5 At-risk infant or toddler.
303.6 Child.
303.7 Consent.
303.8 Council.
303.9 Day.
303.10 Developmental delay.
303.11 Early intervention service program.
303.12 Early intervention service provider.
303.13 Early intervention services.
303.14 Elementary school.
303.15 Free appropriate public education.
303.16 Health services.
303.17 Homeless children.
303.18 Include; including.
303.19 Indian; Indian tribe.
303.20 Individualized family service plan.
303.21 Infant or toddler with a disability.
303.22 Lead agency.
303.23 Local educational agency.
303.24 Multidisciplinary.
303.25 Native language.
303.26 Natural environments.
303.27 Parent.
303.28 Parent training and information center.
303.29 Personally identifiable information.
303.30 Public agency.
303.31 Qualified personnel.
303.32 Scientifically based research.
303.33 Secretary.
303.34 Service coordination services (case management).
303.35 State.
303.36 State educational agency.
303.37 Ward of the State.

Subpart B—State Eligibility for a Grant and Requirements for a Statewide System

GENERAL AUTHORITY AND ELIGIBILITY

303.100 General authority.
303.101 State eligibility—requirements for a grant under this part.

303.102 State conformity with Part C of the Act and Abrogation of State sovereign immunity.

303.103 Abrogation of State sovereign immunity.

EQUIPMENT AND CONSTRUCTION

303.104 Acquisition of equipment and construction or alteration of facilities.

POSITIVE EFFORTS TO EMPLOY AND ADVANCE QUALIFIED INDIVIDUALS WITH DISABILITIES

303.105 Positive efforts to employ and advance qualified individuals with disabilities.

MINIMUM COMPONENTS OF A STATEWIDE SYSTEM

303.110 Minimum components of a statewide system.
303.111 State definition of developmental delay.
303.112 Availability of early intervention services.
303.113 Evaluation, assessment, and nondiscriminatory procedures.
303.114 Individualized family service plan (IFSP).
303.115 Comprehensive child find system.
303.116 Public awareness program.
303.117 Central directory.
303.118 Comprehensive system of personnel development (CSPD).
303.119 Personnel standards.
303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities.
303.121 Policy for contracting or otherwise arranging for services.
303.122 Reimbursement procedures.
303.123 Procedural safeguards.
303.124 Data collection.
303.125 State interagency coordinating council.
303.126 Early intervention services in natural environments.

Subpart C—State Application and Assurances

GENERAL

303.200 State application and assurances.

APPLICATION REQUIREMENTS

303.201 Designation of lead agency.
303.202 Certification regarding financial responsibility.
303.203 Statewide system and description of services.
303.204 Application’s definition of at-risk infants and toddlers and description of services.
303.205 Description of use of funds.
303.206 Referral policies for specific children.
303.207 Availability of resources.
303.208 Public participation policies and procedures.
303.209 Transition to preschool and other programs.
303.210 Coordination with Head Start and Early Head Start, early education, and child care programs.
303.211 State option to make services under this part available to children ages three and older.
303.212 Additional information and assurances.

ASSURANCES
303.220 Assurances satisfactory to the Secretary.
303.221 Expenditure of funds.
303.222 Payor of last resort.
303.223 Control of funds and property.
303.224 Reports and records.
303.225 Prohibition against supplanting; indirect costs.
303.226 Fiscal control.
303.227 Traditionally underserved groups.

SUBSEQUENT APPLICATIONS AND MODIFICATIONS, ELIGIBILITY DETERMINATIONS, AND STANDARD OF DISAPPROVAL
303.230 Subsequent State application and modifications of application.
303.229 Determination by the Secretary that a State is eligible.
303.230 Standard for disapproval of an application.

DEPARTMENT PROCEDURES
303.231 Notice and hearing before determining that a State is not eligible.
303.232 Hearing Official or Panel.
303.233 Hearing procedures.
303.234 Initial decision; final decision.
303.235 Filing requirements.
303.236 Judicial review.

Subpart D—Child Find, Evaluations and Assessments, and Individualized Family Service Plans

GENERAL
303.300 General.

PRE-REFERRAL PROCEDURES—PUBLIC AWARENESS PROGRAM AND CHILD FIND SYSTEM
303.301 Public awareness program—information for parents.
303.302 Comprehensive child find system.

REFERRAL PROCEDURES
303.303 Referral procedures.
303.304–303.309 [Reserved]

303.310 Post-referral timeline (45 days).
303.311–303.319 [Reserved]
303.320 Screening procedures (optional).
303.321 Evaluation of the child and assessment of the child and family.
303.322 Determination that a child is not eligible.

INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)
303.340 Individualized family service plan—general.
303.341 [Reserved]
303.342 Procedures for IFSP development, review, and evaluation.
303.343 IFSP Team meeting and periodic review.
303.344 Content of an IFSP.
303.345 Interim IFSPs—provision of services before evaluations and assessments are completed.
303.346 Responsibility and accountability.

Subpart E—Procedural Safeguards

GENERAL
303.400 General responsibility of lead agency for procedural safeguards.

CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION AND EARLY INTERVENTION RECORDS
303.401 Confidentiality and opportunity to examine records.
303.402 Confidentiality.
303.403 Definitions.
303.404 Notice to parents.
303.405 Access rights.
303.406 Record of access.
303.407 Records on more than one child.
303.408 List of types and locations of information.
303.409 Fees for records.
303.410 Amendment of records at a parent’s request.
303.411 Opportunity for a hearing.
303.412 Result of hearing.
303.413 Hearing procedures.
303.414 Consent prior to disclosure or use.
303.415 Safeguards.
303.416 Destruction of information.
303.417 Enforcement.

PARENTAL CONSENT AND NOTICE
303.420 Parental consent and ability to decline services.
303.421 Prior written notice and procedural safeguards notice.

SURROGATE PARENTS
303.422 Surrogate parents.

DISPUTE RESOLUTION OPTIONS
303.430 State dispute resolution options.
§ 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—
§ 303.2 Eligible recipients of an award and applicability of this part.

(a) 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 United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(b) Applicability of this part.

(1) The provisions of this part apply to—

(i) The State lead agency and any EIS provider that is part of the statewide system of early intervention, regardless of whether that EIS provider receives funds under part C of the Act; and

(ii) All children referred to the part C program, including infants and toddlers with disabilities consistent with the definitions in §§303.6 and 303.21, and their families.

(2) The provisions of this part do not apply to any child with a disability receiving a free appropriate public education or FAPE under 34 CFR part 300.

(Authority: 20 U.S.C. 1401(31), 1434, 1435(a)(10)(A))

§ 303.3 Applicable regulations.

(a) The following regulations apply to this part:

(1) The regulations in this part 303.

(2) The Education Department General Administrative Regulations (EDGAR), including 34 CFR parts 76 (except for §76.103), 77, 79, 80, 81, 82, 84, 85, and 86.

(b) In applying the regulations cited in paragraph (a)(2) of this section, any reference to—

(1) State educational agency means the lead agency under this part; and

(2) Education records or records means early intervention records.

(Authority: 20 U.S.C. 1221(b), 1221e–3, 1431–1444)

DEFINITIONS USED IN THIS PART

§ 303.4 Act.

Act means the Individuals with Disabilities Education Act, as amended.

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

§ 303.5 At-risk infant or toddler.

At-risk infant or toddler means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual. At the State’s discretion, at-risk infant or toddler may include an infant or toddler who is at risk of experiencing developmental delays because of biological or environmental factors that can be identified (including low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, a history of abuse or neglect, and being directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure).

(Authority: 20 U.S.C. 1432(1), 1432(5)(B)(1) and 1437(a)(6))
§ 303.6 Child.

Child means an individual under the age of six and may include an infant or toddler with a disability, as that term is defined in § 303.21.

(Authority: 20 U.S.C. 1432(5))

§ 303.7 Consent.

Consent means that—
(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in § 303.25;
(b) The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and
(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

(Authority: 20 U.S.C. 1439)

§ 303.8 Council.

Council means the State Interagency Coordinating Council that meets the requirements of subpart G of this part.

(Authority: 20 U.S.C. 1432(2))

§ 303.9 Day.

Day means calendar day, unless otherwise indicated.

(Authority: 20 U.S.C. 1221e–3)

§ 303.10 Developmental delay.

Developmental delay, when used with respect to a child residing in a State, has the meaning given that term by the State under § 303.111.

(Authority: 20 U.S.C. 1432(3))

§ 303.11 Early intervention service program.

Early intervention service program or EIS program means an entity designated by the lead agency for reporting under §§ 303.700 through 303.702.

(Authority: 20 U.S.C. 1416, 1431–1444)

§ 303.12 Early intervention service provider.

(a) Early intervention service provider or EIS provider means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under part C of the Act, whether or not the entity or individual receives Federal funds under part C of the Act, and may include, where appropriate, the lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the State under part C of the Act.
(b) An EIS provider is responsible for—
(1) Participating in the multidisciplinary individualized family service plan (IFSP) Team’s ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant’s or toddler’s family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP;
(2) Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and
(3) Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

(Authority: 20 U.S.C. 1431–1444)

§ 303.13 Early intervention services.

(a) General. Early intervention services means developmental services that—
(1) Are provided under public supervision;
(2) Are selected in collaboration with the parents;
(3) Are provided at no cost, except, subject to §§ 303.520 and 303.521, where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
(4) Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the
§ 303.13

Infant’s or toddler’s development, as identified by the IFSP Team, in any one or more of the following areas, including—

(i) Physical development;
(ii) Cognitive development;
(iii) Communication development;
(iv) Social or emotional development;
(v) Adaptive development;

(5) Meet the standards of the State in which the early intervention services are provided, including the requirements of part C of the Act;

(6) Include services identified under paragraph (b) of this section;

(7) Are provided by qualified personnel (as that term is defined in § 303.31), including the types of personnel listed in paragraph (c) of this section;

(8) To the maximum extent appropriate, are provided in natural environments, as defined in § 303.26 and consistent with §§ 303.126 and 303.344(d); and

(9) Are provided in conformity with an IFSP adopted in accordance with section 636 of the Act and § 303.20.

(b) Types of early intervention services.

Subject to paragraph (d) of this section, early intervention services include the following services defined in this paragraph:

(1) Assistive technology device and service are defined as follows:

(i) 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 infant or toddler with a disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

(ii) Assistive technology service means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(A) The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child’s customary environment;

(B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;

(C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child’s family; and

(F) Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.

(2) Audiology services include—

(i) Identification of children with auditory impairments, 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 an infant or toddler with a disability who has an auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child’s 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 an infant.
(4) **Health services** has the meaning given the term in §303.16.

(5) **Medical services** means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child’s developmental status and need for early intervention services.

(6) **Nursing services** include—
   (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) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and
   (iii) The administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) **Nutrition services** include—
   (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 (b)(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 an infant or toddler with a disability 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 impairment, 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 children 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** include—
   (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** has the meaning given the term in §303.34.

(12) **Sign language and cued language services** include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

(13) **Social work services** include—
   (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 infant or toddler 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 infant or toddler and parents;

(iv) Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.

(14) Special instruction includes—

(i) The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability;

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(iv) Working with the infant or toddler with a disability to enhance the child's development.

(15) Speech-language pathology services include—

(i) Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

(16) Transportation and related costs include the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

(17) Vision services mean—

(i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(iii) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

(c) Qualified personnel. The following are the types of qualified personnel who provide early intervention services under this part:

(1) Audiologists.

(2) Family therapists.

(3) Nurses.

(4) Occupational therapists.

(5) Orientation and mobility specialists.

(6) Pediatricians and other physicians for diagnostic and evaluation purposes.

(7) Physical therapists.

(8) Psychologists.

(9) Registered dieticians.

(10) Social workers.

(11) Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness).

(12) Speech and language pathologists.

(13) Vision specialists, including ophthalmologists and optometrists.

(d) Other services. The services and personnel identified and defined in paragraphs (b) and (c) of this section do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing in this section prohibits the identification in the IFSP of another type of service as an early intervention service.
provided that the service meets the criteria identified in paragraph (a) of this section or of another type of personnel that may provide early intervention services in accordance with this part, provided such personnel meet the requirements in §303.31.

(Authority: 20 U.S.C. 1432(4))

§ 303.14 Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

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

§ 303.15 Free appropriate public education.

Free appropriate public education or FAPE, as used in §§303.211, 303.501, and 303.521, 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 State educational agency (SEA), including the requirements of part B of the Act;

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

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.

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

§ 303.16 Health services.

(a) Health services mean services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this part during the time that the child is eligible to receive 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

(2) Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

(c) The term does not include—

(1) Services that are—

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus);

(ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose); or

(iii) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.

(A) Nothing in this part limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child’s IFSP as being needed to meet the child’s developmental outcomes.

(B) Nothing in this part prevents the EIS provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;

(2) Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and

(3) Medical-health services (such as immunizations and regular “well-baby” care) that are routinely recommended for all children.

(Authority: 20 U.S.C. 1432(4))

§ 303.17 Homeless children.

Homeless children means children who meet the definition given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

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

§ 303.18 Include; including.

Include or including 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)
§ 303.19 Indian; Indian tribe.

(a) Indian means an individual who is a member of an Indian tribe.

(b) 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, 43 U.S.C. 1601 et seq.).

(c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian Tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

(Authority: 20 U.S.C. 1401(12)-(13))

§ 303.20 Individualized family service plan.

Individualized family service plan or IFSP means a written plan for providing early intervention services to an infant or toddler with a disability under this part and the infant’s or toddler’s family that—

(a) Is based on the evaluation and assessment described in §303.321;

(b) Includes the content specified in §303.344;

(c) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with §303.421); and

(d) Is developed in accordance with the IFSP procedures in §§303.342, 303.343, and 303.345.

(Authority: 20 U.S.C. 1401(15), 1435(a)(4), 1436)

§ 303.21 Infant or toddler with a disability.

(a) Infant or toddler with a disability means an individual under three years of age who needs early intervention services because the individual—

(1) Is experiencing a developmental delay, 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) Has a diagnosed physical or mental condition that—

(i) Has a high probability of resulting in developmental delay; and

(ii) Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

(b) Infant or toddler with a disability may include, at a State’s discretion, an at-risk infant or toddler (as defined in §303.5).

(c) Infant or toddler with a disability may include, at a State’s discretion, a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part until the child enters, or is eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part must include—

(1) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children ages three and older who receive part C services pursuant to §303.211; and

(2) A written notification to parents of a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619 of the Act.

(Authority: 20 U.S.C. 1401(16), 1432(5))

§ 303.22 Lead agency.

Lead agency means the agency designated by the State’s Governor under section 655(a)(10) of the Act and §303.120 that receives funds under section 643 of
the Act to administer the State’s responsibilities under part C of the Act.
(Authority: 20 U.S.C. 1435(a)(10))

§ 303.23 Local educational agency.
(a) General. Local educational agency or LEA 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 schools 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 schools or secondary schools.
(b) Educational service agencies and other public institutions or agencies. The term includes the following:
(1) Educational service agency, defined as a regional public multiservice agency—
   (i) Authorized by State law to develop, manage, and provide services or programs to LEAs; and
   (ii) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State.
(2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under State law.
(3) Entities that meet the definition of intermediate educational unit or IEU in section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition an intermediate educational unit or IEU means any public authority other than an LEA that—
   (i) Is under the general supervision of a State educational agency;
   (ii) Is established by State law for the purpose of providing FAPE on a regional basis; and
   (iii) Provides special education and related services to children with disabilities within the State.
(c) BIE-funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Education, 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 the Act with the smallest student population.
(Authority: 20 U.S.C. 1401(5), 1401(19))

§ 303.24 Multidisciplinary.
Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to—
(a) Evaluation of the child in §§303.113 and 303.321(a)(1)(i) and assessments of the child and family in §303.321(a)(1)(ii), may include one individual who is qualified in more than one discipline or profession; and
(b) The IFSP Team in §303.340 must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with §303.343(a)(1)(iv)).

§ 303.25 Native language.
(a) Native language, when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means—
(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; and
(2) For evaluations and assessments conducted pursuant to §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.
(b) Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no
written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

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

§ 303.26 Natural environments.

Natural environments means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of §303.126.

(Authority: 20 U.S.C. 1432, 1435, 1436)

§ 303.27 Parent.

(a) Parent means—

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

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with §303.422 or section 639(a)(5) of the Act.

(b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention service decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (a)(4) of this section to act as the "parent" of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the "parent" for purposes of part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

(Authority: 20 U.S.C. 1401(23), 1439(a)(5))

§ 303.28 Parent training and information center.

Parent training and information center means a center assisted under section 671 or 672 of the Act.

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

§ 303.29 Personally identifiable information.

Personally identifiable information means personally identifiable information as defined in 34 CFR 99.3, as amended, except that the term "student" in the definition of personally identifiable information in 34 CFR 99.3 means "child" as used in this part and any reference to "school" means "EIS provider" as used in this part.

(Authority: 20 U.S.C. 1415, 1439)

§ 303.30 Public agency.

As used in this part, public agency means the lead agency and any other agency or political subdivision of the State.

(Authority: 20 U.S.C. 1435(a)(10))

§ 303.31 Qualified personnel.

Qualified personnel means personnel who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.

(Authority: 20 U.S.C. 1432(4)(F))

§ 303.32 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). In applying the ESEA to the regulations under part C of the Act, any reference to "education
activities and programs’’ refers to ‘‘early intervention services.”’’

(Authority: 20 U.S.C. 1435(a)(2))

§ 303.33 Secretary.
Secretary means the Secretary of Education.

(Authority: 20 U.S.C. 1401(28))

§ 303.34 Service coordination services (case management).
(a) General. (1) As used in this part, service coordination services mean services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child’s family to receive the services and rights, including procedural safeguards, required under this part.

(2) Each infant or toddler with a disability and the child’s family must be provided with one service coordinator who is responsible for—

(i) Coordinating all services required under this part across agency lines; and

(ii) Serving as the single point of contact for carrying out the activities described in paragraphs (a)(3) and (b) of this section.

(3) Service coordination is an active, ongoing process that involves—

(i) Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under this part; and

(ii) Coordinating the other services identified in the IFSP under §303.34(e) that are needed by, or are being provided to, the infant or toddler with a disability and that child’s family.

(b) Specific service coordination services. Service coordination services include—

(1) Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

(2) Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;

(3) Coordinating evaluations and assessments;

(4) Facilitating and participating in the development, review, and evaluation of IFSPs;

(5) Conducting referral and other activities to assist families in identifying available EIS providers;

(6) Coordinating, facilitating, and monitoring the delivery of services required under this part to ensure that the services are provided in a timely manner;

(7) Conducting follow-up activities to determine that appropriate part C services are being provided;

(8) Informing families of their rights and procedural safeguards, as set forth in subpart E of this part and related resources;

(9) Coordinating the funding sources for services required under this part; and

(10) Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

(c) Use of the term service coordination or service coordination services. The lead agency’s or an EIS provider’s use of the term service coordination or service coordination services does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act—Medicaid), for purposes of claims in compliance with the requirements of §§303.501 through 303.521 (Payor of last resort provisions).


§ 303.35 State.

Except as provided in §303.732(d)(3) (regarding State allotments under this part), State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(31))
§ 303.36 State educational agency.

(a) State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(b) The term includes the agency that receives funds under sections 611 and 619 of the Act to administer the State's responsibilities under part B of the Act.

(Authority: 20 U.S.C. 1401(32))

§ 303.37 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is—

(1) A foster child;
(2) A ward of the State; or
(3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in § 303.27.

(Authority: 20 U.S.C. 1401(36))

Subpart B—State Eligibility for a Grant and Requirements for a Statewide System

GENERAL AUTHORITY AND ELIGIBILITY

§ 303.100 General authority.

The Secretary, in accordance with part C of the Act, makes grants to States (from their allotments under section 643 of the Act) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

(Authority: 20 U.S.C. 1433)

§ 303.101 State eligibility—requirements for a grant under this part.

In order to be eligible for a grant under part C of the Act for any fiscal year, a State must meet the following conditions:

(a) Assurances regarding early intervention services and a statewide system. The State must provide assurances to the Secretary that—

(1) The State has adopted a policy that appropriate early intervention services, as defined in § 303.13, are available to all infants and toddlers with disabilities in the State and their families, including—

(i) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State;
(ii) Infants and toddlers with disabilities who are homeless children and their families; and
(iii) Infants and toddlers with disabilities who are wards of the State; and

(2) The State has in effect a statewide system of early intervention services that meets the requirements of section 635 of the Act, including policies and procedures that address, at a minimum, the components required in §§ 303.111 through 303.126.

(b) State application and assurances. The State must provide information and assurances to the Secretary, in accordance with subpart C of this part, including—

(1) Information that shows that the State meets the State application requirements in §§ 303.200 through 303.212; and
(2) Assurances that the State also meets the requirements in §§ 303.221 through 303.227.

(c) Approval before implementation. The State must obtain approval by the Secretary before implementing any policy or procedure required to be submitted as part of the State's application in §§ 303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1434, 1435, 1437)

STATE CONFORMITY WITH PART C OF THE ACT AND ABROGATION OF STATE SOVEREIGN IMMUNITY

§ 303.102 State conformity with Part C of the Act.

Each State that receives funds under part C of the Act must ensure that any State rules, regulations, and policies
relating to this part conform to the purposes and requirements of this part.
(Authority: 20 U.S.C. 1407(a)(1))

§ 303.103 Abrogation of State sovereign immunity.
(a) General. A State is not immune under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of part C of the Act.
(b) Remedies. In a suit against a State for a violation of part C of the Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in a suit against any public entity other than a State.
(c) Effective date. Paragraphs (a) and (b) of this section apply with respect to violations that occur in whole or part after October 30, 1990, the date of enactment of the Education of the Handicapped Act Amendments of 1990.
(Authority: 20 U.S.C. 1405)

EQUIPMENT AND CONSTRUCTION

§ 303.104 Acquisition of equipment and construction or alteration of facilities.
(a) General. If the Secretary determines that a program authorized under part C of the Act will 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 Act Accessibility Guidelines for Buildings and Facilities”); or
(Authority: 20 U.S.C. 1404)

§ 303.105 Positive efforts to employ and advance qualified individuals with disabilities.
Each recipient of assistance under part C of the Act must make positive efforts to employ and advance in employment, qualified individuals with disabilities in programs assisted under part C of the Act.
(Authority: 20 U.S.C. 1405)

MINIMUM COMPONENTS OF A STATEWIDE SYSTEM

§ 303.110 Minimum components of a statewide system.
Each statewide system (system) must include, at a minimum, the components described in §§ 303.111 through 303.126.
(Approved by Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1435(a))

§ 303.111 State definition of developmental delay.
Each system must include the State's rigorous definition of developmental delay, consistent with §§ 303.10 and 303.203(c), that will be used by the State in carrying out programs under part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under part C of the Act. The definition must—
(a) Describe, for each of the areas listed in §303.21(a)(1), the evaluation and assessment procedures, consistent with §303.321, that will be used to measure a child's development; and
(b) Specify the level of developmental delay in functioning or other comparable criteria that constitute a developmental delay in one or more of the developmental areas identified in §303.21(a)(1).
(Approved by Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1435(a)(1))
§ 303.112 Availability of early intervention services.

Each system must include a State policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including—

(a) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

(b) Infants and toddlers with disabilities who are homeless children and their families.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(2))

§ 303.113 Evaluation, assessment, and nondiscriminatory procedures.

(a) Subject to paragraph (b) of this section, each system must ensure the performance of—

(1) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State; and

(2) A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler.

(b) The evaluation and family-directed identification required in paragraph (a) of this section must meet the requirements of § 303.321.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(3))

§ 303.114 Individualized family service plan (IFSP).

Each system must ensure, for each infant or toddler with a disability and his or her family in the State, that an IFSP, as defined in § 303.20, is developed and implemented that meets the requirements of §§ 303.940 through 303.345, and that includes service coordination services, as defined in § 303.34.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(4))

§ 303.115 Comprehensive child find system.

Each system must include a comprehensive child find system that meets the requirements in §§ 303.302 and 303.303.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(5))

§ 303.116 Public awareness program.

Each system must include a public awareness program that—

(a) Focuses on the early identification of infants and toddlers with disabilities; and

(b) Provides information to parents of infants and toddlers through primary referral sources in accordance with § 303.301.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(6))

§ 303.117 Central directory.

Each system must include a central directory that is accessible to the general public (i.e., through the lead agency’s Web site and other appropriate means) and includes accurate, up-to-date information about—

(a) Public and private early intervention services, resources, and experts available in the State;

(b) Professional and other groups (including parent support, and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under part C of the Act and their families; and

(c) Research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(7))

§ 303.118 Comprehensive system of personnel development (CSPD).

Each system must include a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to
the basic components of early intervention services available in the State. A comprehensive system of personnel development—

(a) Must include—

(1) Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers;

(2) Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this part; and

(3) Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under part C of the Act to a preschool program under section 619 of the Act, Head Start, Early Head Start, an elementary school program under part B of the Act, or another appropriate program.

(b) May include—

(1) Training personnel to work in rural and inner-city areas;

(2) Training personnel in the emotional and social development of young children; and

(3) Training personnel to support families in participating fully in the development and implementation of the child’s IFSP; and

(4) Training personnel who provide services under this part using standards that are consistent with early learning personnel development standards funded under the State Advisory Council on Early Childhood Education and Care established under the Head Start Act, if applicable.

(Authority: 20 U.S.C. 1435(a)(8))

§ 303.119 Personnel standards.

(a) General. Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(b) Qualification standards. The policies and procedures required in paragraph (a) of this section must provide for the establishment and maintenance of qualification standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services.

(c) Use of paraprofessionals and assistants. Nothing in part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy to assist in the provision of early intervention services under part C of the Act to infants and toddlers with disabilities.

(d) Policy to address shortage of personnel. 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 infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraphs (a) and (b) of this section.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(9), 1435(b))

§ 303.120 Lead agency role in supervision, monitoring, funding, inter-agency coordination, and other responsibilities.

Each system must include a single line of responsibility in a lead agency designated or established by the Governor that is responsible for the following:

(a)(1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under part C of the Act.

(2) The monitoring of programs and activities used by the State to carry out part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under part C of the Act.
§ 303.121 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the State, consistent with the provisions of part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must—

(a) Include a requirement that all early intervention services must meet State standards and be consistent with the provisions of this part; and

(b) Be consistent with the Education Department General Administrative Regulations in 34 CFR part 80.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(11))

§ 303.122 Reimbursement procedures.

Each system must include procedures for securing the timely reimbursement of funds used under part C of the Act, in accordance with subpart F of this part.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(12), 1440(a))

§ 303.123 Procedural safeguards.

Each system must include procedural safeguards that meet the requirements of subpart E of this part.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(13), 1439)

§ 303.124 Data collection.

(a) Each statewide system must include a system for compiling and reporting timely and accurate data that meets the requirements in paragraph (b) of this section and §§ 303.700 through 303.702 and 303.720 through 303.724.

(b) The data system required in paragraph (a) of this section must include a

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(a)(14))

§ 303.118 Monitoring, enforcement, assistance and coordination.

Act), to ensure that the State complies with part C of the Act, including—

(i) Monitoring agencies, institutions, organizations, and EIS providers used by the State to carry out part C of the Act;

(ii) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under part C of the Act and these regulations;

(iii) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;

(iv) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency’s identification of the noncompliance; and

(v) Conducting the activities in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, consistent with §§ 303.700 through 303.707, and any other activities required by the State under those sections.

(b) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources, consistent with subpart F of this part.

(c) The assignment of financial responsibility in accordance with subpart F of this part.

(d) The development of procedures in accordance with subpart F of this part to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.

(e) The resolution of intra- and inter-agency disputes in accordance with subpart F of this part.

(f) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with § 303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in subpart F of this part.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1416, 1435(a)(10), 1442)
description of the process that the State uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this part, including a description of the State’s sampling methods, if sampling is used, for reporting the data required by the Secretary under sections 616 and 618 of the Act and §§303.700 through 303.707 and 303.720 through 303.724.

(Approved by Office of Management and Budget under control number 1820-0550, 1820-0557 and 1820-0578)

(Authority: 20 U.S.C. 1416, 1418(a)-(c), 1435(a)(14), 1442)

§ 303.125 State interagency coordinating council.

Each system must include a State Interagency Coordinating Council (Council) that meets the requirements of subpart G of this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(15))

§ 303.126 Early intervention services in natural environments.

Each system must include policies and procedures to ensure, consistent with §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.34(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided—

(a) To the maximum extent appropriate, in natural environments; and

(b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP Team, only when early intervention services cannot be achieved satisfactorily in a natural environment.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(16))

Subpart C—State Application and Assurances

GENERAL

§ 303.200 State application and assurances.

Each application must contain—

(a) The specific State application requirements (including certifications, descriptions, methods, and policies and procedures) required in §§303.201 through 303.212; and

(b) The assurances required in §§303.221 through 303.227.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437)

APPLICATION REQUIREMENTS

§ 303.201 Designation of lead agency.

Each application must include the name of the State lead agency, as designated under §303.120, that will be responsible for the administration of funds provided under this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(a)(1))

§ 303.202 Certification regarding financial responsibility.

Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of part C services among appropriate public agencies under §303.511 and the lead agency’s contracts with EIS providers regarding financial responsibility for the provision of part C services both meet the requirements in subpart F of this part (§§303.500 through 303.521) and are current as of the date of submission of the certification.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(a)(2))

§ 303.203 Statewide system and description of services.

Each application must include—

(a) A description of services to be provided under this part to infants and toddlers with disabilities and their families through the State’s system;
§ 303.204 Application’s definition of at-risk infants and toddlers and description of services.

If the State provides services under this part to at-risk infants and toddlers through the statewide system, the application must include—

(a) The State’s definition of at-risk infants and toddlers with disabilities who are eligible in the State for services under part C of the Act (consistent with §§ 303.5 and 303.21(b)); and

(b) A description of the early intervention services provided under this part to at-risk infants and toddlers with disabilities who meet the State’s definition described in paragraph (a) of this section.

§ 303.205 Description of use of funds.

(a) General. Each State application must include a description of the uses for 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) State administration funds including administrative positions. For lead agencies other than State educational agencies (SEAs), each application must include the total—

(1) Amount of funds retained by the lead agency for administration purposes, including the amount in paragraph (b)(2) of this section; and

(2) Number of full-time equivalent administrative positions to be used to implement part C of the Act, and the total amount of salaries (including benefits) for those positions.

(c) Maintenance and implementation activities. Each application must include a description of the nature and scope of each major activity to be carried out under this part, consistent with §303.501, and the approximate amount of funds to be spent for each activity.

(d) Direct services. Each application must include a description of any direct services that the State expects to provide to infants and toddlers with disabilities and their families with funds under this part, consistent with §303.501, and the approximate amount of funds under this part to be used for the provision of each direct service.

(e) Activities by other public agencies. If other public 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.

§ 303.206 Referral policies for specific children.

Each application must include the State’s policies and procedures that require the referral for early intervention services under this part of specific
children under the age of three, as described in §303.303(b).

(Approved by Office of Management and Budget under control number 1820-0550)


§ 303.207 Availability of resources.

Each application must include a description of the procedure used by the State to ensure that resources are made available under this part for all geographic areas within the State.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(a)(7))

§ 303.208 Public participation policies and procedures.

(a) Application. At least 60 days prior to being submitted to the Department, each application for funds under this part (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.

(b) State Policies and Procedures. Each application must include a description of the policies and procedures used by the State to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with part C of the Act and these regulations, the lead agency—

(1) Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with part C of the Act and these regulations.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1231d, 1221e-3, 1437(a)(8))

§ 303.209 Transition to preschool and other programs.

(a) Application requirements. Each State must include the following in its application:

(1) A description of the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this part to—

(i) Preschool or other appropriate services (for toddlers with disabilities); or

(ii) Exiting the program for infants and toddlers with disabilities.

(2) A description of how the State will meet each of the requirements in paragraphs (b) through (f) of this section.

(b) Notification to the SEA and appropriate LEA.

(1) The State lead agency must ensure that—

(i) Subject to paragraph (b)(2) of this section, not fewer than 90 days before the third birthday of the toddler with a
disability if that toddler may be eligible for preschool services under part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under part B of the Act, as determined in accordance with State law:

(ii) Subject to paragraph (b)(2) of this section, if the lead agency determines that the toddler is eligible for early intervention services under part C of the Act more than 45 but less than 90 days before that toddler's third birthday and if that toddler may be eligible for preschool services under part B of the Act, the lead agency, as soon as possible after determining the child's eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under part B of the Act, as determined in accordance with State law; or

(iii) Subject to paragraph (b)(2) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under part B of the Act, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

(2) The State must ensure that the notification required under paragraphs (b)(1)(i) and (b)(1)(ii) of this section is consistent with any policy that the State has adopted, under §303.401(e), permitting a parent to object to disclosure of personally identifiable information.

(c) Conference to discuss services. The State lead agency must ensure that—

(1) If a toddler with a disability may be eligible for preschool services under part B of the Act, the lead agency, with the approval of the family of the toddler, convenes a conference, among the lead agency, the family, and the LEA not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the toddler's third birthday to discuss any services the toddler may receive under part B of the Act; and.

(2) If the lead agency determines that a toddler with a disability is not potentially eligible for preschool services under part B of the Act, the lead agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

(d) Transition plan. The State lead agency must ensure that for all toddlers with disabilities—

(1)(i) It reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year; and

(ii) Each family of a toddler with a disability who is served under this part is included in the development of the transition plan required under this section and §303.344(h);

(2) It establishes a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the toddler's third birthday; and

(3) The transition plan in the IFSP includes, consistent with §303.344(h), as appropriate—

(i) Steps for the toddler with a disability and his or her family to exit from the part C program; and

(ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.

(e) Transition conference and meeting to develop transition plan. Any conference conducted under paragraph (c) of this section or meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the requirements in §§303.342(d) and (e) and 303.343(a).

(f) Applicability of transition requirements. (1) The transition requirements in paragraphs (b)(1)(i) and (b)(1)(ii), (c)(1), and (d) of this section apply to all toddlers with disabilities receiving services under this part before those toddlers turn age three, including any toddler with a disability under the age
§ 303.210 Coordination with Head Start and Early Head Start, early education, and child care programs.

(a) Each application must contain a description of State efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801, et seq., as amended), early education and child care programs, and services under this part.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1412(a)(3) and (a)(9), 1436(a)(3), 1437(a)(9))

§ 303.211 State option to make services under this part available to children ages three and older.

(a) General. (1) Subject to paragraphs (a)(2) and (b) of this section, a State may elect to include in its application for a grant under this part a State policy, developed and implemented jointly by the lead agency and the SEA, under which a parent of a child with a disability who is eligible for preschool services under section 619 of the Act and who previously received early intervention services under this part, may choose the continuation of early intervention services under this part for his or her child after the child turns three until the child enters, or is eligible under State law to enter, kindergarten or elementary school.

(2) In a State that offers services under § 303.211, for toddlers with disabilities identified in § 303.209(b)(1)(i), the parent must be provided at the transition conference conducted under paragraph (c)(1) of this section:

(i) An explanation, consistent with § 303.211(b)(1)(ii), of the toddler’s options to continue to receive early intervention services under this part or preschool services under section 619 of the Act.

(ii) The initial annual notice referenced in § 303.211(b)(1).

(3) For children with disabilities age three and older who receive services pursuant to § 303.211, the State must ensure that it satisfies the separate transition requirements in § 303.211(b)(6)(ii).

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1412(a)(3) and (a)(9), 1436(a)(3), 1437(a)(9))
(2) Consistent with §303.344(d), services provided pursuant to this section will include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills.

(3) The State policy ensures that any child served pursuant to this section has the right, at any time, to receive FAPE (as that term is defined at §303.15) under part B of the Act instead of early intervention services under part C of the Act.

(4) The lead agency must continue to provide all early intervention services identified in the toddler with a disability’s IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler’s initial eligibility determination under part B of the Act is made under 34 CFR 300.306. This provision does not apply if the LEA has requested parental consent for the initial evaluation under 34 CFR 300.300(a) and the parent has not provided that consent.

(5) The lead agency must obtain informed consent from the parent of any child with a disability for the continuation of early intervention services pursuant to this section for that child. Consent must be obtained before the child reaches three years of age, where practicable.

(6)(i) For toddlers with disabilities under the age of three in a State that offers services under this section, the lead agency ensures that the transition requirements in §303.209(b)(1)(i) and (b)(1)(ii), (c)(1), and (d) are met.

(ii) For toddlers with disabilities age three and older in a State that offers services under this section, the lead agency ensures a smooth transition from services under this section to preschool, kindergarten or elementary school by—

(A) Providing the SEA and LEA where the child resides, consistent with any State policy adopted under §303.401(e), the information listed in §303.401(d)(1) not fewer than 90 days before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or will no longer receive, early intervention services under this section;

(B) With the approval of the parents of the child, convening a transition conference, among the lead agency, the parents, and the LEA, not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section, to discuss any services that the child may receive under part B of the Act; and

(C) Establishing a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section.

(7) In States that adopt the option to make services under this part available to children ages three and older pursuant to this section, there will be a referral to the part C system, dependent upon parental consent, of a child under the age of three who directly experiences a substantiated case of trauma due to exposure to family violence, as defined in section 320 of the Family Violence Prevention and Services Act, 42 U.S.C. 10401, et seq.

(c) Reporting requirement. If a State includes in its application a State policy described in paragraph (a) of this section, the State must submit to the Secretary, in the State’s report under §303.124, the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for their children to continue to receive early intervention services under this part.

(d) Available funds. The State policy described in paragraph (a) of this section must describe the funds—including an identification as Federal, State, or local funds—that will be used to ensure that the option described in paragraph (a) of this section is available to eligible children and families who provide the consent described in paragraph (b)(5) of this section, including fees, if any, to be charged to families as described in §§303.520 and 303.521.

(e) Rules of construction. (1) If a statewide system includes a State policy described in paragraph (a) of this section,
a State that provides services in accordance with this section to a child with a disability who is eligible for services under section 619 of the Act will not be required to provide the child FAPE under part B of the Act for the period of time in which the child is receiving services under this part.

(2) Nothing in this section may be construed to require a provider of services under this part to provide a child served under this part with FAPE.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1435(c), 1437(a)(11))

§ 303.212 Additional information and assurances.

Each application must contain—

(a) A description of the steps the State is taking to ensure equitable access to, and equitable participation in, the part C statewide system as required by section 427(b) of GEPA; and

(b) Other information and assurances as the Secretary may reasonably require.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1228a(b), 1437(a)(11))

ASSURANCES

§ 303.220 Assurances satisfactory to the Secretary.

Each application must contain assurances satisfactory to the Secretary that the State has met the requirements in §§303.221 through 303.227.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b))

§ 303.221 Expenditure of funds.

The State must ensure that Federal funds made available under the State under section 643 of the Act will be expended in accordance with the provisions of this part, including §§303.500 and 303.501.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(1))

§ 303.222 Payor of last resort.

The State must ensure that it will comply with the requirements in §§303.510 and 303.511 in subpart F of this part.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(2))

§ 303.223 Control of funds and property.

The State must ensure 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 Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(3))

§ 303.224 Reports and records.

The State must ensure that it will—

(a) Make reports in the form and containing the information that the Secretary may require; and

(b) Keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Approved by Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(4))

§ 303.225 Prohibition against supplanting; indirect costs.

(a) Each application must provide satisfactory assurance that the Federal funds made available under section 643 of the Act to the State:

(1) Will not be commingled with State funds; and

(2) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities 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) A decrease in the number of infants and toddlers 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.

(c) Requirement regarding indirect costs. (1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its part C grant.

(2) If approved by the lead agency’s cognizant Federal agency or by the Secretary, the lead agency must charge indirect costs through either—

(i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or

(ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR part 76 of EDGAR.

(3) In charging indirect costs under paragraph (c)(2)(i) and (c)(2)(ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to the part C grant, unless those costs are specifically approved in advance by the Secretary.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(5))

§ 303.226 Fiscal control.

The State must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(6))

§ 303.227 Traditionally underserved groups.

The State must ensure that policies and practices have been adopted to ensure—

(a) That traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, 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 Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1231d, 1437(b)(7))
§ 303.229 Determination by the Secretary that a State is eligible.

If the Secretary determines that a State is eligible to receive a grant under part C of the Act, the Secretary notifies the State of that determination.

(Authority: 20 U.S.C. 1437)

§ 303.230 Standard for disapproval of an application.

The Secretary does not disapprove an application under this part unless the Secretary determines, after notice and opportunity for a hearing in accordance with the procedures in §§ 303.231 through 303.236, that the application fails to comply with the requirements of this part.

(Authority: 20 U.S.C. 1437(c))

DEPARTMENT PROCEDURES

§ 303.231 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 C of the Act until providing the State—
   (i) Reasonable notice; and
   (ii) An opportunity for a hearing.
   (2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the lead agency by certified mail with a 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 lead agency 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 the lead agency with information about the hearing procedures that will be followed.

(Authority: 20 U.S.C. 1437(c))

§ 303.232 Hearing Official or Panel.

(a) If the lead 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.

(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. 1437(c))

§ 303.233 Hearing procedures.

(a) As used in §§ 303.231 through 303.235, the term party or parties means any of the following:
   (1) A lead agency 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 Hearing Panel.
   (b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.
   (c) The Hearing Official or Hearing 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 Hearing 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 Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties.

(3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Hearing 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 an evidentiary hearing;
      (C) Further proceedings before the Hearing Official or Hearing 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 an estimation of time for each presentation; and
      (E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel.

(5) A prehearing or other conference held under paragraph (c)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (c)(4) of this section.

(7) Following a prehearing or other conference, the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(8) The Hearing Official or Hearing Panel may require the parties to state their positions and to provide all or part of their evidence in writing.

(e) The Hearing Official or Hearing Panel may require the parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents, information, and lists of witnesses, and to send copies to the Hearing Official or Hearing Panel.

(g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Hearing Panel may examine witnesses.

(j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Hearing 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 Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m)(1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel must determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Hearing Panel gives each party, in addition to the opportunity to be represented by counsel—
   (1) An opportunity to present witnesses on the party’s behalf; and
   (2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Hearing Panel accepts any evidence that it finds is relevant and material to the
proceedings and is not unduly repetitious.

(p)(1) The Hearing Official or Hearing Panel—
   (i) Arranges for the preparation of a transcript of each hearing;
   (ii) Retains the original transcript as part of the record of the hearing; and
   (iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. 1437(c))

§ 303.234 Initial decision; final decision.

(a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the lead agency under §303.231, including any amendments to or further clarification of the issues under §303.233(c).

(b) The initial decision of a Hearing Panel is made by a majority of Hearing Panel members.

(c) The Hearing Official or Hearing 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 Hearing Panel within 15 days of the date the party receives the Panel’s decision.

(e) The Hearing Official or Hearing 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 Hearing Panel within seven days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Hearing 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 Hearing 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 Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary rejects or modifies the initial decision of the Hearing Official or Hearing 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 transcript of the Hearing Official's or Hearing Panel's proceedings, and written comments.

(j) The Secretary may remand the matter to the Hearing Official or Hearing Panel for further proceedings.

(k) Unless the Secretary remands the matter as provided in paragraph (j) of this section, the Secretary issues the final decision, with any necessary modifications, within 30 days after notifying the Hearing Official or Hearing Panel that the initial decision is being further reviewed.

(Authority: 20 U.S.C. 1437(c))

§ 303.235 Filing requirements.

(a) Any written submission by a party under §§303.230 through 303.236 must be filed with the Secretary 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.
§ 303.236 If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Panel, 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. 1437(c))

§ 303.236 Judicial review.

If a State is dissatisfied with the Secretary’s final decision with respect to the eligibility of the State under part C of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be 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 28 U.S.C. 2112.

(Authority: 20 U.S.C. 1437(c))

Subpart D—Child Find, Evaluations and Assessments, and Individualized Family Service Plans

§ 303.300 General.

The statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in §303.100 must include the following components:

(a) Pre-referral policies and procedures that include—

(1) A public awareness program as described in §303.301; and

(2) A comprehensive child find system as described in §303.302.

(b) Referral policies and procedures as described in §303.303.

(c) Post-referral policies and procedures that ensure compliance with the timeline requirements in §303.310 and include—

(1) Screening, if applicable, as described in §303.320;

(2) Evaluations and assessments as described in §§303.321 and 303.322; and

(3) Development, review, and implementation of IFSPs as described in §§303.340 through 303.346.

PRE-REFERRAL PROCEDURES—PUBLIC AWARENESS PROGRAM AND CHILD FIND SYSTEM

§ 303.301 Public awareness program—information for parents.

(a) Preparation and dissemination. In accordance with §303.116, each system must include a public awareness program that requires the lead agency to—

(i) Prepare information on the availability of early intervention services under this part, and other services, as described in paragraph (b) of this section; and

(ii) Disseminate to all primary referral sources (especially hospitals and physicians) the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications; and

(b) Information to be provided. The information required to be prepared and disseminated under paragraph (a) of this section must include—

(1) A description of the availability of early intervention services under this part;

(2) A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and

(3) A central directory, as described in §303.117.

(c) Information specific to toddlers with disabilities. Each public awareness program also must include a requirement that the lead agency provide for informing parents of toddlers with disabilities of the availability of services under section 619 of the Act not fewer than 90 days prior to the toddler’s third birthday.

(Authority: 20 U.S.C. 1435(a)(6), 1437(a)(9))
§ 303.302 Comprehensive child find system.

(a) General. Each system must include a comprehensive child find system that—

(1) Is consistent with part B of the Act (see 34 CFR 300.111);

(2) Includes a system for making referrals to lead agencies or EI providers under this part that—

(i) Includes timelines; and

(ii) Provides for participation by the primary referral sources described in § 303.303(c);

(3) Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this part that will reduce the need for future services; and

(4) Meets the requirements in paragraphs (b) and (c) of this section and §§ 303.303, 303.310, 303.320, and 303.321.

(b) Scope of child find. The lead agency, as part of the child find system, must ensure that—

(1) All infants and toddlers with disabilities in the State who are eligible for early intervention services under this part are identified, located, and evaluated, including—

(i) Indian infants and toddlers with disabilities residing on a reservation geographically located in the State (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the State based, in part, on the information provided to them by the lead agency under § 303.731(e)(1)); and

(ii) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the State; and

(iii) Infants and toddlers with disabilities that are referenced in § 303.303(b); and

(2) An effective method is developed and implemented to identify children who are in need of early intervention services.

(c) Coordination. (1) The lead agency, with the assistance of the Council, as defined in § 303.8, must ensure that the child find system under this part—

(i) Is coordinated with all other major efforts to locate and identify children by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, including Indian tribes that receive payments under this part, and other Indian tribes, as appropriate; and

(ii) Is coordinated with the efforts of the—

(A) Program authorized under part B of the Act;

(B) Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, (MCHB or Title V) (42 U.S.C. 701(a));

(C) Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(13) and 1396(a)(4)(B));

(D) Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);


(F) Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);

(G) Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the State agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));

(H) Child care programs in the State;

(i) The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

(J) Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g–1) administered by the Centers for Disease Control (CDC); and

(K) Children’s Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(2) The lead agency, with the advice and assistance of the Council, must take steps to ensure that—

(i) There will not be unnecessary duplication of effort by the programs identified in paragraph (c)(1)(ii) of this section; and
(ii) The State will make use of the resources available through each public agency and EIS provider in the State to implement the child find system in an effective manner.


REFERRAL PROCEDURES

§ 303.303 Referral procedures.

(a) General. (1) The lead agency’s child find system described in §303.302 must include the State’s procedures for use by primary referral sources for referring a child under the age of three to the part C program.

(2) The procedures required in paragraph (a)(1) of this section must—

(i) Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and

(ii) Meet the requirements in paragraphs (b) and (c) of this section.

(b) Referral of specific at-risk infants and toddlers. The procedures required in paragraph (a) of this section must provide for requiring the referral of a child under the age of three who—

(1) Is the subject of a substantiated case of child abuse or neglect; or

(2) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

(c) Primary referral sources. As used in this subpart, primary referral sources include—

(1) Hospitals, including prenatal and postnatal care facilities;

(2) Physicians;

(3) Parents, including parents of infants and toddlers;

(4) Child care programs and early learning programs;

(5) LEAs and schools;

(6) Public health facilities;

(7) Other public health or social service agencies;

(8) Other clinics and health care providers;

(9) Public agencies and staff in the child welfare system, including child protective service and foster care;

(10) Homeless family shelters and agencies.


§§ 303.304–303.309 [Reserved]

POST-REFERRAL PROCEDURES—SCREENINGS, EVALUATIONS, AND ASSESSMENTS

§ 303.310 Post-referral timeline (45 days).

(a) Except as provided in paragraph (b) of this section, any screening under §303.320 (if the State has adopted a policy and elects, and the parent consents, to conduct a screening of a child); the initial evaluation and the initial assessments of the child and family under §303.321; and the initial IFSP meeting under §303.342 must be completed within 45 days from the date the lead agency or EIS provider receives the referral of the child.

(b) Subject to paragraph (c) of this section, the 45-day timeline described in paragraph (a) of this section does not apply for any period when—

(1) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child’s early intervention records; or

(2) The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent.

(c) The lead agency must develop procedures to ensure that in the event the circumstances described in (b)(1) or (b)(2) of this section exist, the lead agency or EIS provider must—

(1) Document in the child’s early intervention records the exceptional family circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent;

(2) Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as
soon as possible after the documented exceptional family circumstances described in paragraph (b)(1) of this section no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and
(3) Develop and implement an interim IFSP, to the extent appropriate and consistent with §303.345.
(d) The initial family assessment must be conducted within the 45-day timeline in paragraph (a) of this section if the parent concurs and even if other family members are unavailable.

§§ 303.311–303.319 [Reserved]
§ 303.320 Screening procedures (optional).
(a) General. (1) The lead agency may adopt procedures, consistent with the requirements of this section, to screen children under the age of three who have been referred to the part C program to determine whether they are suspected of having a disability under this part. If the lead agency or EIS provider proposes to screen a child, it must—
   (i) Provide the parent notice under §303.421 of its intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent’s right to request an evaluation under §303.321 at any time during the screening process; and
   (ii) Obtain parental consent as required in §303.420(a)(1) before conducting the screening procedures.
(2) If the parent consents to the screening and the screening or other available information indicates that the child is—
   (i) Suspected of having a disability, after notice is provided under §303.421 and once parental consent is obtained as required in §303.420, an evaluation and assessment of the child must be conducted under §303.321; or
   (ii) Not suspected of having a disability, the lead agency or EIS provider must ensure that notice of that determination is provided to the parent under §303.421, and that the notice describes the parent’s right to request an evaluation.
(3) If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under §303.321, even if the lead agency or EIS provider has determined under paragraph (a)(2)(ii) of this section that the child is not suspected of having a disability.
(b) Definition of screening procedures. Screening procedures—
   (1) Means activities under paragraphs (a)(1) and (a)(2) of this section that are carried out by, or under the supervision of, the lead agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and
   (2) Includes the administration of appropriate instruments by personnel trained to administer those instruments.
(c) Condition for evaluation or early intervention services. For every child under the age of three who is referred to the part C program or screened in accordance with paragraph (a) of this section, the lead agency is not required to—
   (1) Provide an evaluation of the child under §303.321 unless the child is suspected of having a disability or the parent requests an evaluation under paragraph (a)(3) of this section; or
   (2) Make early intervention services available under this part to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under §303.21.

§ 303.321 Evaluation of the child and assessment of the child and family.
(a) General. (1) The lead agency must ensure that, subject to obtaining parental consent in accordance with §303.420(a)(2), each child under the age of three who is referred for evaluation or early intervention services under this part and suspected of having a disability, receives—
   (i) A timely, comprehensive, multi-disciplinary evaluation of the child in accordance with paragraph (b) of this section unless eligibility is established
under paragraph (a)(3)(i) of this section; and

(ii) If the child is determined eligible as an infant or toddler with a disability as defined in §303.21—

(A) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;

(B) A family-directed assessment of 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 that infant or toddler. The assessments of the child and family are described in paragraph (c) of this section and these assessments may occur simultaneously with the evaluation, provided that the requirements of paragraph (b) of this section are met.

(2) As used in this part—

(i) Evaluation means the procedures used by qualified personnel to determine a child’s initial and continuing eligibility under this part, consistent with the definition of infant or toddler with a disability in §303.21. An initial evaluation refers to the child’s evaluation to determine his or her initial eligibility under this part;

(ii) Assessment means the ongoing procedures used by qualified personnel to identify the child’s unique strengths and needs and the early intervention services necessary to meet those needs throughout the period of the child’s eligibility under this part and includes the assessment of the child, consistent with paragraph (c)(i) of this section and the assessment of the child’s family, consistent with paragraph (c)(ii) of this section; and

(iii) Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child’s first IFSP meeting.

(3)(i) A child’s medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this part if those records indicate that the child’s level of functioning in one or more of the developmental areas identified in §303.21(a)(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under §303.21. If the child’s part C eligibility is established under this paragraph, the lead agency or EIS provider must conduct assessments of the child and family in accordance with paragraph (c) of this section.

(ii) Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the lead agency must ensure that informed clinical opinion may be used as an independent basis to establish a child’s eligibility under this part even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under paragraph (b) of this section.

(4) All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

(5) Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child, in accordance with the definition of native language in §303.25.

(6) Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed, in accordance with the definition of native language in §303.25.

(b) Procedures for evaluation of the child. In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child’s eligibility under this part. Procedures must include—

(1) Administering an evaluation instrument;

(2) Taking the child’s history (including interviewing the parent);

(3) Identifying the child’s level of functioning in each of the developmental areas in §303.21(a)(1);

(4) Gathering information from other sources such as family members, other care-givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child’s unique strengths and needs; and
(5) Reviewing medical, educational, or other records.

(c) Procedures for assessment of the child and family. (1) An assessment of each infant or toddler with a disability must be conducted by qualified personnel in order to identify the child’s unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following—

(i) A review of the results of the evaluation conducted under paragraph (b) of this section;

(ii) Personal observations of the child; and

(iii) The identification of the child’s needs in each of the developmental areas in §303.21(a)(1).

(2) A family-directed assessment must be conducted by qualified personnel in order to identify the family’s resources, priorities, and concerns and the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the family’s infant or toddler with a disability. The family-directed assessment must—

(i) Be voluntary on the part of each family member participating in the assessment;

(ii) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and

(iii) Include the family’s description of its resources, priorities, and concerns related to enhancing the child’s development.

(Authority: 20 U.S.C. 1435(a)(3), 1435(a)(5), 1436(a)(1)–(2))

§ 303.322 Determination that a child is not eligible.

If, based on the evaluation conducted under §303.321, the lead agency determines that a child is not eligible under this part, the lead agency must provide the parent with prior written notice required in §303.421, and include in the notice information about the parent’s right to dispute the eligibility determination through dispute resolution mechanisms under §303.430, such as requesting a due process hearing or mediation or filing a State complaint.

(Authority: 20 U.S.C. 1435(a)(6))

§ 303.340 Individualized family service plan—general.

For each infant or toddler with a disability, the lead agency must ensure the development, review, and implementation of an individualized family service plan or IFSP developed by a multidisciplinary team, which includes the parent, that—

(a) Is consistent with the definition of that term in §303.20; and

(b) Meets the requirements in §§303.342 through 303.346 of this subpart.

(Authority: 20 U.S.C. 1435(a)(4), 1436)

§ 303.341 [Reserved]

§ 303.342 Procedures for IFSP development, review, and evaluation.

(a) Meeting to develop initial IFSP—timelines. For a child referred to the part C program and determined to be eligible under this part as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in §303.310.

(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 results or outcomes identified in the IFSP is being made; and

(ii) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP 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.

(c) Annual meeting to evaluate the IFSP. A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child’s family. The results of any current evaluations and other information available from the assessments of the child and family conducted under §303.321 must be used
§ 303.343 IFSP Team meeting and periodic review.

(a) Initial and annual IFSP Team meeting. (1) Each initial meeting and each annual IFSP Team 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 designated by the public agency to be responsible for implementing the IFSP.
   (v) A person or persons directly involved in conducting the evaluations and assessments in § 303.321.
   (vi) As appropriate, persons who will be providing early intervention services under this part to the child or family.

(b) Periodic review. Each periodic review under § 303.342(b) 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.

(Authority: 20 U.S.C. 1435(a)(4), 1436)

§ 303.344 Content of an IFSP.

(a) Information about the child’s status. The IFSP must include a statement of the infant or toddler with a disability’s present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child’s evaluation and assessments conducted under § 303.321.

(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 as identified through the assessment of the family under § 303.321(c)(2).

(c) Results or outcomes. The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including pre-literacy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timelines used to determine—

   (1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and
   (2) Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.

(d) Early intervention services. (1) The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the
extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including—

(i) The length, duration, frequency, intensity, and method of delivering the early intervention services;

(ii) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§ 303.13(a)(8), 303.26 and 303.126, or, subject to paragraph (d)(1)(ii)(B) of this section, a justification as to why an early intervention service will not be provided in the natural environment.

(B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be—

(1) Made by the IFSP Team (which includes the parent and other team members);

(2) Consistent with the provisions in §§ 303.13(a)(8), 303.26, and 303.126; and

(3) Based on the child’s outcomes that are identified by the IFSP Team in paragraph (c) of this section;

(iii) The location of the early intervention services; and

(iv) The payment arrangements, if any.

(2) As used in paragraph (d)(1)(i) of this section—

(i) Frequency and intensity mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis;

(ii) Method means how a service is provided;

(iii) Length means the length of time the service is provided during each session of that service (such as an hour or other specified time period); and

(iv) Duration means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in his or her IFSP).

(3) As used in paragraph (d)(1)(ii) of this section, location means the actual place or places where a service will be provided.

(4) For children who are at least three years of age, the IFSP must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.

(e) Other services. To the extent appropriate, the IFSP also must—

(1) Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this part; and

(2) If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.

(f) Dates and duration of services. The IFSP must include—

(1) The projected date for the initiation of each early intervention service in paragraph (d)(1) of this section, which date must be as soon as possible after the parent consents to the service, as required in §§ 303.342(e) and 303.420(a)(3); and

(2) The anticipated duration of each service.

(g) Service coordinator. (1) The IFSP must include the name of the service coordinator from the profession most 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 implementing the early intervention services identified in a child’s IFSP, including transition services, and coordination with other agencies and persons.

(2) In meeting the requirements 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 and services to be taken to support the smooth transition of the child, in accordance with §§ 303.209 and 303.211(b)(6), from part C services to—

(i) Preschool services under part B of the Act, to the extent that those services are appropriate;

(ii) Part C services under § 303.211; or

(iii) Other appropriate services.
(2) The steps required in paragraph (h)(1) of this section must include—
   (i) Discussions with, and training of, parents, as appropriate, regarding fu-
       ture placements and other matters re-
       lated to the child’s transition;
   (ii) Procedures to prepare the child for changes in service delivery, includ-
       ing steps to help the child adjust to, and function in, a new setting;
   (iii) Confirmation that child find in-
       formation about the child has been trans-
       mitted to the LEA or other rel-
       evant agency, in accordance with §303.209(b) (and any policy adopted by 
       the State under §303.401(e)) and, with parental consent if required under 
       §303.414, transmission of additional in-
       formation needed by the LEA to ensure 
       continuity of services from the part C 
       program to the part B program, includ-
       ing a copy of the most recent eval-
       uation and assessments of the child and 
       the family and most recent IFSP devel-
       oped in accordance with §§303.340 
       through 303.345; and 
   (iv) Identification of transition serv-
       ices and other activities that the IFSP 
       Team determines are necessary to sup-
       port the transition of the child.

(Authority: 20 U.S.C. 1435(a)(10)(B), 1435(a)(16), 1436(a)(3), 1436(d), 1437(a)(9)–(10), 
1440)

§ 303.345 Interim IFSPs—provision of services before evaluations and as-
seSSments are completed.

Early intervention services for an eli-
gable child and the child’s family may 
commence before the completion of the 
evaluation and assessments in §303.321, 
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 coordi-
   nator who will be responsible, consis-
   tent with §303.344(g), for imple-
   menting the interim IFSP and coordi-
   nating with other agencies and per-
   sons; and
   (2) The early intervention services 
      that have been determined to be needed 
      immediately by the child and the 
      child’s family.
   (c) Evaluations and assessments are 
      completed within the 45-day timeline in 
      §303.310.

(Authority: 20 U.S.C. 1436(c))

§ 303.346 Responsibility and account-
ability.

Each public agency or EIS provider 
who has a direct role in the provision 
of early intervention services is respon-
sible for making a good faith effort to 
assist each eligible child in achieving 
the outcomes in the child’s IFSP. How-
ever, part C of the Act does not require 
that any public agency or EIS provider 
be held accountable if an eligible child 
does not achieve the growth projected 
in the child’s IFSP.

(Authority: 20 U.S.C. 1436)

Subpart E—Procedural Safeguards

GENERAL

§ 303.400 General responsibility of lead 
agency for procedural safeguards.

Subject to paragraph (c) of this sec-
tion, each lead agency must—
   (a) Establish or adopt the procedural 
safeguards that meet the require-
ments of this subpart, including the provi-
sions on confidentiality in §§303.401 
through 303.417, parental consent and 
notice in §§303.420 and 303.421, surro-
gate parents in §303.422, and dispute 
resolution procedures in §303.430;
   (b) Ensure the effective implementa-
tion of the safeguards by each partici-
pating agency (including the lead agen-
cy and EIS providers) in the statewide 
system that is involved in the provi-
sion of early intervention services 
under this part; and
   (c) Make available to parents an ini-
tial copy of the child’s early interven-
tion record, at no cost to the parents.

(Authority: 20 U.S.C. 1439(a))

CONFIDENTIALITY OF PERSONALLY IDEN-
TIFIABLE INFORMATION AND EARLY 
INTERVENTION RECORDS

§ 303.401 Confidentiality and oppor-
tunity to examine records.

(a) General. Each State must ensure 
that the parents of a child referred 
under this part are afforded the right 
to confidentiality of personally identi-
fiable information, including the right 
to written notice of, and written con-
sent to, the exchange of that informa-
tion among agencies, consistent with 
Federal and State laws.

§ 303.401Confidentiality and oppor-
tunity to examine records.
(b) Confidentiality procedures. As required under sections 617(c) and 642 of the Act, the regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. Each State must have procedures in effect to ensure that—

(1) Participating agencies (including the lead agency and EIS providers) comply with the part C confidentiality procedures in §§303.401 through 303.417; and

(2) The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all part C early intervention records about the child and the child’s family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, individual complaints involving the child, or any part of the child’s early intervention record under this part.

(c) Applicability and timeframe of procedures. The confidentiality procedures described in paragraph (b) of this section apply to the personally identifiable information of a child and the child’s family that—

(1) Is contained in early intervention records collected, used, or maintained under this part by the lead agency or an EIS provider; and

(2) Applies from the point in time when the child is referred for early intervention services under this part until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

(d) Disclosure of information. (1) Subject to paragraph (e) of this section, the lead agency must disclose to the SEA and the LEA where the child resides, in accordance with §303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act:

(i) A child’s name.

(ii) A child’s date of birth.

(iii) Parent contact information (including parents’ names, addresses, and telephone numbers).

(2) The information described in paragraph (d)(1) of this section is needed to enable the lead agency, as well as LEAs and SEAs under part B of the Act, to identify all children potentially eligible for services under §303.211 and part B of the Act.

(e) Option to inform a parent about intended disclosure. (1) A lead agency, through its policies and procedures, may require EIS providers, prior to making the limited disclosure described in paragraph (d)(1) of this section, to inform parents of a toddler with a disability of the intended disclosure and allow the parents a specified time period to object to the disclosure in writing.

(2) If a parent (in a State that has adopted the policy described in paragraph (e)(1) of this section) objects during the time period provided by the State, the lead agency and EIS provider are not permitted to make such a disclosure under paragraph (d) of this section and §303.209(b)(1)(i) and (b)(1)(ii).

(Authority: 20 U.S.C. 1412(a)(8), 1412(a)(9), 1417(e), 1435(a)(5), 1437(a)(9), 1439(a)(2), 1439(a)(4), 1439(a)(6), 1442)

§ 303.402 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by lead agencies and EIS providers pursuant to part C of the Act, and consistent with §§303.401 through 303.417. The regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the Family
§ 303.404 Notice to parents.

The lead agency must give notice when a child is referred under part C of the Act that is adequate to fully inform parents about the requirements in §303.402, including—

(a) 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;

(b) 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;

(c) A description of all the rights of parents and children regarding this information, including their rights under the part C confidentiality provisions in §§303.401 through 303.417; and

(d) A description of the extent that the notice is provided in the native languages of the various population groups in the State.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1442)
as custody, foster care, guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§ 303.406 Record of access.

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under part C of the Act (except access by parents and authorized representatives and 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 early intervention records.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442)

§ 303.407 Records on more than one child.

If any early intervention 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. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§ 303.408 List of types and locations of information.

Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§ 303.409 Fees for records.

(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, except as provided in paragraph (c) of this section.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(c) A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

(Authority: 20 U.S.C. 1417(c), 1432(4)(B), 1439(a)(2), 1439(a)(4), 1442)

§ 303.410 Amendment of records at a parent's request.

(a) A parent who believes that information in the early intervention records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

(b) The participating agency must 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 participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §303.411.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§ 303.411 Opportunity for a hearing.

The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child’s early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in §303.430(d)(1) provided that such hearing procedures meet the requirements of the hearing procedures in §303.413 or may request a hearing directly under the State's procedures in §303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§ 303.412 Result of hearing.

(a) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it must
§ 303.413 Hearing procedures.

A hearing held under § 303.411 must be conducted according to the procedures under 34 CFR 99.22.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§ 303.414 Consent prior to disclosure or use.

(a) Except as provided in paragraph (b) of this section, prior parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, 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) A lead agency or other participating agency may not disclose personally identifiable information, as defined in § 303.29, to any party except participating agencies (including the lead agency and EIS providers) that are part of the State’s part C system without parental consent unless authorized to do so under—

(1) Sections 303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or

(2) One of the exceptions enumerated in 34 CFR 99.31 (where applicable to part C), which are expressly adopted to apply to part C through this reference.

In applying the exceptions in 34 CFR 99.31 to this part, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.37, 99.38, and 99.39; in applying these provisions in 34 CFR part 99 to part C, the reference to—

(i) 34 CFR 99.30 means § 303.414(a);

(ii) “Education records” means early intervention records under § 303.403(b);

(iii) “Educational” means early intervention under this part;

(iv) “Educational agency or institution” means the participating agency under § 303.404(c);

(v) “School officials and officials of another school or school system” means qualified personnel or service coordinators under this part;

(vi) “State and local educational authorities” means the lead agency under § 303.22; and

(vii) “Student” means child under this part.

(c) The lead agency must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent’s right to refuse consent under § 303.420.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

§ 303.415 Safeguards.

(a) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information
§ 303.416 Destruction of information.

(a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80.

(b) Subject to paragraph (a) of this section, the information must be destroyed at the request of the parents. However, a permanent record of a child’s name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

§ 303.417 Enforcement.

The lead agency must have in effect the policies and procedures, including sanctions and the right to file a complaint under §§ 303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with §§ 303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met.

§ 303.420 Parental consent and ability to decline services.

(a) The lead agency must ensure parental consent is obtained before—

1. Administering screening procedures under § 303.320 that are used to determine whether a child is suspected of having a disability;
2. All evaluations and assessments of a child are conducted under § 303.321;
3. Early intervention services are provided to the child under this part;
4. Public benefits or insurance or private insurance is used if such consent is required under § 303.320; and
5. Disclosure of personally identifiable information consistent with § 303.414.

(b) If a parent does not give consent under paragraph (a)(1), (a)(2), or (a)(3) of this section, the lead agency must make reasonable efforts to ensure that the parent—

1. Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
2. Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

(c) The lead agency may not use the due process hearing procedures under this part or part B of the Act to challenge a parent’s refusal to provide any consent that is required under paragraph (a) of this section.

(d) The parents of an infant or toddler with a disability—

1. Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time, in accordance with State law; and
2. May decline a service after first accepting it, without jeopardizing other early intervention services under this part.

§ 303.421 Prior written notice and procedural safeguards notice.

(a) General. Prior written notice must be provided to parents a reasonable time before the lead agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant’s or toddler’s family.
§ 303.422 Surrogate parents.

(a) General. Each lead agency or other public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in §303.27) can be identified;

(2) The lead agency or other public agency, after reasonable efforts, cannot locate 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. (1) 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 assignment process must include a method for—

(i) Determining whether a child needs a surrogate parent; and

(ii) Assigning a surrogate parent to the child.

(2) In implementing the provisions under this section for children who are wards of the State or placed in foster care, the lead agency must consult with the public agency that has been assigned care of the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the lead agency under paragraph (b)(1) of this section, may be appointed by the judge overseeing the infant or toddler’s case provided that the surrogate parent meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents. (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(i) Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;

(ii) Has no personal or professional 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.

(e) Non-employee requirement; compensation. A person who is otherwise qualified to be a surrogate parent under paragraph (d) 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.

(f) Surrogate parent responsibilities. The surrogate parent has the same rights as a parent for all purposes under this part.

(g) Lead agency responsibility. The lead agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days
after a public agency determines that the child needs a surrogate parent.
(Authority: 20 U.S.C. 1439(a)(5))

DISPUTE RESOLUTION OPTIONS

§ 303.430 State dispute resolution options.

(a) General. Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, State complaint procedures, and due process hearing procedures, described in paragraphs (b) through (e) of this section.

(b) Mediation. Each lead agency must make available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements in §303.431.

(c) State complaint procedures. Each lead agency must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part that meet the requirements in §§303.432 through 303.434.

(d) Due process hearing procedures. Each lead agency must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a), by either adopting—

(1) The part C due process hearing procedures under section 639 of the Act that—

(i) Meet the requirements in §§303.435 through 303.438; and

(ii) Provide a means of filing a due process complaint regarding any matter listed in §303.421(a); or

(2) The part B due process hearing procedures under section 615 of the Act and §§303.440 through 303.449 (with either a 30-day or 45-day timeline for resolving due process complaints, as provided in §303.440(c)).

(e) Status of a child during the pendency of a due process complaint. (1) During the pendency of any proceeding involving a due process complaint under paragraph (d) of this section, unless the lead agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents.

(2) If the due process complaint under paragraph (d) of this section involves an application for initial services under part C of the Act, the child must receive those services that are not in dispute.

(Approved by Office of Management and Budget under control number 1820–0678 and 1820–NEW)

MEDIATION

§ 303.431 Mediation.

(a) General. Each lead agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

(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, 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)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.

(ii) The lead agency must select mediators on a random, rotational, or other impartial basis.

(3) The State must 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.

(5) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding
agreement that sets forth that resolution and that—
(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
(ii) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.
(6) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.
(7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator. (1) An individual who serves as a mediator under this part—
(i) May not be an employee of the lead agency or an EIS provider that is involved in the provision of early intervention services or other services to the child; and
(ii) Must not have a personal or professional interest that conflicts with the person’s objectivity.
(2) A person who otherwise qualifies as a mediator is not an employee of a lead agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator.

(d) Meeting to encourage mediation. A lead agency may establish procedures to offer to parents and EIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—
(1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
(2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

STATE COMPLAINT PROCEDURES

§ 303.432 Adoption of State complaint procedures.
(a) General. Each lead agency must adopt written procedures for—
(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in §303.434 by providing for the filing of a complaint with the lead agency; and
(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under §§303.432 through 303.434.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the lead agency has found a failure to provide appropriate services, the lead agency, pursuant to its general supervisory authority under part C of the Act, must address—
(1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant’s or toddler’s family (such as compensatory services or monetary reimbursement); and
(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

§ 303.433 Minimum State complaint procedures.
(a) Time limit; minimum procedures. Each lead agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under §303.434 to—
(1) Carry out an independent on-site investigation, if the lead agency 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) Provide the lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum—
   (i) At the discretion of the lead agency, a proposal to resolve the complaint; and
   (ii) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§303.430(b) and 303.431;
(4) Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of part C of the Act or of this part; and
(5) 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 decision; 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—
      (i) Exceptional circumstances exist with respect to a particular complaint; or
      (ii) The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency, public agency or EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; 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 §303.430(d). (1) If a written complaint is received that is also the subject of a due process hearing under §303.430(d), 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 hearing must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
   (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—
      (i) The due process hearing decision is binding on that issue; and
      (ii) The lead agency must inform the complainant to that effect.
   (3) A complaint alleging a lead agency, public agency, or EIS provider’s failure to implement a due process hearing decision must be resolved by the lead agency.

(Approved by Office of Management and Budget under control number 1820–NEW)

(Authority: 20 U.S.C. 1439(a)(1))

§ 303.434 Filing a complaint.
(a) An organization or individual may file a signed written complaint under the procedures described in §§303.432 and 303.433.
(b) The complaint must include—
   (1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of part C of the Act;
   (2) The facts on which the statement is based;
   (3) The signature and contact information for the complainant; and
   (4) If alleging violations with respect to a specific child—
      (i) The name and address of the residence of the child;
      (ii) The name of the EIS provider serving the child; and
      (iii) A description of the nature of the problem of the child, including facts relating to the problem; and
§ 303.435 Appointment of an impartial due process hearing officer.

(a) Qualifications and duties. Whenever a due process complaint is received under §303.430(d), a due process hearing officer 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 early intervention services available for, infants and toddlers with disabilities and their families; and

(2) Perform the following duties:

(i) (A) Listen to the presentation of relevant viewpoints about the due process complaint.

(B) Examine all information relevant to the issues.

(C) Seek to reach a timely resolution of the due process complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) Definition of impartial. (1) Impartial means that the due process hearing officer appointed to implement the due process hearing under this part—

(i) Is not an employee of the lead agency or an EIS provider 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 due process hearing procedures or mediation procedures under this part.

(Authority: 20 U.S.C. 1439(a)(1))

§ 303.436 Parental rights in due process hearing proceedings.

(a) General. Each lead agency must ensure that the parents of a child referred to part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under §303.430(d).

(b) Rights. Any parent involved in a due process hearing 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 infants and toddlers 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 the parent at least five days before the hearing;

(4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and

(5) Receive a written copy of the findings of fact and decisions at no cost to the parent.

(Authority: 20 U.S.C. 1439(a))

§ 303.437 Convenience of hearings and timelines.

(a) Any due process hearing conducted under this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency must ensure that, not later than 30 days after the receipt of a parent’s due process complaint, the due process hearing required under this subpart is completed and a written decision mailed to each of the parties.
§ 303.438 Civil action.

Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

(Authority: 20 U.S.C. 1439(a)(1))

§ 303.440 Filing a due process complaint.

(a) General.

(1) A parent, EIS provider, or a lead agency may file a due process complaint on any of the matters described in § 303.421(a), relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and his or her family under part C of the Act.

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 303.443(f) apply to the timeline in this section.

(b) Information for parents. The lead agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or EIS provider files a due process complaint under this section.

(c) Timeline for Resolution. The lead agency may adopt a 30- or 45-day timeline, subject to § 303.447(a), for the resolution of due process complaints and must specify in its written policies and procedures under § 303.123 and in its prior written notice under § 303.421, the specific timeline it has adopted.

(Approved by Office of Management and Budget under control number 1820–NEW)

(Authority: 20 U.S.C. 1415(b)(6), 1439)

§ 303.441 Due process complaint.

(a) General. (1) The lead agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the lead agency.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include—

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the EIS provider serving the child;

(4) In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the EIS provider serving the child;

(5) 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

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint. (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.
§ 303.442 Resolution process.

(a) Resolution meeting. (1) Within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing under § 303.443, the lead agency must convene a meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint that—

(i) Includes a representative of the lead agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the lead agency unless the parent is accompanied by an attorney.

(2) The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the lead agency has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraphs (a)(1) and (a)(2) of this section need not be held if—

(i) The parent and lead agency agree in writing to waive the meeting; or

(ii) The parent and lead agency agree to use the mediation process described in § 303.431.

(4) The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.

(b) Resolution period. (1) If the lead agency has not resolved the due process complaint to the satisfaction of the parties within 30 days of receiving the due process complaint, send to the other party a response that specifies the issues raised in the due process complaint.

(2) Except as provided in paragraph (c) of this section, the timeline for

§ 303.442 (2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements in paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if—

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to § 303.442; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in § 303.442(a) and the time period to resolve in § 303.442(b) begin again with the filing of the amended due process complaint.

(e) Lead agency response to a due process complaint. (1) If the lead agency has not sent a prior written notice under § 303.421 to the parent regarding the subject matter contained in the parent’s due process complaint, the lead agency or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

(i) An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IFSP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the lead agency or EIS provider used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the agency’s or EIS provider’s proposed or refused action.

(2) A response by the lead agency under paragraph (e)(1) of this section does not preclude the lead agency from asserting that the parent’s due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2), 1439)
issuing a final decision under §303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (b)(2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the lead agency may, at the conclusion of the 30-day period, request that the hearing officer dismiss the parent’s due process complaint.

(5) If the lead agency fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 30- or 45-day timeline adopted by the lead agency under §303.440(c) for the due process hearing described in §303.447(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting.

(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or lead agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (a)(2) of this section, the parties must execute a legally binding agreement that is—

(1) Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the lead agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements pursuant to this section.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within three business days of the agreement’s execution.


§303.443 Impartial due process hearing.

(a) General. Whenever a due process complaint is received consistent with §303.440, the parents or the EIS provider involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§303.440 through 303.442.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the lead agency directly responsible for the early intervention services of the infant or toddler, as determined under State statute, State regulation, or a written policy of the lead agency.

(c) Impartial hearing officer. (1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the lead agency or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or

(B) A person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in
§ 303.444  
Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§ 303.440 through 303.445, or an appeal conducted pursuant to §303.446, 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 infants or toddlers 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 five 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 five business days prior to a hearing conducted pursuant to §303.443(a), each party must 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. Parents involved in hearings must—

(1) Be given the right to open the hearing to the public; and

(2) Receive a copy of the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section at no cost.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h), 1439)

§ 303.445  
Hearing decisions.

(a) Decision of hearing officer. (1) Subject to paragraph (a)(2) of this section, a hearing officer’s determination of whether an infant or toddler was appropriately identified, evaluated, or placed, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under part C of the Act, must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child was not appropriately identified, evaluated, or placed, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under part C of the Act only if the procedural inadequacies—
(i) Impeded the child’s right to identification, evaluation, and placement or provision of early intervention services for the child and that child’s family under part C of the Act;
(ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for the child and that child’s family under part C of the Act; or
(iii) Caused a deprivation of educational or developmental benefit.

(3) Nothing in paragraph (a) of this section precludes a hearing officer from ordering the lead agency or EIS provider to comply with procedural requirements under §§303.400 through 303.449.

(b) Construction clause. Nothing in §§303.440 through 303.445 affects the right of a parent to file an appeal of the due process hearing decision with the lead agency under §303.446(b), if the lead agency level appeal is available.

(c) Separate due process complaint. Nothing in §§303.440 through 303.449 precludes a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decisions to general public. The lead agency, after deleting any personally identifiable information, must make the findings and decisions available to the public.


§ 303.446 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§303.440 through 303.445 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §303.448.

(b) Appeal of decisions; impartial review. (1) The lead agency may provide for procedures to allow any party aggrieved by the findings and decision in the hearing to appeal to the lead agency.

(2) If there is an appeal, the lead agency must conduct an impartial review of the findings and decision appealed. The official conducting the review must—

(i) Examine the entire hearing record;
(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §303.444 apply;
(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
(v) Make an independent decision on completion of the review; and
(vi) Give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings of fact and decision to the general public. The lead agency, after deleting any personally identifiable information, must make the findings of fact and decisions described in paragraph (b)(2)(vi) of this section available to the general public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §303.448.

(Authority: 20 U.S.C. 1415(g), 1415(h)(4), 1415(i)(1)(A), 1415(i)(2), 1439)

§ 303.447 Timelines and convenience of hearings and reviews.

(a) The lead agency must ensure that not later than either 30 days or 45 days (consistent with the lead agency’s written policies and procedures adopted under §303.440(c)) after the expiration of the 30-day period in §303.442(b), or the adjusted 30-day time periods described in §303.442(c)—

(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 lead agency must 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
§ 303.448 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§ 303.440 through 303.445 who does not have the right to an appeal under § 303.446(b), and any party aggrieved by the findings and decision under § 303.446(b), has the right to bring a civil action with respect to the due process complaint under § 303.440. 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) Time limitation. The party bringing the action has 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under part C of the Act, in the time allowed by that State law.

(c) Additional requirements. In any action brought under paragraph (a) of this section, the court—

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) 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.

(e) 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 §§ 303.440 and 303.446 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.


§ 303.449 State enforcement mechanisms.

Notwithstanding §§ 303.431(b)(6) and 303.442(d)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or a resolution meeting, there is nothing in this part that would prevent the State from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court or competent jurisdiction or in a district court of the United States.


Subpart F—Use of Funds and Payor of Last Resort

§ 303.500 Use of funds, payor of last resort, and system of payments.

(a) Statewide system. Each statewide system must include written policies and procedures that meet the requirements of the—

(1) Use of funds provisions in § 303.501; and

(2) Payor of last resort provisions in §§ 303.510 through 303.521 (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under part C of the Act within the State).

(b) System of Payments. A State may establish, consistent with §§ 303.13(a)(3) and 303.203(b), a system of payments for early intervention services under part C of the Act, including a schedule of sliding fees or cost participation fees (such as co-payments, premiums, or
§ 303.510 Payor of last resort.

(a) Nonsubstitution of funds. Except as provided in paragraph (b) 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 Department 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 infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source (subject to §§ 303.520 and 303.521).

(b) Interim payments—reimbursement. If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child’s family, funds under this part may be used to pay the provider of services (for services and functions authorized under this part, including health services, as defined in §303.16 (but not medical services), functions of the child find system described in §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in §303.321), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.
§ 303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.

(a) General Each State must ensure that it has in place methods for State interagency coordination. Under these methods, the Chief Executive Officer of a State or designee of the Officer must ensure that the interagency agreement or other method for interagency coordination is in effect between each State public agency and the designated lead agency in order to ensure—

(1) The provision of, and establishing financial responsibility for, early intervention services provided under this part; and
(2) Such services are consistent with the requirement in section 635 of the Act and the State’s application under section 637 of the Act, including the provision of such services during the pendency of any dispute between State agencies.

(b) The methods in paragraph (a) of this section must meet all requirements in this section and be set forth in one of the following:

(1) State law or regulation;
(2) Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or
(3) Other appropriate written methods determined by the Governor of the State, or the Governor’s designee, and approved by the Secretary through the review and approval of the State’s application.

(c) Procedures for resolving disputes. (1) Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State’s early intervention service program. Those procedures must include a mechanism for resolution of disputes within agencies and for the Governor, Governor’s designee, or the lead agency to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.

(2) The method must—

(i) Permit the agency to resolve its own internal disputes (based on the agency’s procedures that are included in the agreement), so long as the agency acts in a timely manner; and
(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(3) If, during the lead agency’s resolution of the dispute, the Governor, Governor’s designee, or lead agency determines that the assignment of financial responsibility under this section was inappropriately made—

(i) The Governor, Governor’s designee, or lead agency must reassign the financial responsibility to the appropriate agency; and
(ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

(d) Delivery of services in a timely manner. The methods adopted by the State under this section must—

(1) Include a mechanism to ensure that no services that a child is entitled to receive under this part are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and
(2) Be consistent with the written funding policies adopted by the State under this subpart and include any provisions the State has adopted under §303.520 regarding the use of insurance to pay for part C services.
Additional components. Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the lead agency's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in the State's early intervention service programs.

(Authority: 20 U.S.C. 1435(a)(10), 1437(a)(2), 1440(b))

Payor of Last Resort & System of Payments Provisions—Use of Insurance, Benefits, Systems of Payments, and Fees

§ 303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services.

(a) Use of public benefits or public insurance to pay for Part C services.

(1) A State may not use the public benefits or insurance of a child or parent to pay for part C services unless the State provides written notification, consistent with §303.520(a)(3), to the child's parents, and the State meets the no-cost protections identified in paragraph (a)(2) of this section.

(2) With regard to using the public benefits or insurance of a child or parent to pay for part C services, the State—

(i) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(ii) Must obtain consent, consistent with §§303.7 and 303.420(a)(4), to use a child’s or parent’s public benefits or insurance to pay for part C services if that use would—

(A) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

(B) Result in the child’s parents paying for services that would otherwise be covered by the public benefits or insurance program;

(C) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child’s parents; or

(D) Risk loss of eligibility for the child or that child’s parents for home and community-based waivers based on aggregate health-related expenditures.

(iii) If the parent does not provide consent under paragraphs (a)(2)(i) or (a)(2)(ii) of this section, the State must still make available those part C services on the IFSP to which the parent has provided consent.

(3) Prior to using a child’s or parent’s public benefits or insurance to pay for part C services, the State must provide written notification to the child’s parents. The notification must include—

(i) A statement that parental consent must be obtained under §303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child’s personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program (e.g., Medicaid);

(ii) A statement of the no-cost protection provisions in §303.520(a)(2) and that if the parent does not provide the consent under §303.520(a)(2), the State lead agency must still make available those part C services on the IFSP for which the parent has provided consent;

(iii) A statement that the parents have the right under §303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program (e.g., Medicaid) at any time; and

(iv) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance).

(4) If a State requires a parent to pay any costs that the parent would incur as a result of the State’s using a child’s or parent’s public benefits or insurance to pay for part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the State’s system of
payments policies under §303.521 and included in the notification provided to the parent under paragraph (a)(3) of this section; otherwise, the State cannot charge those costs to the parent.

(b) Use of private insurance to pay for Part C services. (1)(i) The State may not use the private insurance of a parent of an infant or toddler with a disability to pay for part C services unless the parent provides parental consent, consistent with §§303.7 and 303.420(a)(4), to use private insurance to pay for part C services for his or her child or the State meets one of the exceptions in paragraph (b)(2) of this section. This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained—

(A) When the lead agency or EIS provider seeks to use the parent’s private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

(B) Each time consent for services is required under §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child’s IFSP.

(ii) If a State requires a parent to pay any costs that the parent would incur as a result of the State’s use of private insurance to pay for early intervention services (such as co-payments, premiums, or deductibles), those costs must be identified in the State’s system of payments policies under §303.521; otherwise, the State may not charge those costs to the parent.

(iii) When obtaining parental consent required under paragraph (b)(1)(i) of this section or initially using benefits under a child or parent’s private insurance policy to pay for an early intervention service under paragraph (b)(2) of this section, the State must provide to the parent a copy of the State’s system of payments policies that identifies the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under this part (such as co-payments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).

(2) The parental consent requirements in paragraph (b)(1) of this section do not apply if the State has enacted a State statute regarding private health insurance coverage for early intervention services under part C of the Act, that expressly provides that—

(i) The use of private health insurance to pay for part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child’s family members who are covered under that health insurance policy;

(ii) The use of private health insurance to pay for part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child’s family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under part C of the Act; and

(iii) The use of private health insurance to pay for part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child’s family members covered under that health insurance policy.

(3) If a State has enacted a State statute that meets the requirements in paragraph (b)(2) of this section, regarding the use of private health insurance coverage to pay for early intervention services under part C of the Act, the State may reestablish a new baseline of State and local expenditures under §303.225(b) in the next Federal fiscal year following the effective date of the statute.

(c) Inability to pay. If a parent or family of an infant or toddler with a disability is determined unable to pay under the State’s definition of inability to pay under §303.521(a)(3) and does not provide consent under paragraph (b)(1), the lack of consent may not be used to delay or deny any services under this part to that child or family.

(d) Proceeds or funds from public insurance or benefits or from private insurance.
(1) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.

(2) If the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under part C of the Act, those funds are considered neither State nor local funds under §303.225(b).

(3) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under §303.225.

(e) Funds received from a parent or family member under a State’s system of payments. Funds received by the State from a parent or family member under the State’s system of payments established under §303.521 are considered program income under 34 CFR 80.25. These funds—

(1) Are not deducted from the total allowable costs charged under part C of the Act (as set forth in 34 CFR 80.25(g)(1));

(2) Must be used for the State’s part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

(3) Are considered neither State nor local funds under §303.225(b).

(Authority: 20 U.S.C. 14224(B), 1435(a)(10), 1439(a))

§303.521 System of payments and fees.

(a) General. If a State elects to adopt a system of payments in §303.500(b), the State’s system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family’s public insurance or benefits or private insurance), and include—

(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;

(2) The basis and amount of payments or fees;

(3) The State’s definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the State makes its determination of the ability or inability to pay;

(4) An assurance that—

(i) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under paragraphs (a)(4)(ii), (b), and (c) of this section);

(ii) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this part to the child or the child’s family such that, if the parent or family meets the State’s definition of inability to pay, the infant or toddler with a disability must be provided all part C services at no cost.

(iii) Families will not be charged any more than the actual cost of the part C service (factoring in any amount received from other sources for payment for that service); and

(iv) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;

(5) Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and

(6) Provisions that permit, but do not require, the lead agency to use part C or other funds to pay for costs such as the premiums, deductibles, or co-payments.

(b) Functions not subject to fees. The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in §§303.301 through 303.303.

(2) Evaluation and assessment, in accordance with §303.320, and the functions related to evaluation and assessment in §303.13(b).

(3) Service coordination services, as defined in §§303.13(b)(11) and 303.33.

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§303.342 through 303.345; and
§ 303.600

Implementation of the procedural safeguards in subpart B of this part and the other components of the statewide system of early intervention services in subpart D of this part and this subpart.

(c) States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three. If a State has in effect a State law requiring the provision of FAPE for, or uses part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the State may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this part that are part of FAPE for that infant or toddler and the child’s family, and those FAPE services must meet the requirements of both parts B and C of the Act.

(d) Family fees. (1) Fees or costs collected from a parent or the child’s family to pay for early intervention services under a State’s system of payments are program income under 34 CFR 80.25. A State may add this program income to its part C grant funds, rather than deducting the program income from the amount of the State’s part C grant. Any fees collected must be used for the purposes of the grant under part C of the Act.

(2) Fees collected under a system of payments are considered neither State nor local funds under §303.225(b).

(e) Procedural Safeguards. (1) Each State system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the State’s determination of the parent’s ability to pay, may do one of the following:

(i) Participate in mediation in accordance with §303.431.

(ii) Request a due process hearing under §303.436 or 303.441, whichever is applicable.

(iii) File a State complaint under §303.434.

(iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent’s procedural rights under this part, including the right to pursue, in a timely manner, the redress options described in paragraphs (e)(2)(i) through (e)(2)(iii) of this section.

(2) A State must inform parents of these procedural safeguard options by either—

(i) Providing parents with a copy of the State’s system of payments policies when obtaining consent for provision of early intervention services under §303.420(a)(3); or

(ii) Including this information with the notice provided to parents under §303.421.

(Authority: 20 U.S.C. 1432(4)(B), 1439(a), 1440)

Subpart G—State Interagency Coordinating Council

§ 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under part C of the Act must establish a State Interagency Coordinating Council (Council) as defined in §303.8.

(b) The Council must be appointed by the Governor. The Governor must ensure that the membership of the Council reasonably represents the population of the State.

(c) The Governor must 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 §303.201 may not serve as the chairperson of the Council.

(Authority: 20 U.S.C. 1441(a))

§ 303.601 Composition.

(a) The Council must be composed as follows:

(i) At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.

(ii) At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged six years or younger.

(2) At least 20 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 provision 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 SEA responsible for preschool services to children with disabilities; and
   (ii) Have sufficient authority to engage in policy planning and implementation on behalf of the SEA.
(7) At least one member must be from the agency responsible for the State Medicaid and CHIP program.
(8) At least one member must be from a Head Start or Early Head Start agency or program in the State.
(9) At least one member must be from a State agency responsible for child care.
(10) At least one member must be from the agency responsible for the State regulation of private health insurance.
(11) At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.
(12) At least one member must be a representative from the State child welfare agency responsible for foster care.
(13) At least one member must be from the State agency responsible for children's mental health.
(b) The Governor may appoint one member to represent more than one program or agency listed in paragraphs (a)(7) through (a)(13) of this section.
(c) The Council may include other members selected by the Governor, including a representative from the Bureau of Indian Education (BIE) or, where there is no school operated or funded by the BIE in the State, from the Indian Health Service or the tribe or tribal council.
(d) 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 under State law.

(Authority: 20 U.S.C. 1231d, 1441(b), 1441(f))

§ 303.602 Meetings.
(a) The Council must meet, at a minimum, on a quarterly basis, and in such places as it determines 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;
   (2) To the extent appropriate, be open and accessible to the general public; and
   (3) As needed, provide for interpreters for persons who are deaf and other necessary services for Council members and participants. The Council may use funds under this part to pay for those services.

(Authority: 20 U.S.C. 1441(c))

§ 303.603 Use of funds by the Council.
(a) Subject to the approval by the Governor, the Council may use funds under this part to—
   (1) Conduct hearings and forums;
   (2) 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) 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) Hire staff; and
   (5) Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under part C of the Act.

(Authority: 20 U.S.C. 1441(d))

§ 303.604 Functions of the Council—required duties.
(a) Advising and assisting the lead agency. The Council must advise and
assist the lead agency in the performance of its responsibilities in section 635(a)(10) of the Act, including—
1. Identification of sources of fiscal and other support for services for early intervention service programs under part C of the Act;
2. Assignment of financial responsibility to the appropriate agency;
3. Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find under §§ 303.115 and 303.302, monitoring under § 303.120 and §§ 303.700 through 303.708, financial responsibility and provision of early intervention services under §§ 303.202 and 303.511, and transition under § 303.209; and
4. Preparation of applications under this part and amendments to those applications.

(b) Advising and assisting on transition. The Council must advise and assist the SEA and the lead agency regarding the transition of toddlers with disabilities to preschool and other appropriate services.

(c) Annual report to the Governor and to the Secretary. 1. The Council must—
   (i) Prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention service programs for infants and toddlers with disabilities and their families under part C of the Act operated within the State; and
   (ii) Submit the report to the Secretary by a date that the Secretary establishes.
2. Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Authority: 20 U.S.C. 1441(e)(1))

§ 303.605 Authorized activities by the Council.
The Council may carry out the following activities:
(a) Advise and assist the lead agency and the SEA regarding the provision of appropriate services for children with disabilities from birth through age five.
(b) 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 their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.
(c) Coordinate and collaborate with the State Advisory Council on Early Childhood Education and Care for children, as described in section 642B(b)(1)(A)(1) of the Head Start Act, 42 U.S.C. 9837(b)(1)(A)(1), if applicable, and other State interagency early learning initiatives, as appropriate.

(Authority: 20 U.S.C. 1435(a)(10), 1441(e)(2))

Subpart H—State Monitoring and Enforcement; Federal Monitoring and Enforcement; Reporting; and Allocation of Funds

FEDERAL AND STATE MONITORING AND ENFORCEMENT

§ 303.700 State monitoring and enforcement.
(a) The lead agency must—
1. Monitor the implementation of this part;
2. Make determinations annually about the performance of each EIS program using the categories identified in § 303.703(b);
3. Enforce this part consistent with § 303.704, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 303.704(a)(1) (technical assistance) and § 303.704(a)(2) (imposing conditions on the lead agency’s funding of an EIS program or, if the lead agency does not provide part C funds to the EIS program, an EIS provider), § 303.704(b)(2)(1) (corrective action or improvement plan) and § 303.704(b)(2)(iv) (withholding of funds, in whole or in part by the lead agency), and § 303.704(c)(2) (withholding of funds, in whole or in part by the lead agency); and
4. Report annually on the performance of the State and of each EIS program under this part as provided in § 303.702.

(b) The primary focus of the State's monitoring activities must be on—
1. Improving early intervention results and functional outcomes for all

Authority: 20 U.S.C. 1441(e)(1)
infants and toddlers with disabilities; and

(2) Ensuring that EIS programs meet the program requirements under part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.

(d) The lead agency must monitor each EIS program located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Early intervention services in natural environments.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution sessions (if the State adopts part B due process hearing procedures under §303.430(d)(2)), mediation, and a system of transition services as defined in section 637(a)(9) of the Act.

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by EIS programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the State’s identification of the noncompliance.

(Approved by Office of Management and Budget under control number 1820–0578)

(Authority: 20 U.S.C. 1416(a), 1442)

§ 303.702 State use of targets and reporting.

(a) General. Each State must use the targets established in the State’s performance plan under §303.701 and the priority areas described in §303.700(d) to analyze the performance of each EIS program in implementing part C of the Act.

(b) Public reporting and privacy. (1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must—

(A) Report annually to the public on the performance of each EIS program located in the State on the targets in the State’s performance plan as soon as practicable but no later than 120 days following the State’s submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and
(B) Make the State’s performance plan under §303.701(a), annual performance reports under paragraph (b)(2) of this section, and the State’s annual reports on the performance of each EIS program under paragraph (b)(1)(i)(A) of this section available through public means, including by posting on the Web site of the lead agency, distribution to the media, and distribution to EIS programs.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i)(A) of this section, collects data through State monitoring or sampling, the State must include in its public report on EIS programs under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each EIS program and the date the data were collected.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State’s performance plan.

(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

(Approved by Office of Management and Budget under control number 1820–0578)

(Approval: 20 U.S.C. 1416(d), 1442)

§ 303.704 Enforcement.

(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under §303.703(b)(1)(ii) in implementing the requirements of part C of the Act, the Secretary takes one or more of the following actions:

(i) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. This technical assistance may include—

(ii) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research;

(iii) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program to provide advice, technical assistance, and support; and
(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D of the Act, and private providers of scientifically based technical assistance.

(2) Identifies the State as a high-risk grantee and imposes special conditions on the State’s grant under part C of the Act.

(b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under §303.703(b)(1)(iii) in implementing the requirements of part C of the Act, the following apply:

(1) The Secretary may take any of the actions described in paragraph (a) of this section.

(2) The Secretary takes one or more of the following actions:

(i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.

(ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended (GEPA), 20 U.S.C. 1234f, if the Secretary has reason to believe that the State cannot correct the problem within one year.

(iii) Seeks to recover funds under section 452 of GEPA, 20 U.S.C. 1234a.

(iv) Withholds, in whole or in part, any further payments to the State under part C of the Act.

(3) Refers the case to the Office of Inspector General of the Department of Education.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) Report to Congress. The Secretary reports to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

(Authority: 20 U.S.C. 1416(e)(1)–(3), 1416(e)(5), 1442)

§ 303.705 Withholding funds.

(a) Opportunity for hearing. Prior to withholding any funds under part C of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the lead agency involved, pursuant to the procedures in §§303.231 through 303.236.

(b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under part C of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under part C of the Act should not be suspended.

(c) Nature of withholding. (1) Limitation. If the Secretary determines that it is appropriate to withhold further payments under section 616(e)(2) or (e)(3) of the Act, the Secretary may determine—

(i) That such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary’s determination under §303.703(b)(1); or

(ii) That the lead agency must not make further payments of funds under part C of the Act to specified State agencies, EIS programs or, if the lead agency does not provide part C funds to
§ 303.706  
the EIS program, EIS providers that caused or were involved in the Secretary’s determination under § 303.703(b)(1).

(2) **Withholding until rectified.** Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

(i) Payments to the State under part C of the Act must be withheld in whole or in part; and

(ii) Payments by the lead agency under part C of the Act must be limited to State agencies and EIS providers whose actions did not cause or were not involved in the Secretary’s determination under § 303.703(b)(1).

(Authority: 20 U.S.C. 1416(e)(4), 1416(e)(6), 1442)

§ 303.707  **Rule of construction.**

Nothing in this subpart may be construed to restrict the Secretary from utilizing any authority under GEPA, 20 U.S.C. 1221 et seq., and its regulations in 34 CFR parts 76, 77, 80, and 81, including the imposition of special conditions under 34 CFR 80.12, to monitor and enforce the requirements of the Act.

(Authority: 20 U.S.C. 1416(g), 1442)

§ 303.708  **State enforcement.**

Nothing in this subpart may be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of the Act.

(Authority: 20 U.S.C. 1416(a)(1)(C), 1442)

§ 303.720  **Data requirements—general.**

(a) The lead agency must annually report to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The lead agency must submit the report to the Secretary in the manner prescribed by the Secretary.

(Approved by Office of Management and Budget under control number 1820–0597)

(Authority: 20 U.S.C. 1418, 1435(a)(14), 1442)

§ 303.721  **Annual report of children served—report requirement.**

(a) For the purposes of the annual report required by section 618 of the Act and § 303.720, the lead agency must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year. The report must include—

(1) The number and percentage of infants and toddlers with disabilities in the State, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to it by tribes, tribal organizations, and consortia under § 303.731(e)(1));

(2) The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and

(3) The number and percentage of at-risk infants and toddlers (as defined in section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under part C of the Act.

(b) If a State adopts the option under section 635(c) of the Act and § 303.211 to make services under this part available to children ages three and older, the State must submit to the Secretary a report on the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for those children to continue to receive early intervention services.
§ 303.731 Payments to Indians.

(a) General. (1) The Secretary makes payments to the Secretary of the Interior under part C of the Act, which the Secretary of the Interior must distribute to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450b), or consortia of those entities, for the coordination of assistance in the provision of early intervention services by 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 Secretary of the Interior.
§ 303.732  State allotments.

(a) General. Except as provided in paragraphs (b) and (c) of this section, a tribe, tribal organization, or consortium must make a biennial report to the Secretary of the Interior of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the two years following the year in which the report is made. This report must include an assurance that the tribe, tribal organization, or consortium has provided the lead agency in the State child find information (including the names and dates of birth and parent contact information) for infants or toddlers with disabilities who are included in the report in order to meet the child find coordination and child count requirements in sections 618 and 643 of the Act.

(b) Allocation. For each fiscal year, the Secretary of the Interior must distribute the entire payment received under paragraph (a)(1) of this section by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total number of those children served by all tribes, tribal organizations, or consortia.

(c) Information. To receive a payment under this section, the tribe, tribal organization, or consortium must submit the appropriate information to the Secretary of the Interior to determine the amounts to be distributed under paragraph (b) of this section.

(d) Use of funds. (1) The funds received by a tribe, tribal organization, or consortium must be used to assist States in child find, screening, and other procedures for the early identification of Indian children under three years of age and for parent training. The funds also may be used to provide early intervention services in accordance with part C of the Act. These activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Education, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities.

(2) The tribe, tribal organization, or consortium must, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) Reports. (1) To be eligible to receive a payment under paragraph (b) of this section, a tribe, tribal organization, or consortium must make a biennial report to the Secretary of the Interior of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the two years following the year in which the report is made. This report must include an assurance that the tribe, tribal organization, or consortium has provided the lead agency in the State child find information (including the names and dates of birth and parent contact information) for infants or toddlers with disabilities who are included in the report in order to meet the child find coordination and child count requirements in sections 618 and 643 of the Act.

(b) Allocation. For each fiscal year, the Secretary of the Interior must distribute the entire payment received under paragraph (a)(1) of this section by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total number of those children served by all tribes, tribal organizations, or consortia.

(c) Information. To receive a payment under this section, the tribe, tribal organization, or consortium must submit the appropriate information to the Secretary of the Interior to determine the amounts to be distributed under paragraph (b) of this section.

(d) Use of funds. (1) The funds received by a tribe, tribal organization, or consortium must be used to assist States in child find, screening, and other procedures for the early identification of Indian children under three years of age and for parent training. The funds also may be used to provide early intervention services in accordance with part C of the Act. These activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Education, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities.

(2) The tribe, tribal organization, or consortium must, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) Reports. (1) To be eligible to receive a payment under paragraph (b) of this section, a tribe, tribal organization, or consortium must make a biennial report to the Secretary of the Interior of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the two years following the year in which the report is made. This report must include an assurance that the tribe, tribal organization, or consortium has provided the lead agency in the State child find information (including the names and dates of birth and parent contact information) for infants or toddlers with disabilities who are included in the report in order to meet the child find coordination and child count requirements in sections 618 and 643 of the Act.

(b) Allocation. For each fiscal year, the Secretary of the Interior must distribute the entire payment received under paragraph (a)(1) of this section by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total number of those children served by all tribes, tribal organizations, or consortia.

(c) Information. To receive a payment under this section, the tribe, tribal organization, or consortium must submit the appropriate information to the Secretary of the Interior to determine the amounts to be distributed under paragraph (b) of this section.

(d) Use of funds. (1) The funds received by a tribe, tribal organization, or consortium must be used to assist States in child find, screening, and other procedures for the early identification of Indian children under three years of age and for parent training. The funds also may be used to provide early intervention services in accordance with part C of the Act. These activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Education, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities.

(2) The tribe, tribal organization, or consortium must, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) Reports. (1) To be eligible to receive a payment under paragraph (b) of this section, a tribe, tribal organization, or consortium must make a biennial report to the Secretary of the Interior of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the two years following the year in which the report is made. This report must include an assurance that the tribe, tribal organization, or consortium has provided the lead agency in the State child find information (including the names and dates of birth and parent contact information) for infants or toddlers with disabilities who are included in the report in order to meet the child find coordination and child count requirements in sections 618 and 643 of the Act.
for each fiscal year, from the aggregate amount of funds available under part C of the Act 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) Minimum allocations. Except as provided in paragraph (c) of this section, no State may receive less than 0.5 percent of the aggregate amount available under this section or $500,000, whichever is greater.

(c) Ratable reduction. (1) If the sums made available under part C of the Act for any fiscal year are insufficient to pay the full amount that all States are eligible to receive under this section for that year, the Secretary ratably reduces the allotments to those States for such year.

(2) If additional funds become available for making payments under this section, allotments that were reduced under paragraph (c)(1) of this section will be increased on the same basis the allotments were reduced.

(d) Definitions. For the purpose of allotting funds to the States under 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 §303.731, to the outlying areas under §303.730, and any amount to be reserved for State incentive grants under §303.734;

(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.

§ 303.733 Reallotment of funds.

If a State (as defined in §303.35) elects not to receive its allotment, the Secretary reallocates those funds among the remaining States (as defined in §303.732(d)(3)), in accordance with §303.732(c)(2).

(Authority: 20 U.S.C. 1445(d))

§ 303.734 Reservation for State incentive grants.

(a) General. For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 of the Act exceeds $460,000,000, the Secretary reserves 15 percent of the appropriated amount exceeding $460,000,000 to provide grants to States that are carrying out the policy described in section 635(c) of the Act and in §303.211 (including a State that makes part C services available under §303.211(a)(2)), in order to facilitate the implementation of that policy.

(b) Amount of grant. (1) General. Notwithstanding section 643(c)(2) and (c)(3) of the Act, the Secretary provides a grant to each State under this section in an amount that bears the same ratio to the amount reserved under paragraph (a) of this section as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under paragraph (a) of this section.

(2) Maximum amount. No State may receive a grant under paragraph (a) of this section for any fiscal year in an amount that is greater than 20 percent of the amount reserved under that paragraph for the fiscal year.

(c) Carryover of amounts pursuant to section 643(e)(3) of the Act. (1) First succeeding fiscal year. Pursuant to section 421(b) of GEPA, 20 U.S.C. 1221 et seq., amounts under a grant provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which those amounts were appropriated must remain available for obligation and expenditure during the first succeeding fiscal year.

(2) Second succeeding fiscal year. Amounts under a grant provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which those amounts were appropriated must be returned to the Secretary and used to make grants to States under section 633 of the Act (from their allotments identified in
Appendix A to Part 303—Index for IDEA Part C Regulations

§§ 303.731 through 303.733) during the second succeeding fiscal year.

(Authority: 20 U.S.C. 1443)

ABILIT Y TO PAY (State definition) ............................................. 303.521(a)(3).

ABRO GATION OF STATE SOVEREIGN IMMUNITY .................... 303.103.

ABUSE or NEGLECT:
  • At-risk infant or toddler (Definition) ........................... 303.5.
  • Referral of specific at-risk infants and toddlers ............ 303.303(b).

ACCESS (TO); ACCESSING (A–O):
  • Access rights (of parents) ......................................... 303.405.
  • Culturally competent services (Traditionally underserved groups) ......................... 303.227(b).
  • Early Intervention records (definition) ....................... 303.403(b).
  • Early Intervention services ...................................... 303.34(b)(1).
  • See also “Service Coordination (Services)”

ACCESS (TO); ACCESSING (P–Z):
  • Personally identifiable information (Employees with access) 303.415(d).
  • Private insurance (Parental consent prior to using or accessing) 303.520(b)(1)(i).
  • Public Insurance (Written notification prior to using or accessing) 303.520(a).
  • Records (Keep and afford access to the Secretary) ........ 303.224(b).
  • Safeguards (Employees with access to personally identifiable information) 303.415(d).

ACCESSIBLE; ACCESSIBILITY:
  • Central directory (Accessible to general public) .......... 303.117.
  • Individualized family service plan (IFSP) meetings (Accessibility and convenience of) 303.342(d).
  • Meetings (Of Council) 303.602(b)(2).
  • See also “Convenience (of hearings; meetings)”

ACCESSIBILITY STANDARDS (Construction or Alteration):
  • Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities 303.104(b)(1).
  • Uniform Federal Accessibility Standards ................. 303.104(b)(2).

ACQUISITION OF EQUIPMENT (Construction):
  • Appropriate equipment and construction or alteration of facilities 303.104.
  • See also “Accessibility standards”.

ACT:
  • Definition (Individuals with Disabilities Education Act (IDEA)) 303.4.

ADAPTIVE DEVELOPMENT:
  • Developmental delay in .......................................... 303.21(a)(1)(V).
  • Early Intervention services (Definition) 303.34(a)(4)(V).
  • See also “Occupational therapy” 303.13(b)(8).
  • Evaluation and assessment (Of the child) ................. 303.321(b)(3).
  • Individualized family service plan (IFSP) content (Child’s status) 303.344(a).
  • Infant or toddler with a disability (Definition) ........ 303.21(a)(1)(V).

ADVOCATE (Noun):
  • Individualized family service plan (IFSP) Team ....... 303.349(a)(1)(1f).

AGGREGATE AMOUNT:
  • Payments to Indians .............................................. 303.731(a)(3).
  • State allotments (Definition) ................................. 303.732(d)(1).
  • See also “State allotments” 303.732(a),(b).

AMENDMENTS (To a State’s application):
  • Functions of the Council (Advise and assist lead agency with) 303.604(a)(4).
  • Modifications required by the Secretary 303.226(c)(1).

AMERICANS WITH DISABILITIES ACT:
  • Civil Action ......................................................... 303.446(e).

APPLICABLE REGULATIONS ..................................................... 303.3.

APPLICATION:
  • See “State Application”.

234
ASSESSMENT:
  • Assessment of child and family (Definition) ................. 303.321(a)(2)(i).
  • Early Intervention services (Types of services) ............. 303.13(b)(6)(i), (b)(7)(i),
    (b)(8)(i), (b)(9)(i), (b)(10)(i)–(b)(10)(ii), (b)(13)(ii), (b)(17)(i).
  • Procedures for assessment of the child ...................... 303.321(c)(1).
  • Procedures for assessment of the family .................. 303.321(c)(2).
  • Voluntary on part of the family ............................... 303.321(c)(2)(i).
  • See also “Evaluation (And Assessment)”.

ASSISTANTS (In personnel standards):
  • Use of ............................................................................. 303.119(c).
  • See also “Paraprofessionals”.

ASSISTIVE and ORTHOTIC DEVICES:
  • Occupational therapy (Fabrication of) .......................... 303.13(b)(8)(ii).

ASSISTIVE TECHNOLOGY (AT):
  • Assistive Technology (AT) device ............................... 303.13(b)(1)(i).
  • Assistive Technology (AT) service ............................. 303.13(b)(1)(ii).

AT NO COST:
  • Early Intervention services ....................................... 303.13(a)(3).
  • Initial copy of Early Intervention record ..................... 303.409(c).
  • Parental rights at hearings (Record of hearing) ............ 303.444(c)(2).
  • System of payments and fees ................................... 303.521(a)(4)(i)–(a)(4)(ii).

AT-RISK:
  • Annual report of children served ............................... 303.721(a)(3).
  • Audiology services (At-risk criteria) ......................... 303.13(b)(2)(i).
  • Council (Authorized activities) ................................. 303.605(b).
  • Definition (Infant or toddler) .................................... 303.5.
  • Description of Early Intervention services to ............. 303.204(b).
  • Infant or toddler with a disability ............................ 303.21(b).
  • Permissive use of funds by lead agency .................... 303.501(e).
  • Referral of specific at-risk infants and toddlers ........... 303.303(b).
  • State’s definition of (Application requirements) .......... 303.204(a).

AUDIOLOGY SERVICES:
  • Definition ................................................................. 303.13(b)(2).
  • Qualified personnel (Audiologists) ............................ 303.13(c)(1).

AUTHORIZED ACTIVITIES:
  • Council ...................................................................... 303.605.

AWARD:
  • Eligible recipients .................................................... 303.2(a).
  • See also “Grants”.

BIE:
  • See “Bureau of Indian Education”.

BLINDNESS; BLIND:
  • Native language ....................................................... 303.25(b).
  • Special educators (Teachers of children with visual impairments (Including blindness)).

BRaille:
  • Native language ........................................................ 303.25(b).

BRAIN HEMORRAGE:
  • At-Risk infant or toddler (Definition) ......................... 303.5.

BUREAU OF INDIAN EDUCATION (BIE):
  • Bureau of Indian Education (BIE)-funded schools .......... 303.23(c).
  • Council Composition (Other members selected by the Governor).  303.501(c).
  • Payments to Indians .................................................. 303.731(d).

BUSINESS DAY (In Individuals with Disabilities Education Act (IDEA) Part B):
  • Resolution process (Agreement review period) .......... 303.442(e).
  • Hearing rights ......................................................... 303.444(a)(3), (b)(1).

CALENDAR DAY:
  • See “Day” (Definition) .............................................. 303.9.

CHILD ABUSE, PREVENTION, AND TREATMENT ACT (CAPTA):
  • Child protection and welfare programs under CAPTA .. 303.302(c)(1)(i)(G).

CASE MANAGEMENT:
  • In “Service coordination services” .......................... 303.34.
• Medicaid reference to .................................................... 303.34(c).
CENTRAL DIRECTORY:
• Public awareness program ............................................. 303.301(b)(3).
• State system requirement .............................................. 303.117.
CERTIFICATION (In Administration):
• Annual report of children served ................................... 303.723.
• Annual report of children served (Other responsibilities of the lead agency). 303.724(c).
• Public participation application ................................... 303.208(a).
• State application requirement ...................................... 303.200(a).
CERTIFICATION (Of personnel):
• Personnel qualification standards ................................... 303.119(b).
• Qualified personnel (Definition) .................................... 303.31.
CHILD (Definition) ........................................................... 303.6.
CHILD ABUSE, PREVENTION, AND TREATMENT ACT:
• See “CAPTA”.
CHILD COUNT:
• Accurate and unduplicated count (Annual report of children served—certification). 303.723.
• Other responsibilities of lead agency:
  ○ Aggregate count data ............................................. 303.724(d).
  ○ Ensure documentation of count is maintained 303.724(e).
  ○ Obtain certification (Of unduplicated and accurate count). 303.724(c).
• Prohibited uses of funds (By Secretary of the Interior) 303.731(f).
CHILD’S ELIGIBILITY:
• Evaluation and assessment of child ................................... 303.320(a)(2)(i).
• No single procedure as sole criterion ................................ 303.321(b).
• Not eligible (Agency determination) ................................... 303.322.
• Parental consent before determining a child’s eligibility. 303.420(a)(1)–(2).
• Status of child during pendency of a due process complaint. 303.430(e)(2).
• Transition to preschool ................................................. 303.209(b)(1).
CHILD FIND (A–E):
• At public expense (Functions not subject to fees) ............ 303.521(b)(1).
• Comprehensive child find system:
  ○ State system requirement ........................................ 303.115.
  ○ Substantive requirement ..................................... 303.302.
• Consistent with Part B .................................................. 303.302(a)(1).
• Content of an individualized family service plan (IFSP) (Transmission of child find information). 303.344(b)(2)(iii).
• Coordination with other Federal and State efforts ........... 303.302(c)(1)–(c)(2).
CHILD FIND (F–PO):
• Financial responsibility for ........................................... 303.511(a).
• Functions of the Council (Intra-agency and inter-agency collaboration). 303.604(a)(3).
• Payments to Indians (Use of funds) ................................. 303.731(d).
• Payor of last resort (Interim payments and reimbursement). 303.510(b).
CHILD FIND (PR–Z):
• Primary referral sources ........................................... 303.303(c).
• Public awareness program (Information to be provided to parents). 303.301(b).
• Referral procedures (In general) ................................... 303.303(a)(1).
• Scope of child find ...................................................... 303.303(b).
• Screening procedures ............................................... 303.320.
• State monitoring and enforcement ................................... 303.700(d)(2).
• State system requirement ............................................. 303.115.
CHILD WITH A DISABILITY:
• Composition of the Council ........................................... 303.601(a)(1)(ii).
• Infant or toddler with a disability (Definition) ............... 303.21(c).
• State option to make Early Intervention services available to children three and older (Rules of construction). 303.211(e)(1).

CHROMOSOMAL ABNORMALITIES:
• Diagnosed physical or mental condition 303.21(a)(2)(ii).

CIVIL ACTION (Part B):
• Civil action (In general) 303.448(a).
• Finality of review decision 303.446(d).
• Rule of construction 303.448(e).
• Time limitation 303.448(b).

CIVIL ACTION (Part C) 303.438.

CLEFT PALATE; CLUB FOOT (Surgery for):
• Health services (Not included) 303.16(c)(1)(i).

COCHLEAR IMPLANT:
• Assistive technology device (Not included) 303.13(b)(1)(i).
• Health services (Not included) 303.16(c)(1)(iii).

COGNITIVE DEVELOPMENT:
• Content of an individualized family service plan (IFSP) (Child’s status). 303.344(a).
• Developmental delay in 303.21(a)(1)(i).
• Early Intervention services (Definition) 303.13(a)(4)(ii).
• Evaluation and assessment (Of child) 303.321(b)(3).
• Infant or toddler with a disability (Definition) 303.21(a)(1)(i).

COLOSTOMY COLLECTION BAGS:
• Health services (Included) 303.16(b)(1).

COMMINGLING:
• Prohibition against 303.225(a)(1).

COMMUNICATION DEVELOPMENT:
• Content of individualized family service plan (IFSP) (Child’s status). 303.344(a).
• Developmental delay in 303.21(a)(1)(ii).
• Early Intervention services (Definition) 303.13(a)(4)(iii).
• Evaluation and assessment (Of child) 303.321(b)(3).
• Infant or toddler with a disability (Definition) 303.21(a)(1)(iii).

COMPLAINTS:
• Annual report of children served (Number of due process complaints). 303.721(c).
• Confidentiality procedures 303.401(b)(2).
• Minimum State complaint procedures (Comparison with due process complaints).
  ○ See also “State Complaint Procedures”.
• State dispute resolution options:
  ○ Due process hearing procedures 303.430(d).
  ○ In general 303.430(a).
  ○ State complaint procedures 303.430(c).

COMPLIANCE:
• Compliance agreement (Enforcement) 303.704(b)(2)(ii).
• Compliance with certain regulations (Construction or alteration of facilities). 303.104(b).
• Corrective action plans to achieve compliance (Enforcement). 303.704(b)(2)(i).
• Modifications of State application required by the Secretary (For compliance). 303.228(c).
• Reports and records (To ensure compliance with Part C) 303.224(b).

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD).

CONFIDENTIALITY (A–D):
• Access rights 303.405.
• Confidentiality and opportunity to examine records 303.401(a)-(c).
• Consent prior to disclosure or use 303.414.
• Definitions:
  ○ Destruction 303.433(a).
  ○ Early Intervention records 303.433(b).
  ○ Participating agency 303.433(c).
• Destruction of information 303.416.

CONFIDENTIALITY (E–N):

Office of Special Education and Rehab. Services, Education

Pt. 303, App. A
Pt. 303, App. A 34 CFR Ch. III (7–1–12 Edition)

- Enforcement by lead agency .................................................. 303.417.
- Family Educational Rights and Privacy Act (FERPA) ........... 303.401(b).
- Fees for records ................................................................. 303.409.
- Hearing procedures .............................................................. 303.413.
- List of types and locations of information .......................... 303.408.
- Notice to parents ............................................................... 303.404.

CONFIDENTIALITY (O–Z):
- Opportunity for a hearing .................................................. 303.411.
- Parental authority to inspect and review records ............... 303.405(c).
- Records on more than one child ....................................... 303.407.
- Result of hearing ............................................................... 303.412.
- Safeguards ......................................................................... 303.415.
- Secretary’s action (To protect) ......................................... 303.402.

CONGENITAL DISORDERS:
- Diagnosed physical or mental condition (Infant or toddler with a disability). 303.21(a)(2)(ii).

CONGENITAL HEART AILMENTS:
- Health services (Not included) ........................................... 303.16(c)(1)(i).

CONGENITAL INFECTIONS:
- Diagnosed physical or mental condition (Infant or toddler with a disability). 303.21(a)(2)(ii).

CONSENT (A–H):
- Continue Early Intervention services from age three to kindergarten, with consent. 303.501(d).
- Definition ............................................................... 303.7.
- Due process complaint ( Sufficiency to amend) ......................... 303.441(d)(3)(i).
- Early Intervention services ............................................... 303.420(a)(3).
- Early Intervention services in lieu of Free Appropriate Public Education (FAPE) from age three to kindergarten. 303.501(d).
- Granting of consent is voluntary ........................................ 303.7(c)(1).
- Hearing rights (Additional disclosure) ................................. 303.444(b)(2).

CONSENT (I–Q):
- Individualized family service plan (IFSP) (Definition) ............... 303.20(c).
- Insurance:
  - Private insurance ............................................................. 303.520(b).
  - Public insurance .............................................................. 303.520(a).
- Interim individualized family service plan (IFSP) ................. 303.345(a).
- Lead agency responsible for procedural safeguards (Consent and notice, etc.). 303.400(a).
- Lead agency role if consent not given .................................. 303.420(b).
- Parental consent and ability to decline services ................. 303.420.
- Permissive use of funds by lead agency (Continue Early Intervention services in lieu of Free Appropriate Public Education (FAPE)). 303.501(d).
- Prior to disclosure or use of personally identifiable information. 303.414.
- Provision of Early Intervention services before evaluation and assessment are completed. 303.345(a).

CONSENT (R–Z):
- Required before:
  - Administering screening procedures ............................... 303.420(a)(1).
  - Conducting an evaluation and assessment of a child. 303.420(a)(2).
  - Providing Early Intervention services ............................. 303.420(a)(3).
  - Using private insurance ................................................. 303.520(b).
- Revocation of consent (Not retroactive) .............................. 303.7(c)(2).
- State option for Early Intervention services after age three:
  - Available funds for ......................................................... 303.211(d).
  - Continuation of Early Intervention services .................... 303.211(b)(5).
  - Referral to Part C (Trauma due to exposure to family violence, under age three). 303.211(b)(7).
- Status of child during due process complaint ................... 303.430(e).
• Timelines for screening, initial evaluation, or assessments.

CONSTRUCTION or ALTERATION (Of facilities):
• Compliance with certain regulations ............................ 303.104(b).
• Use of funds for .............................................................. 303.104(a).

CONSTRUCTION CLAUSES (A–M):
• Civil action (Nothing restricts rights, except that procedures under §§303.440 and 303.446 must be exhausted before filing a civil action).
• Hearing decisions—Nothing:
  ○ Affects the right of a parent to appeal a hearing decision.
  ○ Precludes a hearing officer from requiring compliance with §§ 303.449.
  ○ Precludes a parent from filing a separate due process complaint.
• Indian tribe (Nothing requires services or funding to a State Indian Tribe not in the FEDERAL REGISTER list pursuant to the Federally Recognized Indian Tribe List Act of 1994).

CONSTRUCTION CLAUSES (N–Z):
• Nationwide database of personally identifiable information on individuals involved in studies, etc. (Nothing construed to authorize).
• Non-reduction of benefits (Payor of last resort) .......... 303.510(c).
• Personnel standards (Nothing prohibits the use of paraprofessionals and assistants).
• Secretary’s authority to monitor enforcement of General Education Provisions Act (GEPA).
• State option to make services available after age three:
  ○ If Early Intervention services provided to a child eligible under §619, Free Appropriate Public Education (FAPE) not required.
  ○ Service provider under Part C not required to provide Free Appropriate Public Education (FAPE).

CONSULTATION:
• By physicians (Health services) ................................. 303.16(b)(2).
• On child development (Psychological services) ............. 303.13(b)(10)(iv).

CONTENT OF INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP):
• See also “Individualized Family Service Plan (IFSP) Content”.

CONTRACTS:
• Certification regarding financial responsibility (Lead agency’s contracts with Early Intervention service providers).
  ○ Biennial report to Secretary of the Interior (Number of contracts, etc.).
  ○ Use of funds for Early Intervention services through contracts or cooperative agreements.
• Mediation (Meeting to encourage) .............................. 303.431(d)(1).
• Parent (Definition) ....................................................... 303.27(a)(2).
• Policy for contracting for services .............................. 303.121(a)(2).

CONVENIENCE (OF HEARINGS; MEETINGS):
• Convenience of hearings and timelines (Part C) ............. 303.347.
• Individualized family service plan (IFSP) meetings (Accessibility and convenience of).
• Timelines and convenience of hearings and reviews (Part B).
  ○ See also “Accessible; Accessibility”.

COORDINATION (A–O):
• Child find (Coordination of lead agency’s efforts with the assistance of Council).
• Establishing financial responsibility for, and methods of, ensuring services (Additional components).
• Head Start, Early Head Start, early education, and child care.
• Individualized family service plan (IFSP):
  ○ Content of (Service coordinator) ................. 303.344(g)(1).
  ○ Statewide system requirement (Including service coordination services).
• Lead agency role in interagency coordination, etc. .... 303.120(b), (f).
• Methods for financial interagency coordination .......... 303.511.

COORDINATION (P–Z):
• Payor of last resort (Coordination of funding resources).
• Purpose of Early Intervention program (Facilitate coordination of payment).
• Service coordination services (In definition of ‘Early Intervention services’).
  ○ See “Service coordination services (Case management).”.
  ○ See also “Service Coordination”.
• Services before evaluations and assessments completed (Service coordinator).
• Statewide system and description of services .......... 303.203(b).
• Use of funds and payor of last resort (Coordination of funding resources).

CO-PAYMENTS; CO-PAYS:
• Policies related to use of insurance for payment for services:
  ○ Private insurance .............................................. 303.520(b).
  ○ Public insurance ................................................ 303.520(a).
• System of payments and fees .................................. 303.521(a)(6).

COST PARTICIPATION FEES:
• System of payments and fees .................................. 303.521(a)(1).

COUNCIL:
• Definition ............................................................... 303.8.
• See “State Interagency Coordinating Council” ............ 303.600–303.605.

CRITERIA:
• Assessment of the child and family ......................... 303.321(c).
• At-risk criteria ....................................................... 303.1, 303.204.
• Content of individualized family service plan (IFSP) (Results or outcomes).
• Early Intervention services (Audiology services) ........ 303.13(b)(2)(I).
• Early Intervention services (Other services) .............. 303.13(d).
• State definition of developmental delay .................... 303.111(b).
• Surrogate parents (Selection of) .............................. 303.422(d).

CSPD (COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT).

CULTU tally COMPETENT SERVICES ..................................... 303.227(b).

CURRICULUM PLANNING:
• In “Early Intervention services” definition (Special instruction).

DATA (A–H):
• Annual report of children served (Aggregate data) .... 303.724(d).
• Confidentiality (Personally identifiable data) ............. 303.402.
• Data collection (Construction clause) ....................... 303.701(c)(3).
• Data collection (Statewide system) .......................... 303.124.
• Data reporting:
  ○ Protection of identifiable data ......................... 303.722(a).
  ○ Sampling .......................................................... 303.722(b).
• Data requirements (In general) .............................. 303.720.
• Exit data (Destruction of information) ...................... 303.416(b).

DATA (I–Z):
• Insufficient data (State use of targets and reporting) .. 303.702(b)(3).
• State performance plans and data collection ............. 303.701.
  ○ Construction clause (Nationwide data base) ......... 303.701(c)(3).
Definiciones (A–D):
- Ability to pay (State’s definition) 303.521(a)(3).
- Act 303.4.
- Aggregate amount (State allotments) 303.732(d)(1).
- Assessment of the child and the family 303.321(a)(2), 303.321(c)(1)–(c)(2).
- Assistive technology devices and services 303.13(b)(1).
- Audiology services 303.13(b)(1).
- Council 303.8.
- Day 303.9.
- Consent 303.7.
- Council Meetings (Interpreters for) 303.602(b)(3).
- Early Intervention services (Special educators) 303.13(c)(11).
- Native language 303.25(b).

Definiciones (E–H):
- Early Intervention record 303.3(b)(2), 303.403(b).
- Early Intervention service program 303.11.
- Early Intervention service provider 303.12.
- Early Intervention services 303.13.
- Education records 303.3(b)(2).
- Family training, counseling, and home visits 303.13(b)(3).
- Free Appropriate Public Education (FAPE) 303.15.
- Frequency and intensity (Content of an individualized family service plan (IFSP)) 303.344(d)(2)(i).
- Health services 303.16.
- Homeless children 303.17.

Definiciones (I–M):
- Impartial 303.435(b).
- Include; including 303.18.
- Indian; Indian tribe 303.19.
- Individualized family service plan (IFSP) 303.20.
- Infants and toddlers (State allotments) 303.732(d)(2).
- Infant or toddler with a disability 303.21.
- Lead agency 303.22.
- Length (Content of an individualized family service plan (IFSP)) 303.344(d)(2)(iii).
- Local educational agency (LEA) 303.23.
- Location (Content of an individualized family service plan (IFSP)) 303.344(d)(3).
- Medical services 303.13(b)(5).
- Method (Content of an individualized family service plan (IFSP)) 303.344(d)(2)(ii).
- Multidisciplinary 303.24.

Definiciones (N–R):
- Native language 303.25.
- Nursing services 303.13(b)(6).
- Nutrition services 303.13(b)(7).
- Occupational therapy 303.13(b)(8).
- Parent 303.27.
- Participating agency (Personally identifiable information) 303.403(c).
• Parent training and information center .................. 303.28.
• Personally identifiable information ...................... 303.29, 303.401.
• Physical Therapy ................................................. 303.13(b)(9).
• Primary referral sources ....................................... 303.303(c).
• Psychological services .......................................... 303.13(b)(10).
• Public agency ....................................................... 303.30.
• Qualified personnel .............................................. 303.31.

DEFINITIONS (S–Z):
• Scientifically based research .................................. 303.32.
• Screening procedures ........................................... 303.320(b).
• Secretary ............................................................... 303.33.
• Service coordination services (Case management) ...... 303.34.
  ◦ See also “Early Intervention services” definition.
• Sign language and cued language ........................... 303.13(b)(12).
• Social work services .............................................. 303.13(b)(13).
• Special instruction .................................................. 303.13(b)(14).
• Speech-language pathology services ....................... 303.13(b)(15).
• State ................................................................. 303.35.
• State (State allotments) .......................................... 303.732(d)(3).
• State educational agency (SEA) ............................ 303.36.
• Transportation and related costs ............................. 303.13(b)(16).
• Vision services ...................................................... 303.13(b)(17).
• Ward of the State ................................................... 303.37.

DEPARTMENT PROCEDURES:
• State application and assurances ........................... 303.231–303.236.

DEVELOPMENTAL DELAY:
• At-risk infant or toddler (Definition) ....................... 303.5.
• Definition ............................................................. 303.10.
• Infant or toddler with a disability (Definition) .......... 303.21(a)(1), (a)(2)(i).
• Purpose of the Early Intervention program ............... 303.1(e).
• Statewide system (State’s rigorous definition) .......... 303.203(c).
• State definition ....................................................... 303.111.

DEVELOPMENTAL DISABILITIES ASSISTANCE and BILL OF RIGHTS ACT:
• Child find coordination .......................................... 303.302(c)(1)(I)(D).

DIAGNOSED PHYSICAL OR MENTAL CONDITION:
• Infant or toddler with a disability (Definition) .......... 303.21(a)(2).

DIETICIANS:
• Early Intervention services (Qualified personnel) ...... 303.13(c)(9).

DIRECT SERVICES:
• Description of use of funds .................................. 303.205(d).
  ◦ See also “Use of Funds”.

DISORDERS:
• Infant or toddler with a disability (Definition) .......... 303.21(a)(2)(ii).
• Speech-language pathology services (Definition) .... 303.13(b)(15).
• Vision services (Definition) ...................................... 303.13(b)(17).

DISPUTES; DISPUTE RESOLUTION:
• Impartial due process hearing ................................. 303.443(a).
• Intra-agency or interagency disputes ....................... 303.511(c)(1).
• Lead agency role in resolving disputes .................... 303.120(d)(f).
• Mediation
  ◦ In general ......................................................... 303.331.
  ◦ State dispute resolution ...................................... 303.430(b).
• Procedures for resolving disputes (Methods of ensuring services).
  ◦ Resolution process (Part B).
    ◦ Due process procedures (Comparison of Part B and C). 303.430(d).
    ◦ Resolution meeting .......................................... 303.442(a).
    ◦ Written settlement agreement ............................ 303.442(d).
  ◦ State dispute resolution options:
    ◦ Mediation ...................................................... 303.430(b).
    ◦ Status of child during pendency of a due process complaint.
  ◦ Health services (Definition) ................................ 303.16(b)(1).

DRESSINGS; COLOSTOMY BAGS (Changing of):
• Health services (Definition) ................................. 303.16(b)(1).
DUE PROCESS HEARING PROCEDURES—Options:
- Part B procedures .................................................. 303.430(d)(2).
- Part C procedures .................................................. 303.430(d)(1).

DUE PROCESS PROCEDURES—Part B:
- Adopting Part B procedures (By lead agency) ............. 303.430(d)(2).
- Civil action .............................................................. 303.448.
- Due process complaint ............................................. 303.441.
- Filing a due process complaint .................................. 303.440.
- Finality of decision; appeal; impartial review .............. 303.446.
- Hearing decisions .................................................... 303.445.
- Hearing rights .......................................................... 303.444.
- Impartial due process hearing ................................... 303.443.
- Resolution process .................................................. 303.442.
- State enforcement mechanisms ................................ 303.449.
- Timelines and convenience of hearings and reviews ...... 303.447.

DUE PROCESS PROCEDURES—Part C:
- Appointment of impartial hearing officer .................... 303.435.
  - Definition of “impartial” ........................................... 303.435(b).
  - Qualifications and duties ........................................... 303.435(a).
- Civil action .............................................................. 303.438.
- Convenience of hearings and timelines ...................... 303.437.
- Parental rights in due process hearings ....................... 303.436.
- See “Status of child during pendency of a due process hearing request”.
  - See also “Procedural Safeguards”.

EARLY HEAD START:
- Child find Coordination .......................................... 303.302(c)(1)(ii)(E).
- Content of an individualized family service plan (IFSP) (Transition from Part C).
- Coordination with Head Start and Early Head Start, early education, and child care programs.
- Comprehensive system of personnel development (CSPD) (Transition from Part C).

EARLY HEARING DETECTION AND INTERVENTION (EHDI):
- Child find system ..................................................... 303.302(c)(1)(ii)(J).

EARLY INTERVENTION SERVICES:
- Definitions:
  - General .............................................................. 303.13(a).
  - Other services ..................................................... 303.13(d).
  - Qualified personnel .............................................. 303.13(c).
- Types of Early Intervention services ......................... 303.13(b).

EARLY INTERVENTION SERVICE (EIS) PROGRAM:
- Definition ............................................................... 303.11.
- State monitoring and enforcement ............................ 303.700.
- State performance plans and data collection ............... 303.701.
- State use of targets and reporting ............................ 303.702.

EARLY INTERVENTION SERVICE (EIS) PROVIDER:
- Applicability of this part .......................................... 303.2(b)(1)(i).
- Definition ............................................................. 303.12(a).
- Participating agency (Definition) .............................. 303.403(c).
- Requirement to attend individualized family service plan (IFSP) meetings.
- Responsibility and accountability ............................ 303.12(b), 303.346.
- State ability to impose funding conditions (State’s monitoring and enforcement).
- State dispute resolution options ............................... 303.430.
- State requirement to monitor .................................... 303.120.

EARLY PERIODIC DIAGNOSIS, SCREENING, AND TREATMENT (EPSDT):
- Child find (Coordination) ........................................ 303.302(c)(1)(ii)(C).

EDUCATIONAL SERVICE AGENCY:
- Local educational agency (LEA) (Definition) ............... 303.23(b)(1).


ELIGIBLE RECIPIENTS OF AN AWARD ......................... 303.2.

ELIGIBILITY (CHILD):
- See “Child Eligibility”

ELIGIBILITY (STATE):
• Requirements for a grant .............................................. 303.101.

ENVIRONMENTAL or BIOLOGICAL FACTORS:
• At-risk infant or toddler (Definition) ................................ 303.5.

EPSDT:
• See “Early Periodic Screening, Diagnosis, and Treatment”.

EQUITABLE ACCESS TO, AND EQUAL PARTICIPATION IN, THE PART C STATEWIDE SYSTEM.
ESTABLISHING FINANCIAL RESPONSIBILITY and METHODS OF ENSURING SERVICES.
EVALUATION, ASSESSMENT, and NONDISCRIMINATORY PROCEDURES.
EVALUATION (AND ASSESSMENT) (A–E):
• Assessment of child (Definition) ...................................... 303.321(c)(1).
• Assessment of family (Definition) .................................... 303.321(c)(2).
• Confidentiality procedures ............................................. 303.401(b)(2).
• Consent before evaluations and assessments are conducted.
• Determination that a child is not eligible .......................... 303.322.
• Due process complaint .................................................. 303.441(e)(1)(iii).
• Early Intervention services:
  ○ Qualified personnel (Pediatricians, etc, for diagnosis and evaluation).
  ○ Types of services .................................................... 303.13(b)(1)(A), (b)(2)(i), (b)(5), (b)(9)(i), (b)(17)(i).
• Evaluation (Definition) .................................................. 303.321(a)(2)(i).

EVALUATION (AND ASSESSMENT) (F–L):
• Family assessment ....................................................... 303.321(c)(2), 303.344(b).
• Family information ...................................................... 303.344(b).
• Filing a due process complaint (Part B) ........................... 303.440(a)(1).
• Financial responsibility ............................................... 303.511(a).
• Functions not subject to fees .......................................... 303.521(b)(2).
• Hearing officer decision ................................................ 303.445(a)(2)(i)–(ii).
• Hearing rights ............................................................... 303.444(b).
• Individualized family service plan (IFSP):
  ○ Annual meeting to evaluate the individualized family service plan (IFSP).
  ○ Child’s status .......................................................... 303.344(a).
  ○ Definition ............................................................. 303.346.a.
• Initial and annual individualized family service plan (IFSP) Team meetings.

EVALUATION (AND ASSESSMENT) (M–P):
• Multidisciplinary:
  ○ Definition ............................................................... 303.24.
  ○ Early Intervention service (EIS) provider ...................... 303.12(b)(1).
  ○ Statewide system .................................................... 303.113(a)(1).
• Native language (Definition) .......................................... 303.25(a)(2).
• Nondiscriminatory:
  ○ Evaluation of the child (No single procedure used).
  ○ Nondiscriminatory procedures (Title) ............................ 303.113.
• Parental consent .......................................................... 303.420(a)(2), (b)(1)–(b)(2), (c)(1).
• Payor of last resort (Interim payments) ........................... 303.510(b).
• Post-referral timeline (45 days) ...................................... 303.310.
  ○ Exceptional circumstances (Not within 45 days) ............ 303.310(b)(1).

EVALUATION (AND ASSESSMENT) (P–Z):
• Prior written notice ....................................................... 303.421(a).
• Prior written notice (Must be in native language) ............. 303.421(c).
• Provision of Services before evaluations and assessments are completed.
• Public awareness program ............................................ 303.301(b)(2).
• Referral procedures .................................................... 303.303.
• Screening procedures .................................................. 303.320(a), (c).
• Service coordination services (Case management) ............ 303.34(b)(3).
• Timelines (45 days) ...................................................... 303.310(a).
EVALUATION, ASSESSMENT, AND NONDISCRIMINATORY PROCEDURES.

EXCEPTION(S):
- Consent prior to disclosure (Except to lead agency and Early Intervention service (EIS) providers)
- Filing a due process complaint
- Post-referral timeline (Exceptional circumstances)
- Timeline for requesting a hearing (Exceptions)
- Ward of the State (Definition)
- Evaluation and assessment of child and family:
  - In native language
  - Post-referral timeline
- Family-directed identification of needs
- Family therapists
- Family training, counseling, and home visits
- Family Violence Prevention and Services Act
- Homeless family shelters (Primary referral sources)
- Content of an individualized family service plan (IFSP) (Family information)
- Individualized family service plan (IFSP) Team meetings:
  - Accessibility and convenience
  - Advocate outside the family
  - Native language (Meeting conducted in)
  - Written notice to family
- Interim individualized family service plan (IFSP)
- Payor of last resort (Interim payments)
- Permissive use of funds by lead agency
- Prior written notice
- Private insurance
- Service coordination services (Case management):
  - Specific service coordination services
  - Definition
- State complaint procedures
- State eligibility requirements (Assurance regarding Early Intervention services)
- State option to make Early Intervention services available for children three and older:
  - Possible costs to families
  - Referral of a child (Substantiated case of trauma due to family violence)
- Surrogate parents
Traditionally underserved groups:
- Access to culturally competent services: 303.227(b).
- Minority, low-income, homeless, and rural families and wards of the State: 303.227(a).

Transition to preschool:
- Conference to discuss services: 303.209(c).
- Notification of local educational agency (LEA): 303.209(b).
- Transition plan: 303.209(d)(3).

FAMILY ASSESSMENT:
- Assessment of the family (Definition): 303.321(c)(2).
- Content of an individualized family service plan (IFSP) (Family information): 303.344(b).
- Post-referral timeline: 303.310(a).

FAMILY-DIRECTED:
- Assessment of resources: 303.12(b)(1).
- Identification of needs: 303.113(a)(2), (b).

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA):
- Confidentiality procedures: 303.401(b)(1).

FAMILY THERAPISTS:
- Qualified personnel (Early Intervention services): 303.13(c)(2).

FAMILY TRAINING, COUNSELING, AND HOME VISITS:
- Early Intervention services (Definition): 303.13(b)(3).

FAMILY VIOLENCE PREVENTION AND SERVICES ACT: 303.211(b)(7), 303.302(c)(1)(ii)(A).

FAPE: See “Free Appropriate Public Education.”

FEDERAL COURT:
- Civil action (Part C): 303.438.
- State application (Modifications to): 303.228(c)(2).

FEDERAL FUNDS:
- Expenditure of funds: 303.221.
- Fiscal control: 303.226.
- Indirect costs (Cognizant Federal agency): 303.225(c)(2).
- Proceeds from public or private insurance: 303.520(d).
- Requirement to supplement and not supplant: 303.225(a).

FEDERAL LAW(S):
1. • Alaska Native Claims Settlement Act: 303.19(b).
2. • Americans With Disabilities Act (ADA) of 1990: 303.448(e).
3. • Child Abuse Prevention and Treatment Act (CAPTA), see CAPTA.
4. • Confidentiality: 303.401(a), (c)(2).
5. • Developmental Disabilities Assistance and Bill of Rights Act: 303.302(c)(1)(ii)(D).
6. • Early Intervention services (Services at no cost unless Federal or State law requires fees): 303.13(a)(3).
7. • Family Educational Rights and Privacy Act (FERPA): 303.401(b).
9. • Federally Recognized Indian Tribe Act of 1994 (section 104).
10. • Head Start Act, see Head Start.
11. • Indian Self-Determination and Education Assistance Act.
12. • Individuals with Disabilities Education Act (IDEA).
14. • Social Security Act (MCHB/Title V, SSI/XVI, and Medicaid/Title XIX), see Social Security Act.
15. • State application (Modifications): 303.228(c)(3).


FEDERAL REGULATIONS:
- Amendment to Act or a Federal regulation: 303.228(c)(1).
- Knowledge of impartial hearing officer: 303.443(c)(1)(ii).
FEES (A–R):

- Ability to pay (State’s definition) 
  303.521(a)(3).
- Assurance (Fees will not be charged for services enti-
  tied to at no cost).
  303.521(a)(4)(i).
- Co-payments or deductible amounts 
  303.521(a)(6).
- Cost participation fees 
  303.521(a)(1).
- Fees (Under confidentiality) 
  303.409.
- Functions not subject to fees 
  303.521(b).
- Income and family expenses (State’s definition) 
  303.521(a)(3).
- Inability to pay—State’s definition 
  303.521(a)(3).

FEES (S–Z):

- State option to make services available to children 
  ages three and older.
  303.211(b)(1)(ii)(C), (d).
- Sliding fees (Schedule of):
  - Early Intervention services 
    303.13(a)(3).
  - System of payments and fees 
    303.521(a)(1).
- State’s definition of ability to pay 
  303.521(a)(3).
- State system of payments and fees 
  303.203(b).
- See also “INSURANCE.”

FERPA (Family Educational Rights and Privacy Act) 
303.401(b)(1).

FETAL ALCOHOL SYNDROME:

- Diagnosed physical or mental condition 
  303.21(a)(2)(ii).

FILING (FILED) REQUIREMENTS:

- Adoption of State complaint procedures 
  303.432(a)(1).
- Civil action (Rule of construction) 
  303.448(e).
- Due process complaint 
  303.441(a)(2), (d)(4).
- Due process hearing procedures 
  303.430(d)(1)(ii), (d)(1)(ii).
- Filing a due process complaint 
  303.440(a)(2).
  303.440(a)(2).
- Filing a State complaint 
  303.434(d).
- Filing requirements regarding a State application ... 
  303.435.
- Impartial due process hearing (Exception to timeline) 
  303.443(f).
- Mediation 
  303.431(a).
- Resolution process 
  303.442(b)(3).
- Separate due process complaint 
  303.445(c).

FISCAL CONTROL (AND FUND ACCOUNTING PROCEDURES) FORMULA:

- For State allocations 
  303.730.

FOSTER CARE:

- Child find:
  - Scope 
    303.302(b)(1)(ii)(C), (d).
  - Coordination 
    303.302(c)(1)(ii)(G).
- Confidentiality (Access rights) 
  303.405(c).
- Council (Composition) 
  303.303(a)(12).
- Primary referral sources 
  303.303(c)(9).
- Purpose of Early Intervention Program 
  303.31(d).

FOSTER PARENT:

- Parent (Definition) 
  303.27(a)(2).
- Ward of the State (Exception) 
  303.37(b).

FREE APPROPRIATE PUBLIC EDUCATION (FAPE):

- Definition 
  303.15.
- Permissive use of funds by lead agency 
  303.501(c)–(d).
- State option to make services available to children 
  ages three and older.
  303.211(b)(1)(ii)(C), (d).
- States with Free Appropriate Public Education 
  (FAPE) mandates to serve children under age three.
  303.521(c).

FREQUENCY and INTENSITY:

- Content of an individualized family service plan (IFSP) 
  303.344(d)(1)(i). 
  Definition 
  303.344(d)(2)(i).

FUNCTIONS NOT SUBJECT TO FEES:

- Administrative and coordinative activities 
  303.521(b)(4).
- Child find requirements 
  303.521(b)(1).
- Evaluation and assessment 
  303.521(b)(2).
- Service coordination services 
  303.521(b)(3).

FUNDING SOURCES:

- Service coordination services 
  303.34(b)(9).
Pt. 303, App. A  34 CFR Ch. III (7–1–12 Edition)

- Acquisition of equipment and construction or alteration of facilities. 303.104(a).
- Allocation of funds (Outlying areas):
  - Consolidation of funds 303.730(b).
  - Reservation of funds 303.730(a).
- Control of funds and property 303.223.
- Council:
  - Funds for interpreters 303.602(b)(3).
  - Use of funds by 303.603.
- Designation of lead agency 303.201.
- Description of use of funds 303.205.
- Direct services 303.205(d).

Funds (E–FA):
- Early Intervention service provider 303.12(a).
- Enforcement (By the Secretary):
  - Needs intervention (Seeks to recover funds) 303.704(b)(2)(iii).
  - Needs substantial intervention 303.704(c)(1).
  - Opportunity for hearing 303.705(a).
  - Suspension (Of payments) 303.705(b).
- Expenditure of (Federal) funds 303.221.
- Family fees 303.521(d).

Funds (FE–O):
- Federal funds to supplement 303.225(a)(2).
- Fiscal control 303.226.
- Funds under a State’s system of payments 303.521(a)(6), (d).
- Lead agency (Receives Federal funds to administer Part C) 303.22.
- Non-substitution of funds (Payor of last resort) 303.510(a).
- Permissive use of funds 303.501.
- Proceeds or funds from public or private insurance 303.520(d).
- Prohibition against commingling 303.225(a)(1).
- Prohibition against supplanting 303.225(a)(2).
- Reallotment of (State) funds 303.733.
- Reimbursement procedures 303.122.
- Reports and records 303.224.
- Reservation of funds for outlying areas 303.730(a).

Funds (S–Z):
- State allotments 303.732(a), (c)(2), (d).
- State conformity with Part C 303.102.
- State educational agency (SEA) 303.36(b).
- State monitoring and enforcement 303.700(a)(3), 303.704(b)(2)(iii), 303.705(a), 303.705(b).
- State option to make services available to children ages three and older (Available funds) 303.211(d).
- States with Free Appropriate Public Education (FAPE) mandates 303.521(c).
- State’s definition (Inability to pay) 303.521(a)(3), (a)(4)(i).
- Suspension (Of payments) 303.705(b).
- System of payments and fees 303.521(a)(6), (c), (d).
- Unable to pay 303.520(d), 303.520(c), 303.521(a)(6).
- Use of funds (Payor of last resort) 303.510(a).
- Withholding funds 303.705.
- See also “Grants” and “Payments”.

Funds (Part B):
Off. of Spec. Educ. and Rehab. Services, Education  Pt. 303, App. A

- States with Free Appropriate Public Education (FAPE) mandates or that use Part B funds for children under age three.

**FUNDS (PART C):**
- Early Intervention service provider 303.12(a).
- State conformity with Part C 303.102.
- Withholding funds:
  - Opportunity for a hearing 303.705(a).
  - Suspension 303.705(b).

**GENETIC or CONGENITAL DISORDERS:**
- Diagnosed physical or mental condition (Infant or toddler with a disability) 303.21(a)(2)(ii).

**GOVERNOR; GOVERNOR’S DESIGNEE:**
- Council:
  - Appointed by Governor 303.600(b).
  - Chairperson 303.600(c).
  - Composition 303.601(b)–(c).
  - Functions (Annual report to Governor) 303.604(c).
- Use of funds by Council (Approval) 303.603(a).
- Financial responsibility and methods of ensuring services:
  - Other methods determined by Governor 303.511(b)(3).
  - Procedures for resolving disputes 303.511(c)(1).
- Lead agency:
  - Designated by Governor 303.22.
  - Role in supervision, etc. 303.120.
- State educational agency (SEA) 303.36(a).

**GRANDPARENT:**
- Parent (Definition) 303.27(a)(4).

**GRANTS; GRANTS TO STATES:**
- Consolidation of grants (Outlying areas) 303.730(b).
- Reservation for State incentive grants 303.734.
- Secretary’s authority to make grants 303.100.
- See also “Award” and “Payments to Indians”.

**GUARDIAN:**
- Parent (Definition) 303.27(a)(3).

**GUARDIANSHIP:**
- Confidentiality (Access rights) 303.405(c).

**HEAD START; HEAD START ACT:**
- Child find system (Coordination) 303.302(c)(1)(i)(E).
- Council (Composition) 303.601(a)(8).
- Comprehensive system of personnel development (CSPD) (Training to coordinate transition services and personnel) 303.118(a)(3), (b)(4).
- Early Head Start:
  - Coordination with 303.210(a).
  - Content of an individualized family service plan (IFSP) (Transition from Part C) 303.344(b)(1)(ii).

**HEALTH INSURANCE** 303.520(b)(2), 303.601(a)(10).

**HEALTH SERVICES:**
- Definition 303.16.
- Early Intervention services (Definition) 303.13(b)(4).
- Interim payments—Reimbursement (Payor of last resort) 303.31(b).
- Non-covered services and devices 303.16(c).
- Services included 303.16(b).

**HEALTH STATUS (MEDICAL HISTORY):**
- Content of an individualized family service plan (IFSP) (Information about child’s status) 303.344(a).

**HEARING AID:**
- Health services (Nothing prevents routinely checking) 303.16(c)(1)(ii)(B).

**HEARING IMPAIRED; HEARING IMPAIRMENTS:**
- Special educators including teachers of children with hearing impairments 303.13(c)(11).
HEARING LOSS:
• Audiology services 303.13(b)(2)(ii), (b)(2)(v).

HEARING OFFICER:
• Appointment of 303.443(c), 303.435.
• Duties and qualifications 303.435(a), 303.443(c).
• Hearing decisions 303.445.
• Sufficiency of complaint 303.441(d).

HEARTAILMENTS:
• Health services (Non-covered services) 303.16(c)(1)(ii).

HISTORY OF ABUSE OR NEGLECT:
• At-risk infant or toddler (Definition) 303.5.

HISTORICALLY UNDERREPRESENTED POPULATIONS:
• Purpose of Early Intervention program 303.1(d).
• See “Inner-city,” “Low-income,” “Minority,” and “Rural” (Children), and “Foster care.” 303.227.
• See also “Traditionally underserved groups.” 303.227.

HOMELESS CHILDREN:
• Assurances regarding Early Intervention services and a statewide system. 303.101(a)(1)(ii).
• Child find system 303.302(b)(1)(ii).
• Council (Composition) (Representative designated by Office of the Coordination and Education of Homeless Children and Youth). 303.601(a)(11).
• Definition 303.17.
• Due process complaint (Content) 303.441(b)(4).
• Traditionally underserved groups 303.227(a).

HOMELESS FAMILY SHELTERS:
• Primary referral sources 303.303(c)(10).

HOSPITALS:
• Primary referral sources 303.303(c)(1).
• Public awareness program 303.301(a)(1)(ii).

HOSPITALIZATION (For management of congenital heart ailments):
• Non-covered health services 303.16(c)(1)(ii).

HYDROCEPHALUS (Shunting of):
• Non-covered health services 303.16(c)(1).

IDEA (INDIVIDUALS WITH DISABILITIES EDUCATION ACT):
• Act (Definition) 303.4.

IEP (INDIVIDUALIZED EDUCATION PROGRAM):
• Free appropriate public education (FAPE) (Definition) 303.15(d).

IEU (INTERMEDIATE EDUCATIONAL UNIT):
• Local educational agency (LEA) (Definition) 303.23(b)(3).

IFSP (INDIVIDUALIZED FAMILY SERVICE PLAN) (A–F):
• Acceptable time to meet for parents and others 303.342(b)(2).
• Accountability and responsibility 303.346.
• Annual meeting to evaluate 303.342(c).
• Component of statewide system 303.114.
• Content of an individualized family service plan (IFSP) 303.344(f).
  • See “IFSP (Individualized family service plan) Content”.
• Dates and duration of services 303.344(f).
• Definition 303.342(a).
• Development of 303.342(a).
• Early Intervention services 303.344(d).
  • See also “IFSP (Individualized family service plan) Content”.
• Educational component (For children at least three years old) 303.344(d)(4).
• Family information 303.344(b).

IFSP (INDIVIDUALIZED FAMILY SERVICE PLAN) (I–N):
• Individualized family service plan (IFSP) Team.
  • See “IFSP (Individualized family service plan) Team”.
• Information about child’s status 303.344(a).
• Initial individualized family service plan (IFSP) Meeting. 303.342(a).
• Interim individualized family service plan (IFSP) ....... 303.345.
• Justification (Natural environments)... ................. 303.344(d)(1)(ii).
• Lead agency responsibility ........................................ 303.340.
• Location of services ................................................. 303.344(d)(1)(i)-(iii), (d)(3).
• Meeting(s):
  ○ Accessibility and convenience of ................. 303.342(d).
  ○ Annual meeting to evaluate individualized family service plan (IFSP).
  ○ To develop initial individualized family service plan (IFSP).
• Natural environments .............................................. 303.344(d)(1)(ii).
  ○ See also “Natural Environments”.
• Numeracy skills ....................................................... 303.344(d)(4).
  ○ See also “Numeracy skills”.

IFSP (INDIVIDUALIZED FAMILY SERVICE PLAN) (O–Q):
• Other services ...................................................... 303.344(e).
• Outcomes or results .............................................. 303.344(c).
  ○ See also “Outcomes”.
• Parental consent before providing services ........... 303.342(e).
• Periodic review ................................................... 303.342(b).
• Pre-literacy, language, and numeracy skills ........... 303.344(d)(4).
• Procedures for individualized family service plan (IFSP) development, review, and evaluation.

IFSP (INDIVIDUALIZED FAMILY SERVICE PLAN) (R–Z):
• Responsibility and accountability ........................... 303.346.
• Results or outcomes .............................................. 303.344(c).
• Review and revision (Periodic) ............................. 303.342(b).
• Service coordinator .............................................. 303.344(g).
• Services before evaluation completed .............. 303.345.
• Statewide system component ............................... 303.114.
• Transition from Part C services ............................ 303.344(h).

IFSP (INDIVIDUALIZED FAMILY SERVICE PLAN) TEAM:
• Composition (Meetings and periodic reviews) ....... 303.343(a)(1).
• Due process complaint (Other options considered by individualized family service plan (IFSP) Team).
• Early Intervention services in natural environments 303.126.
• IFSP Team meetings and periodic reviews ........... 303.343.
• Initial and annual individualized family service plan (IFSP) Team meetings.
• Multidisciplinary ................................................... 303.26(b).
• Resolution meeting ....................................................... 303.442(a)(4).
• Transition from Part C services .................................... 303.344(b)(2)(iv).

ILLEGAL SUBSTANCE ABUSE:
• At-risk infant or toddler ................................................ 303.5.
• Referral of specific at-risk infants and toddlers ............ 303.303(b)(2).

IMMUNIZATIONS AND REGULAR WELL-BABY CARE:
• Non-covered medical-health services ............................ 303.16(c)(3).

IMPARTIAL:
• Appointment of impartial hearing officer ..................... 303.435, 303.443(c).
• Definition ...................................................................... 303.435(b)(1), 303.443(c).
• Hearing procedures (Impartial proceeding) ................... 303.233(c).
• Mediator (Qualified and impartial) ............................... 303.431(b)(1)(iii), (b)(2)(ii), (c).

INABILITY TO PAY:
• Assurance that “inability to pay” will not delay or deny services if parent or family meets State’s definition.
• Lack of consent (And inability to pay) may not delay or deny services.
• Private insurance ....................................................... 303.520(c).
• State’s definition ......................................................... 303.521(a)(3).
• System of payments and fees ......................................... 303.521(a)(3)–(a)(4).

INBORN ERRORS OF METABOLISM:
• Diagnosed physical or mental condition (Infant or toddler with a disability). 303.21(a)(2)(ii).

INDIAN CHILDREN:
• Payments to Indians ...................................................... 303.731(a)(1), (d)(1).
• See “Indian infants and toddlers”.

INDIAN; INDIAN TRIBE:
• Definition ...................................................................... 303.19.
• See “Tribe; Tribal organization”.

INDIAN INFANTS AND TODDLERS:
• Assurances regarding Early Intervention services .......... 303.101(a)(1)(i).
• Availability of Early Intervention services .................... 303.112(a).
• Scope of child find ......................................................... 303.320(b)(1).

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.
303.731(a)(1).

INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP):
• See “IFSP”; “IFSP Content”; “IFSP Team.”

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA):
• Act (Definition) ............................................................. 303.4.

INFANT(S) and/or TODDLER(S):
• Annual report of children served ................................... 303.721(a).
• At-risk infant or toddler (Definition) ............................. 303.5.
• Authorized activities of the Council ............................. 303.605(b).
• Definition (In State allotments) .................................... 303.732(d)(2).
• Permissive use of funds ................................................. 303.501(e).
• Payments to Indians ..................................................... 303.731(b), (e).
• Primary referral sources .............................................. 303.303(c)(3).
• Public awareness program .......................................... 303.301(a)(1)(ii).
• Reservation for State incentive grants ........................ 303.734(b)(1).
• Screening procedures ................................................... 303.320(b)(1).

INFANT OR TODDLER WITH A DISABILITY:
• Definition ...................................................................... 303.21.

INFECTION; CONGENITAL INFECTIONS:
• At-risk infant or toddler (Definition) ............................. 303.5.
• Infant or toddler with a disability (Definition) .............. 303.21(a)(2)(ii).

INFORMED CLINICAL OPINION:

INFORMED WRITTEN CONSENT:
• Individualized family service plan (IFSP) (Informed written consent before providing services).
• State option to make services available to children ages three and older.
• See also “Consent.”
INNER-CITY:
- Comprehensive system of personnel development (CSPD) (Training personnel to work in rural and inner-city areas).
- Purpose of Early Intervention program (Enhance capacity to meet needs of inner-city children).

INSURANCE (A–E):
- Consent regarding:
  - Private insurance .............................................. 303.520(b)(1), (b)(2).
  - Public insurance .............................................. 303.520(a)(3)(i).
- Co-payments.
- Composition of Council (Agency responsible for State regulation of health insurance).
- Construction clause (Non-reduction of Medicaid benefits).
- Cost participation fees or sliding fees .......................... 303.521(a)(1).
- Costs to parents (Use of private insurance to pay for Part C services).
- Deductible amounts or co-payments ................................ 303.521(a)(6).
- Enrollment in public insurance or benefits program (May not require parent to enroll).

INSURANCE (F–O):
- Family or parent funds:
  - Not treated as "program income" .......................... 303.520(d)(1).
  - Used for Part C services ..................................... 303.520(d)(2).
- Funds received under a State’s system of payments ......... 303.520(e).
- Health insurance .................................................... 303.520(b)(2), 303.601(a)(10).
- Lack of consent may not delay or deny services .......... 303.520(b).
- Medicaid (Payor of last resort) .................................. 303.510(c).

INSURANCE (P–PR):
- Parental consent and ability to decline services ........ 303.420(a)(4).
- Parent or family funds to State not considered "program income".
- Policies related to use of insurance to pay for services .... 303.520(a), 303.520(b).
- Private insurance .................................................... 303.520(b).
- Proceeds from public or private insurance:
  - Not treated as income ....................................... 303.520(d)(1).
  - Reimbursements (Medicaid, etc.) for Early Intervention services are not State or local funds.

INSURANCE (PU–Z):
- Public insurance ..................................................... 303.520(a).
- Purpose of Early Intervention program ......................... 303.520(b).
- Schedule of sliding fees:
  - Early Intervention services (Definition) ................. 303.13(a)(3).
  - System of payments and fees ................................ 303.521(a)(1).
- State, local, or private programs of insurance ............... 303.521(a).
- State statute regarding private health insurance (Impact on consent requirements).
- System of payments and fees .................................... 303.520(a), 303.521(a).
- See also "Fees" and "Inability to pay".
- Use of public insurance to pay for services ................ 303.520(a).
- Written notification (prior to use of public insurance) .... 303.520(a)(3).
  - See also "Fees" and "Inability to pay".

INTERAGENCY AGREEMENTS:
- Functions of the Council (Promotion of methods for intra-agency and interagency collaboration).
  - 303.604(a)(3).
- Lead agency role (In funding, inter-agency agreements, etc.).
  - 303.120(f).
- Transition to preschool .............................................. 303.209(a)(3).

INTERAGENCY COORDINATION:
- See "Coordination."

INTERIM INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP):
- Services before evaluations and assessments completed .... 303.345.

INTERMEDIATE EDUCATIONAL UNIT (IEU):
- Local educational agency (LEA) (Definition) .................. 303.23(b)(3).
JURISDICTION(S) (Geographic location):
- Eligible recipients of an award ........................................... 303.2(a).
- State (Definition) ................................................................. 303.35.

LACK OF CONSENT (INABILITY TO PAY) ................................. 303.320(c).
- See also “Inability to Pay”.

LACK OF OXYGEN:
- At-risk infant or toddler (Definition) ................................. 303.5.

LEAD AGENCY:
- Definition ................................................................. 303.22.
- Designation of ............................................................... 303.201.
- Lead agency role in supervision, etc. .................................... 303.120.
- Public agency (Definition) ............................................. 303.30.

LIMITED ENGLISH PROFICIENCY (LEP):
- Native language (Definition) ............................................. 303.25(a).
  ○ See “Native language”.

LOCAL EDUCATIONAL AGENCY (LEA):
- Definition ................................................................. 303.23.
- Notification of child transitioning to ..................................... 303.209(b).

LOW BIRTH WEIGHT:
- At-risk infant or toddler (Definition) ................................. 303.5.

LOW-INCOME (Children and families):
- Purpose of Early Intervention program (Historically
  underrepresented populations). ...................................... 303.1(d).
- Traditionally underserved groups (Low-income families).
  ................................................................. 303.227(a).

MAPPING:
- Of surgically implanted medical devices ............................ 303.13(b)(1)(i),
  303.16(c)(1)(i).

MATERNAL AND CHILD HEALTH:
- Child find (Coordination) ....................................................... 303.302(c)(1)(ii)(B).
- Payor of last resort—Non-reduction of benefits (Construction).

MEDIATION (A–L):
- Annual report of children served (Number of mediations held).
  ................................................................. 303.321(c).
- Benefits of (Meeting to explain) ........................................... 303.431(d)(1).
- Confidential discussions ..................................................... 303.431(b)(5)(i), (b)(7).
- Cost of (borne by State) ..................................................... 303.431(b)(3).
- Disputes (Resolve through mediation) ..................................... 303.431(a).
- Disinterested party (to encourage) .......................................... 303.431(d).
- Impartiality of mediator ..................................................... 303.431(c).
- Lead agency procedures (to resolve disputes through mediation).
  ................................................................. 303.431(a).
- Legally binding agreement (if parties resolve dispute through mediation).
  ................................................................. 303.431(b)(5).

MEDIATION (M–O):
- Mediator(s):
  ○ Impartiality of ......................................................... 303.431(c).
  ○ List of ................................................................. 303.431(b)(2)(i).
  ○ Qualified and impartial .................................................. 303.431(b)(1)(ii).
  ○ Random selection of .................................................... 303.431(b)(2)(ii).
  ○ Trained in effective mediation techniques ..................... 303.431(b)(1)(iii).
- Meeting to encourage mediation ........................................... 303.431(d).
- Not used as evidence in hearing or civil proceeding ............. 303.431(b)(7).
- Not used to delay/deny right of hearing ............................... 303.431(b)(1)(i).

MEDIATION (P–Z):
- Parent training and information center ............................... 303.431(d)(1).
- Prior written notice—Content ............................................. 303.421(b).
- Requirements ................................................................. 303.431(b)(1)–(b)(7).
- Sessions scheduled—Timely manner and convenient location.
- State dispute resolution options ......................................... 303.430.
- State monitoring and enforcement ....................................... 303.700(d)(2).
- Voluntary ........................................................................... 303.431(b)(1)(i).
- Written mediation agreement (Enforceable in court) ............ 303.431(b)(6).
• Council—Composition (Member from State Medicaid program). 303.601(a)(7).
• Non-reduction of benefits (Payor of last resort)—Construction. 303.510(c).
• Proceeds from public-private insurance for Part C—Neither State nor local funds under “nonsupplant” (§303.325(b)). 303.520(d)(2).
• “Service coordination”—Use of term not intended to affect seeking Medicaid. 303.34(c).

MEDICAL SERVICES:
• In Early Intervention Services definition ......................... 303.13(b)(5).
• Interim payments—reimbursement (Payor of last resort). 303.510(b). MEDICAL SERVICES FOR DIAGNOSTIC OR EVALUATION PURPOSES:
• See “Medical services” (Definition) ................................. 303.13(b)(5).
MEDICINE OR DRUGS:
• Prescribing for any purpose—Not covered ....................... 303.16(c)(1)(ii).
METHOD (Of delivering Individual Family Service Plan (IFSP) services):
• Definition ................................................................. 303.344(d)(1)(i).
METHODS OF ENSURING SERVICES ........................................ 303.511.
METABOLISM (Inborn errors of):
• Diagnosed physical or mental condition ....................... 303.21(a)(2)(ii).
MINORITY (Children, Families, Parents):
• Council—Composition (Minority parents) ..................... 303.601(a)(1)(i).
• Purpose of Early Intervention Program ........................ 303.1(d).
• Traditionally underserved groups ................................. 303.227(a).
MONITOR; MONITORING:
• Council—Functions ....................................................... 303.604(a)(3).
• Financial responsibility and methods of ensuring services—Added components. 303.511(e).
• Lead agency role in monitoring ...................................... 303.120(a)(2)(i), (a)(2)(iv).
• Rule of construction—Nothing restricts Secretary’s authority under General Education Provisions Act (GEPA) to monitor-enforce requirements of the Act. 303.707.
• Secretary’s review & determination regarding State performance. 303.703(b).
• State monitoring and enforcement ............................... 303.700(a)(1), (b), (d)(2).
• State performance and data collection .......................... 303.701(c)(2).
• State use of targets and reporting ................................. 303.702(b)(1)(ii).
MULTIDISCIPLINARY:
• Definition ................................................................. 303.24.
• Evaluation and assessment ........................................... 303.321(a)(1)(i).
• Evaluation, assessment, and nondiscriminatory procedures. 303.113(a)(1).
• Purpose of Early Intervention program ........................ 303.1(a).
• State eligibility (General authority) .............................. 303.100.
NATIVE LANGUAGE:
• Consent ................................................................. 303.7(a).
• Definition ................................................................. 303.25.
• Evaluation and assessment ........................................... 303.321(a)(5), (a)(6).
• Individualized Family Service Plan (IFSP) meetings—Accessibility and convenience. 303.342(d)(1)(i)(ii).
• Notice regarding confidentiality and availability of notice in native language. 303.404.
• Prior written notice—Native language ............................ 303.421(c).
NATURAL ENVIRONMENTS:
• Definition ................................................................. 303.26.
• Determination of appropriate setting for Early Intervention services. 303.344(d)(1)(ii)(A)–(B).
• Early Intervention services in natural environments (Component of statewide system). 303.126.
• Individualized Family Service Plan (IFSP) content—Early Intervention services in. 303.344(d)(1)(ii)(A)–(B).
• State monitoring and enforcement ................................. 303.700(d)(1).
NEGLECT or ABUSE:
• See “Abuse or neglect”.

NERVOUS SYSTEM (“Disorders reflecting disturbance of development of”):
• Diagnosed physical or mental condition (Infant or toddler with a disability).

NONCOMMINGLING: ............................................................... 303.225(a).

NONDISCRIMINATORY:
• Evaluation, assessment and nondiscriminatory procedures.
  303.113, 303.321(a)(4).
• Evaluation and assessment—in a nondiscriminatory manner.

NON–REDUCTION OF BENEFITS ................................................ 303.510(c).

NONSUBSTITUTION OF FUNDS ................................................. 303.510(a).

NONSUPPLANT:
• Requirement to supplement not supplant ..................... 303.225(b).
• Requirement regarding indirect costs ........................... 303.225(c)(2)(ii).

NOTICE & HEARING BEFORE DETERMINING A STATE NOT ELIGIBLE. 303.231.

NOTICES (State administration):
• Public participation policies—Lead agency notice of hearings.
  303.208(b)(2).
• State applications, eligibility determinations, etc.: 303.229.
  • Determination by Secretary that a State is eligible (Secretary notifies State).
  • Disapproval of an application—Standard for .... 303.230.
  • Initial decision; final decision ............................ 303.234(a), (c).
  • Judicial review ................................................... 303.236.
  • Notice and hearing before determining a State not eligible.
    • Standard for disapproval of an application ........... 303.230.

NOTICES (State monitoring & enforcement):
• Public attention by State—If Secretary proposing enforcement.
  303.706.
• Secretary’s review and determination regarding State performance.
  303.703(b)(2)(i).
• Withholding funds:
  • Opportunity for a hearing .................................... 303.705(a).
  • Suspension ....................................................... 303.705(b).

NOTICES (To parents; family) (A–O):
• Confidentiality and opportunity to examine records ...
  303.401(a).
• Due process procedures—Part B: 303.440(c).
  • Filing a due process complaint (Time-line for resolution).
  • Lead agency response to a due process complaint.
  • Notice required before a hearing ............................ 303.441(c).
  • Resolution process ........................................... 303.442(a)(1), (b)(5).
• Individualized Family Service Plan (IFSP) meetings— 303.342(d)(2).
  Written notice to family, etc.
• Lead agency—General responsibility for procedural safeguards.
  303.400(a).
• Native language .................................................. 303.404(c)(1), (c)(2)(i)–(c)(2)(ii).
• Notice to parents Re-confidentiality .......................... 303.404.

NOTICES (To parents; family) (P-Z):
• Parental consent and ability to decline service ............ 303.420.
• Prior written notice and procedural safeguards notice 303.421.
  • Content of notice ............................................... 303.421(b).
  • General ............................................................. 303.421(a).
  • Native language .................................................. 303.421(c)(1), (c)(2)(1)–(c)(2)(ii).
• Procedural safeguards—General responsibility of lead agency for.
  Screening procedures ........................................... 303.320(a)(1)(1), (2).
• State option—Services to children three and older (Annual notice to parents).
  303.211(b)(1).

NUMERACY SKILLS:
Off. of Spec. Educ. and Rehab. Services, Education Pt. 303, App. A

- Infant or toddler with a disability ........................................ 303.21(c)(1).
- Individualized Family Service Plan (IFSP) .................................. 303.344(d)(4).
- State option—Services to children ages three and older .......... 303.211(b)(2).

NURSES:
- Early Intervention services (Definition)—Qualified personnel. 303.13(c)(3).

NURSING SERVICES:
- Definition ........................................................................ 303.13(b)(6).

NUTRITION SERVICES:
- Definition .......................................................................... 303.13(b)(7).

NUTRITIONAL DEPRIVATION:
- At risk infant or toddler (Definition) ........................................ 303.5.

OCCUPATIONAL THERAPY:
- Definition ........................................................................... 303.13(b)(8).
- Occupational therapists .......................................................... 303.13(c)(4).

OPTIMIZATION (Relating to Cochlear Implants, etc.) ................. 303.13(b)(1)(i), 303.16(c)(1)(iii).

ORIENTATION AND MOBILITY TRAINING:
- Early Intervention services (Definition)—In “Vision services.” 303.13(b)(17)(iii).
- Orientation and mobility specialists ........................................ 303.13(c)(5).

OTHER SERVICES:
- Early Intervention services (Definition) ................................. 303.13(d).
- Individualized Family Service Plan (IFSP) content .................. 303.344(e).

OUTCOMES:
- Early Intervention services provider (Definition) ...................... 303.12(b)(1).
- Health services—Developmental outcomes ............................ 303.16(c)(1)(ii)(A).
- Individualized Family Service Plan (IFSP)—Content:
  - Duration ........................................................................ 303.344(d)(2)(iv).
  - Early Intervention services .............................................. 303.344(d)(1).
  - Results or outcomes .................................................... 303.344(c).
- Individualized Family Service Plan (IFSP)—Periodic review. 303.342(b)(1)(i)–(b)(1)(ii).
- Individualized Family Service Plan (IFSP)—Responsibility and accountability. 303.346.

PARAPROFESSIONALS:
- Use of .............................................................................. 303.119(c).

PARENT:
- Biological or adoptive parent of a child ................................. 303.27(a)(1), (a)(4).
- Definition ............................................................................. 303.27.
- Foster parent ........................................................................ 303.27(a)(2).
- Grandparent ......................................................................... 303.27(a)(4).
- Guardian ............................................................................... 303.27(a)(3).
- Dissemination of Information (Public awareness program). 303.301(a)(1)(ii).
- Stepparent ............................................................................ 303.27(a)(4).
- Surrogate parent .................................................................. 303.27(a)(5).
  - See also “Surrogate Parent(s).”

PARENTAL RIGHTS (A–C):
- Confidentiality:
  - Access rights ................................................................. 303.405.
  - Amendment of records at parent’s request ......................... 303.410.
  - Consent prior to disclosure or use .................................... 303.414.
  - Council—Composition .................................................... 303.601(a)(1).
  - Destruction of information ............................................... 303.416.
  - List of types and locations of information ......................... 303.408.
  - Notice to parents ............................................................ 303.404.
  - Opportunity for a hearing on records .............................. 303.411.
  - Opportunity to inspect-review records ............................. 303.401(b)(2).
  - Right to confidentiality of personally identifiable information. 303.401(a).
- Consent (Definition) .............................................................. 303.7.
PARENTAL RIGHTS (D—Part B):
• Due process hearings—Part B:
  - Construction—parent’s right to file an appeal ........................................ 303.445(b).
  - Construction—filing a separate due process complaint .................................. 303.445(c).
  - Filing a due process complaint ................................................................. 303.440(a)(1)(i).
  - Findings of fact and decisions ................................................................. 303.444(a)(5), 303.446(b)(2)(vi).
  - Hearing rights ...................................................................................... 303.444.
  - Impartial due process hearing ................................................................. 303.445(a), (e), (f)(2).
  - Lead agency response to a due process complaint ....................................... 303.441(e).
  - Parental rights at hearings ................................................................. 303.444(c).
  - Resolution process ............................................................................. 303.442.
  - Separate request for a due process hearing ............................................. 303.446(c).

PARENTAL RIGHTS (D—Part C to IF):
• Due process hearings—Part C:
  - Convenience of hearings & timelines ...................................................... 303.437.
  - Parental rights in due process hearings .................................................... 303.436.
• Functions not subject to fees ...................................................................... 303.521(b).
• Individualized Family Service Plan (IFSP)—Consent provisions:
  - Parental consent regarding IFSP contents ........................................... 303.342(e).
  - Services before evaluation completed (Parental consent) ......................... 303.345(a).
• Individualized Family Service Plan (IFSP) Team meeting participants:
  - An advocate or person outside the family—If parent requests ................ 303.343(a)(1)(iii).
  - Other family members, if requested by the parent .................................... 303.343(a)(1)(ii).
  - The parent or parents .......................................................................... 303.343(a)(1)(i).
• Native language:
  - Consent (definition) ............................................................................. 303.7(a).
  - Definition ............................................................................................... 303.25.
  - Prior notice—Native language ................................................................. 303.421(c).

PARENTAL RIGHTS (IN–O):
• Inability of parents to pay will not delay–deny services ................................ 303.521(a)(4)(ii).
• Mediation:
  - Binding agreement to resolve a dispute—signed by parents & agency .... 303.431(b)(5)(ii).
  - Meeting to encourage ........................................................................... 303.431(d).
  - Not used to deny or delay a parent’s right to a hearing ............................ 303.431(b)(1)(ii).
• Native language:
  - Consent (definition) ............................................................................. 303.7(a).
  - Definition ............................................................................................... 303.25.
  - Prior notice—Native language ................................................................. 303.421(c).

PARENTAL RIGHTS (P–Z):
• Parental consent and ability to decline service ........................................ 303.420.
• Payments to Indians—Use of funds (Encouraged to involve Indian parents).
  - Pendency .................................................................................................. 303.431(d)(1).
  - Prior notice .............................................................................................. 303.432(a).
  - Prior notice .............................................................................................. 303.421.
• State complaint procedures:
  - Adoption of (and widely disseminating procedures to parents) .............. 303.432(a).
  - Time extension ....................................................................................... 303.433(b)(1)(ii).
• States with Free Appropriate Public Education (FAPE) mandates may not charge parents for services under Part B:
  - Status of child during pendency of due process hearing ...................... 303.430(e).
  - State system of payments copy for parents ........................................... 303.520(a)(4), 303.520(b)(1)(iii).
• See also “Due Process Procedures,” “Family (Families),” and “Procedural Safeguards”.

PARENT TRAINING:
Off. of Spec. Educ. and Rehab. Services, Education
Pt. 303, App. A

- Payment to Indians—Use of funds ................................................. 303.731(d).
- Psychological services (Definition) ............................................. 303.13(b)(10)(iv).

PARENT TRAINING & INFORMATION CENTER(S):
- Definition ................................................................. 303.28.
- Mediation—Meeting to encourage ............................................. 303.431(d)(1).
- State complaint procedures—Widely disseminated to Parent Training and Information Centers.

PART B (IDEA) (A–O):
- Child find—Coordination with ............................................. 303.302(a)(1), (c)(1)(i)(A).
- Confidentiality ......................................................... 303.401(d)(2).
- Comprehensive System of Personnel Development (CSPD) (Training personnel relating to transition).
- Due process hearing procedures (Dispute resolution options).
- Free Appropriate Public Education (FAPE) (Definition).
- Financial responsibility and methods of ensuring services.
- Individualized Family Service Plan (IFSP) Content—Transition to preschool.
- Monitoring and enforcement ........................................... 303.700(d).

PART B (IDEA) (P–Z):
- Permissive use of funds .............................................. 303.501(c)(1), (d).
- State educational agency (Definition) ................................... 303.36(b).
- State option—Services to children three and older ........... 303.211(b)(1)(i)-(b)(1)(ii), (b)(3).
- Construction—If child receives Part C services, free appropriate public education (FAPE) not required.
- States with free appropriate public education (FAPE) mandates.

PARTICIPATING AGENCY:
- Definition of .......................................................... 303.403(c).
- See also “Confidentiality” (A–D) and Personally Identifiable Information” (A–C).

PAYMENTS(S) FOR EARLY INTERVENTION SERVICES:
- Coordination of ....................................................... 303.1(b).
- Individualized Family Service Plan (IFSP) content—Payment arrangements, if any.
- Interim payments—reimbursement (payor of last resort).
- Policies Re use of insurance for payment for services ...
- Timely resolution of disputes about payments (Methods of ensuring services).
- To outlying areas ................................................... 303.730(a).
- To Secretary of the Interior ........................................ 303.731(a)(1).

PAYMENTS TO INDIANS .................................................. 303.731.
- Allocation .............................................................. 303.731(b).
- Information ............................................................. 303.731(c).
- Prohibited use of funds ................................................ 303.731(f).
- Reports ................................................................. 303.731(e).
- Use of funds .......................................................... 303.731(d).

PAYOR OF LAST RESORT:
- Assurance regarding ...................................................... 303.222.
- General requirement ..................................................... 303.500.
- Interim payments—reimbursement .............................. 303.510(b).
- Non-reduction of benefits ............................................. 303.510(c).
- Nonsubstitution of funds ............................................. 303.510(a).

PEDIATRICIANS & OTHER PHYSICIANS:
- Qualified personnel .................................................... 303.13(c)(6).

PENDENCY:
- Enforcement action—Public attention .......................... 303.706.
- Status of child during pendency of a due process hearing request.

PERIODIC REVIEW (Individualized Family Service Plan (IFSP)).

PERMISSIVE USE OF FUNDS BY LEAD AGENCY:
At risk infants or toddlers (strengthen statewide system).
Continue Early Intervention services in lieu of FAPE ...
Expand and improve on services
For direct services
Provide FAPE (See also “Use of Funds”)

PERSONALLY IDENTIFIABLE INFORMATION (A–C):
- Confidentiality
- Applicability and timeframe of procedures
- Definitions of “destruction” and “participating agency”
- Destruction of information
- Disclosure of information
- Notice to parents
- Safeguards
- Secretary ensures protection of

PERSONALLY IDENTIFIABLE INFORMATION (D–Z):
- Data collection—Construction (Nationwide database not authorized).
- Finality of hearing decision—Findings of fact & decisions (to public).
- Hearing decision—Part B (to public)
- Parental consent—Exchange of
- Public reporting and privacy
- Transition to preschool—State policy

PERSONNEL (Shortage of):
- Personnel standards—Policy to address
- Qualified personnel (definition)
- Qualification standards
- Policy to address shortage of personnel
- Use of paraprofessionals and assistants

PHYSICAL DEVELOPMENT, including vision and hearing:
- Developmental delays in
- Early Intervention Services (Definition)
- Evaluation of child’s level of functioning IN
- In definition of “Infants and toddlers with disabilities”
- In Individualized Family Service Plan (IFSP) content (Information about child’s status)

PHYSICAL THERAPY:
- Definition
- Physical therapists

PHYSICIANS:
- Early intervention services (Qualified personnel—Pediatricians and other)
- Consultation by
- Medical services (Definition)
- Public awareness program (Dissemination to all primary referral sources)
- Referral procedures—Primary referral sources

POLICIES (AND PROCEDURES) [P&P] (A–D):
- Confidentiality:
  - Enforcement (To ensure requirements are met)
  - Consent prior to disclosure—P&P to be used when parent refuses consent.
  - Notice to parents—summary of P&P regarding disclosure.
  - Option to inform parent about intended disclosure.
  - Safeguards—Training regarding State P&P
- Due process—Part B:
  - 30 or 45 day timeline for resolution (Specify in P&P)
Timelines and convenience of hearings 303.447(a).

POLICIES (AND PROCEDURES) [P&P] (E–Q):

- Early Intervention services in natural environments 303.126.
- Financial responsibility and methods of ensuring services—Delivery of services in a timely manner.
- Personnel standards 303.119.
- Policies related to use of insurance for services 303.520.
- Public participation P&P 303.208.

POLICIES (AND PROCEDURES) [P&P] (R–Z):

- Referral policies for specific children 303.206.
- State application and assurances 303.200.
- State conformity with IDEA—Part C 303.102.
- System of payments and fees—State’s policies to specify functions subject to fees.
- Traditionally underserved groups 303.227.
- Transition to preschool, etc. 303.209(a)(1).
- Use of funds—Payor of last resort 303.500.

POLICIES RELATED TO USE OF PUBLIC OR PRIVATE INSURANCE OR PUBLIC BENEFITS TO PAY FOR PART C SERVICES:

- POSITIVE EFFORTS TO EMPLOY AND ADVANCE QUALIFIED INDIVIDUALS WITH DISABILITIES.

POST-REFERRAL PROCEDURES:

- Types of post-referral procedures 303.300(c).

PRELITERACY, LANGUAGE, & NUMERACY SKILLS:

- Infant or toddler with a disability 303.21(c)(1).
- Individualized Family Service Plan (IFSP)—Educational component.
- State option—Services to children ages three and older 303.211(b).

- Implementation of (Functions not subject to fees & carried out at public expense).
- Lead agency responsibility for .............................................. 303.400.
- Mediation ................................................................. 303.431.
- Native language (Prior written notice) ........................ 303.421.
- See “Native Language”.
- Nondiscriminatory evaluation and assessment procedures.
  - No single procedure used as sole criterion .......... 303.321(b).

PROCEDURAL SAFEGUARDS (O–Z):
- Opportunity to examine records (i.e., to inspect & review records).
- Parental consent and ability to decline service ............ 303.420.
- See also “Consent”.
- Parental rights in due process hearings .................... 303.430.
  - See also “Due Process Rights—Part B.”
- Pendency (Status of child) ...................................... 303.430(e).
- Prior written notice ................................................ 303.421.
- Procedural safeguards notice .................................... 303.421(b)(3).
- State dispute resolution options ............................... 303.430.
- Surrogate parents ......................................................... 303.422.
- System of payments ..................................................... 303.521(e).

PROTECTION & ADVOCACY AGENCIES:
- State complaint procedures ........................................ 303.432(a)(2).

PROVISION OF SERVICES BEFORE EVALUATIONS AND ASSESSMENTS COMPLETED.

PSYCHOLOGICAL SERVICES:
- Early Intervention services (Definition) ........................ 303.13(b)(10).
- Psychologists (Qualified personnel) .............................. 303.13(c)(8).

PUBLIC AGENCY:
- Confidentiality—Option to inform parent about intended disclosure.
- Definition ............................................................... 303.30.
- IFSP Team—Service coordinator designated by public agency.
- Impartial hearing officer (Public agency—List of hearing officers).
- Parent (Definition) ....................................................... 303.430.
- Prior written notice—Native language ......................... 303.421(c)(2).
- State complaint procedures:
  - Filing a complaint .................................................. 303.434(b)(1).
  - Surrogate parents ................................................... 303.422(a)(2).

PUBLIC HEARINGS:
- Public participation policies and procedures ............... 303.208(b)(1).
  - See “Public Participation”.

PUBLIC AWARENESS PROGRAM:
- Component of statewide system ................................. 303.116.
- Public awareness program—Information for parents ...... 303.301(b).

PUBLIC INSURANCE:
- See “Insurance”.

PUBLIC PARTICIPATION .................................................. 303.208.
- Requirements for State applications .......................... 303.208(a).
- Requirements for State policies and procedures ........... 303.208(b).

PURPOSE OF EARLY INTERVENTION PROGRAM ............... 303.1.

QUALIFIED PERSONNEL:
- All evaluations and assessments of child and family conducted by qualified personnel.
  - Definition ........................................................... 303.31.
- Early Intervention Services (Definition) ....................... 303.13(a)(7), (b)(3), (c), (d).
- Evaluations and assessments of child and family—All conducted by qualified personnel.
- Procedures for assessment of child and family ............ 303.321(c)(1), (c)(2).

RECORDS:
Off. of Spec. Educ. and Rehab. Services, Education
Pt. 303, App. A

• Civil action—Part B (records of administrative proceedings). 303.448(c)(1).
• Confidentiality .............................................................. 303.401–303.417.
• Consent (Definition)—Lists records to be released .......... 303.7(b).
• Records used to establish eligibility (without conducting an evaluation). 303.321(a)(3)(1).
• Individualized Family Service Plan (IFSP) Team (Making pertinent records available at the meeting). 303.343(a)(2)(iii).
• Parents right to inspect and review .............................. 303.405(a).
• References in applicable regulations ............................. 303.3(b)(2).
• Reports and records (Assurance—Application requirement). 303.224(b).

REIMBURSEMENT:
• Financial responsibility & methods of ensuring services. 303.511(a).
• Payor of last resort (Interim payments—Reimbursement). 303.510(b).
• Proceeds from public and private insurance .......... 303.520(d).
• Reimbursement procedures (Component of statewide system). 303.122.

REPORTS (A–P):
• Annual report of children served:
  ○ Certification ...................................................... 303.723.
  ○ Other responsibilities of lead agency .................. 303.724, (b), (d).
  ○ Report requirement ........................................... 303.721.
• Council—Annual report to Governor and Secretary .... 303.694(c).
• Data reporting ............................................................. 303.723(a).
• Data requirements—general ................................. 303.720.
• Payments to Indians ............................................... 303.731(e).

REPORTS (R–Z):
• Reports and records (Assurance—Application requirement). 303.224.

RESOLUTION OF DISPUTES:
• See “Disputes-Dispute Resolution”.

RESPIRATORY DISTRESS:
• At risk infant or toddler (Definition) ............................ 303.5.

ROUTINE MEDICAL SERVICES:
• Not covered .................................................................... 303.16(c)(3).

RURAL (AREAS, CHILDREN, FAMILIES):
• Assurance regarding traditionally underserved groups (Rural families, etc.). 303.227(a).
• Comprehensive System of Personnel Development (CSFPD) (Training personnel to work in). 303.118(b)(1).
• Purpose of Early Intervention program ......................... 303.1(d).
STATE CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)

SCHOOL READINESS:
- Infant or toddler with a disability 303.21(c)(1).
- Individualized Family Service Plan (IFSP) 303.344(d)(4).
- State option—Serve age three to five 303.211(a)(2).

SCREENING PROCEDURES 303.320.

SEA:
- See “State educational agency”.

SECRETARY of Education:
- Definition 303.33.

SECRETARY OF THE INTERIOR:
- Eligible recipients of an award 303.2.
- Indian—Indian tribe (Definition—Construction clause) 303.19(c).
- Payments to Indians 303.731.
- State allotments (Definitions “Aggregate amount”) 303.732(d)(1).

SENSORY IMPAIRMENTS:
- Infant or toddler with a disability (Diagnosed condition) 303.21(a)(2)(ii).

SERVICE COORDINATION (Services):
- Definition 303.13(b)(11), 303.34.
- Functions not subject to fees 303.521(b)(3).
- Individualized Family Service Plans (IFSP) (Early Intervention system component) 303.344(d)(4).
- Early Intervention Services 303.13(b)(11).
- Term “case management” not precluded 303.34(c).
- Service coordinator—IFSP content (“Profession” includes “service coordination”) 303.344(g)(2).
- Specific Service Coordination Services 303.34(b).

SERVICE COORDINATOR:
- Entitlement to 303.34(a).
- Named in Individualized Family Service Plan (IFSP) 303.344(g)(1).
- On Individualized Family Service Plan (IFSP) Team 303.343(a)(1)(iv).
- In interim IFSP 303.345(b)(1).

SERVICE PROVIDER(S):
- General role of 303.12(b).
- See “Qualified personnel” 303.13(c).

SEVERE ATTACHMENT DISORDERS:
- “Diagnosed physical or mental condition” 303.21(a)(2)(ii).

SHORTAGE OF PERSONNEL (Policy to address) 303.119(d).

SIGN LANGUAGE AND CUED LANGUAGE SERVICES:
- Definition 303.13(b)(12).

SLIDING FEE SCALES:
- Definition of “Early Intervention services” 303.13(a)(3).
- System of payments 303.500(b), 303.521(a)(1).

SOCIAL OR EMOTIONAL DEVELOPMENT:
- Developmental delays in 303.21(a)(1)(iv).
- Early Intervention Services (Definition) 303.344(a)(4)(v).
- Evaluation of child’s level of functioning in 303.321(b)(3).
- In definition of “Infants and toddlers with disabilities” 303.21(a)(1)(iv).
- In Individualized Family Service Plan (IFSP) content (Information about child’s status) 303.344(a).

SOCIAL SECURITY ACT:
- Title XVI:
- Title XIX:
  - Medicaid 303.510, 303.520.
  - EPSDT (Early Periodic Screening, Diagnosis, and Treatment) 303.302(c)(1)(i)(I)(C).
- Social workers 303.13(b)(13).

SOCIAL WORK SERVICES (Definition) 303.13(b)(10).

SPECIAL INSTRUCTION (Definition) 303.13(b)(14).
- Special educators 303.13(c)(11).

SPEECH–LANGUAGE PATHOLOGY:
- Definition 303.13(b)(15).
- Speech and language pathologists 303.13(c)(12).

SSI (Supplemental Security Income):
Off. of Spec. Educ. and Rehab. Services, Education
Pt. 303, App. A

• Child find (Coordination) ............................................... 303.302(c)(1)(ii)(F).

STATE (Definition) .......................................................... 303.35.

• Special definition-State allocations .................................. 303.732(d)(3).

STATE ADVISORY COUNCIL ON EARLY EDUCATION AND CARE.

• Comprehensive system of personnel development (CSPD) (Coordination).

STATE AGENCIES:

• Child find (Coordination) ............................................... 303.302(c)(1)(i).

• ICC (Composition of Council) ........................................ 303.601(a)(5)(i).

• Interagency agreements .................................................. 303.511(b)(2).

STATE APPLICATION:

• Amendments to (public participation) .......................... 303.208(a).

• Conditions of assistance ................................................ 303.200.

• Components of a statewide system .............................. 303.110–303.126.

• Council function (Advise-assist lead agency with) ......... 303.604(a)(4).

• General requirements .................................................... 303.201–303.212.

• Participation of State lead agency .................................. 303.210(b).

• Public participation ...................................................... 303.208.

• Reviewing public comments received ........................... 303.208(a).

STATE APPROVED OR RECOGNIZED CERTIFICATION (Qualified Personnel).

STATE COMPLAINT PROCEDURES:

• Adoption of ................................................................. 303.432.

○ (See also §§ 303.432–303.434)

• Filing a complaint .......................................................... 303.434.

• Lead agency must adopt ............................................... 303.430(c).

• Minimum State complaint procedures ............................ 303.433.

○ Time extension; final decision; implementation ......... 303.433(b).

○ Time limit (60 days) .................................................... 303.433(a).

• Remedies for denial of appropriate services ............... 303.432(b).

• State dispute resolution options ................................... 303.430(a), (c).

• State complaints & due process hearing procedures .... 303.433(c).

STATE DEFINITION OF ‘INABILITY TO PAY’:

• Private insurance .......................................................... 303.521(a)(3), (4)(1).

• System of payments ...................................................... 303.521(a)(3), (4)(1).

STATE EDUCATIONAL AGENCY (SEA):

• Applicable regulations (SEA means the lead agency) ... 303.3(b)(1).

• Confidentiality procedures—Disclosure of information 303.401(d).

• Council—Composition .................................................. 303.601(a)(6)(i).

• Council—Functions ....................................................... 303.604(b), 303.605(a).

• Definition ................................................................. 303.36.

• Free Appropriate Public Education (FAPE) (Definition)—Standards of the SEA. 303.604(b).

• State option—Services for children 3 and older .......... 303.211(a)(1).


STATE ELIGIBILITY:

• Conditions of assistance ................................................ 303.101.

STATE INTERAGENCY COORDINATING COUNCIL (Council):

• Advising & assisting the lead agency ............................ 303.604(a).

• Advising & assisting on transition ................................ 303.604(a).

• Annual report to Governor & Secretary ....................... 303.604(c).

• Authorized activities by the Council ............................. 303.605.

• Composition ............................................................... 303.601.

• Conflict of interest ...................................................... 303.601(d).

• Establishment ............................................................ 303.600.

• Functions of Council—Required duties ...................... 303.604.

• Meetings ................................................................. 303.602.

• Use of funds by the Council ......................................... 303.603.

STATE MONITORING and ENFORCEMENT ................................ 303.700.

STATE OPTION—EARLY INTERVENTION SERVICES TO CHILDREN AGES THREE and OLDER.

STATE PERFORMANCE PLANS—DATA COLLECTION .......... 303.701.

STATE USE OF TARGETS AND REPORTING ................. 303.702.
### STATEWIDE SYSTEM (of Early Intervention services):
- Assurances regarding Early Intervention services and a statewide system. 303.101(a).
- Minimum components of a statewide system (See also §303.111–303.126). 303.110.
- Required pre-referral, referral, and post-referral components. 303.300.
- Statewide system & description of services 303.303.

### SUBSTANCE ABUSE (Illegal) ...................................................... 303.5, 303.303(b)(2).

### SYSTEM OF PAYMENTS AND FEES:
- See “Fees.”

### SUPPLEMENTAL SECURITY INCOME (SSI):
- Child find—Coordination (see 303.302(c)(1)(ii)(F)).
- See “Social Security Act.”

### SURGERY (Non-covered health service) ...................................... 303.16(c)(1)(i).

### SURGICALLY IMPLANTED DEVICE .......................................... 303.13(b)(1)(i), 303.16(c)(1)(ii)(A), (c)(1)(ii)(B).

### SURROGATE PARENT(S):
- Assignment by lead agency 303.422(b)(1).
- 30 day timeline 303.422(g).
- Criteria for selecting 303.422(d).
- In definition of “parent” 303.421(a)(3).
- Non-employee requirement 303.422(e).
- Rights or responsibilities of 303.422(f).
- When a surrogate parent is needed 303.422(a)(1)–(a)(3).

### SYSTEM OF PAYMENTS:
- Copy to parents 303.520(a)(4), 303.520(b)(1)(ii)–(b)(1)(iii).
- Family fees 303.520(b)(1)(ii).
- Funds received under a State’s system of payments 303.520(d).
- In definition of “Early Intervention services” 303.13(a)(3).
- Procedural safeguards 303.521(e).
- System of payments and fees 303.521(a), (d).
- See also “Fees;” “Co-payments; Co-pays.”

### TECHNICAL ASSISTANCE (TA):
- Lead agency role in monitoring, etc. 303.120(a)(2)(ii).
- Minimum State Complaint procedures (Lead agency use of TA) 303.433(b)(2)(i).
- Payments to Indians (Not to be used for TA) 303.731(f).
- State monitoring and enforcement 303.700(a)(3).

### TIMELINES (A–O):
- Child find—General 303.305(a).
- Confidentiality—Access rights 303.405(a).
- Department hearing procedures on State eligibility 303.231(b)(3), 303.233(b), 303.234(d), (e), (g), (k), 303.236.
- Due process procedures—Part B (see “Timelines—Due Process (Part B)”) 303.704(d).
- Enforcement—Secretary report to Congress w/in 30 days of taking enforcement action. 303.310.
- Evaluation and Assessment & initial Individualized Family Service Plan (IFSP) meeting. 303.310.
- Exceptional circumstances 303.310(b)(1).

### TIMELINES (PA–PU):
- Part C due process hearings; parental rights:
  - Exceptional circumstances 303.310(b)(1).

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Copy to parents 303.520(a)(4), (d).
TIMELINES (R–Z):
- Report to Secretary on State performance 303.702(b)(2).
- State complaint procedures (Time limit of 60 days) 303.433(a).
- Transition—Conference to discuss services 303.209(c).
- Transition—LEA notification 303.209(b).
- Transition plan 303.209(d).
- Transition timelines for child receiving services under section 303.211. 303.211(b)(6).

TIMELINES–DUE PROCESS (PART B) (A–Q):
- Adjustments to 30-day resolution period 303.442(c).
- Agreement review period (w/in three business days of executing a settlement agreement). 303.442(e).
- Civil action (90 days from date of decision) 303.448(b).
- Hearing decision (30 or 45 days after expiration of 30-day period or adjustments to that period in §303.442(b) or (c)). 303.447(a).
- Hearing rights:
  - Additional disclosure (At least five business days before hearing). 303.444(b).
  - Prohibit new evidence (Not disclosed at least five business days before hearing). 303.444(a)(3).
- Lead agency response to complaint (within ten days of receiving complaint). 303.441(e).
- Other party response (within ten days of receiving complaint). 303.441(f).

TIMELINES–DUE PROCESS (PART B) (RE):
- Resolution meeting (w/in 15 days) 303.442(a).
- Resolution period:
  - If no meeting in 15 days, parent may seek intervention—hearing officer. 303.442(b)(5).
- If lead agency not resolved complaint w/in 30 days, hearing may occur. 303.442(b)(1).
- If no parent participation in 30 days, complaint may be dismissed. 303.442(b)(4).
- Review decision (30 days after request for review) 303.447(b).

TIMELINES—DUE PROCESS (PART B) (S–Z):
- Sufficiency of complaint:
  - Amended complaint (Hearing officer permits—Not later than five days before hearing). 303.441(d)(3)(ii).
  - Complaint sufficient—unless party notifies hearing officer w/in 15 days. 303.441(d)(1).
  - Hearing officer determination (within five days of notice). 303.441(d)(2).
- Timelines—convenience of hearings and reviews and exceptions to timelines. 303.447(a)–(c).
- Exception to timeline 303.449(f).

TRACHEOSTOMY CARE (see Health services) 303.15(b)(1).

TRADITIONALLY UNDERSERVED GROUPS 303.227.
- Purpose of Early Intervention program (“Historically underrepresented populations”).
  - See also “Homeless,” “Low Income,” “Minority,” & “Rural” (children &/or families), and “Ward of the State”.
- Scope of child find regarding selected groups 303.302(b)(1)(ii).
- State policies and practices 303.227.

TRAINING:
• In definition of “Early Intervention services” (see §303.13(b)(1)(ii)(E) (specific to AT services), (2)(iv) (specific to audiology services), (10) (specific to psychological services).

TRANSITION TO PRESCHOOL & OTHER PROGRAMS:

• Personnel standards ............................................................. 300.119.

TRANSPORTATION & RELATED COSTS ........................................ 303.13(b)(16).

TRAUMA DUE TO EXPOSURE TO FAMILY VIOLENCE .................. 303.211(b)(7).

TRIBAL ORGANIZATION:

• Child find—Coordination (tribes) ......................................... 303.302(c)(1)(i).

TUBE FEEDING (Health service) .................................................. 303.16(b)(1).

UNDERREPRESENTED POPULATIONS ....................................... 303.1(d).

• See also “Traditionally underserved groups.”

USE OF FUNDS:

• Council (Use of funds by) .................................................. 303.603.

• Special educators including teachers of children with visual impairments.

VISION SPECIALISTS ................................................................. 303.13(c)(13).

WARD OF THE STATE:

• Assurances regarding Early Intervention services ............... 303.101(a)(1)(iii).

“WELL-BABY” CARE and IMMUNIZATIONS:

• Non-covered medical services ............................................. 303.16(c)(3).

WITHHOLDING:

• State monitoring and enforcement ...................................... 303.700(a)(3).

• Withholding funds ................................................................ 303.705.

Æ Exception (If child has a foster parent under “Parent” §303.27).

Æ Nature of withholding ......................................................... 303.705(c).

Æ Withholding until rectified ................................................... 303.705(c)(2)
PART 304—SERVICE OBLIGATIONS UNDER SPECIAL EDUCATION—PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

§ 304.1 Purpose.

Individuals who receive scholarship assistance from projects funded under the Special Education—Personnel Development 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 662(h) of the Act and the regulations of this part.

(Authority: 20 U.S.C. 1462(h))

§ 304.3 Definitions.

The following definitions apply to this program:

(a) 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 scholar, the accumulation of periods of part-time courses of study that is equivalent to an "academic year" under paragraph (a)(1) of this definition.

(b) Act means the Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1400 et seq.

(c) Early intervention services means early intervention services as defined in section 632(4) of the Act and includes early intervention services to infants and toddlers with disabilities, and as applicable, to infants and toddlers at risk for disabilities under sections 632(1) and 632(5)(b) of the Act.

(d) Full-time, for purposes of determining whether an individual is employed full-time in accordance with §304.30 means a full-time position as defined by the individual’s employer or by the agencies served by the individual.

(e) Related services means related services as defined in section 602(26) of the Act.

(f) Repayment means monetary reimbursement of scholarship assistance in lieu of completion of a service obligation.

(g) 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 section 662 of the Act.

(h) Scholarship means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, stipends, books, and travel in conjunction with training assignments.

(i) Service obligation means a scholar’s employment obligation, as described in section 662(h) of the Act and §304.30.

(j) Special education means special education as defined in section 602(29) of the Act.

(Authority: 20 U.S.C. 1462(h))

Subpart B—Conditions That Must be Met by Grantee

§ 304.21 Allowable costs.

In addition to the allowable costs established in the Education Department General Administrative Regulations in
§ 304.22 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 Personnel Development to Improve Services and Results for Children with Disabilities program; or
(3) Provides evidence from the U.S. Department of Homeland Security 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 the cost of attendance portion of the scholarship assistance (as discussed in §304.21(a)) 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 HEA; 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.

(Authority: 20 U.S.C. 1462(h))

§ 304.23 Assurances that must be provided by grantee.

Before receiving an award, a grantee that intends to grant scholarships under the program must include in its application an assurance that the following requirements will be satisfied:

(a) Requirement for agreement. Prior to granting a scholarship, the grantee will require each scholar to enter into a written agreement in which the scholar agrees to the terms and conditions set forth in §304.30. This agreement must explain the Secretary’s authority to grant deferrals and exceptions to the service obligation pursuant to §304.31 and include the current Department address for purposes of the scholar’s compliance with §304.30(1), or any other purpose under this part.

(b) Standards for satisfactory progress. The grantee must establish, notify scholars of, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar’s course of study.

(c) Exit certification. (1) At the time of exit from the program, the grantee must provide the following information to the scholar:

(i) The number of years the scholar needs to work to satisfy the work requirements in §304.30(d);
(ii) The total amount of scholarship assistance received subject to §304.30;
(iii) The time period, consistent with §304.30(f)(1), during which the scholar must satisfy the work requirements; and
(iv) As applicable, all other obligations of the scholar under §304.30.

(2) Upon receipt of this information from the grantee, the scholar must provide written certification to the grantee that the information is correct.

(d) Information. The grantee must forward the information and written certification required in paragraph (c) of this section to the Secretary, as well as any other information that is necessary to carry out the Secretary’s functions under section 662 of the Act and this part.
Subpart C—Conditions That Must Be Met by Scholar

§ 304.30 Requirements for scholar.

Individuals who receive scholarship assistance from grantees funded under section 662 of the Act must—

(a) Training. Receive the training at the educational institution or agency designated in the scholarship;

(b) Educational allowances. Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar’s obligation under section 662 of the Act and this part;

(c) Satisfactory progress. Maintain satisfactory progress toward the degree, certificate, endorsement, or license as determined by the grantee;

(d) Service obligation. Upon exiting the training program under paragraph (a) of this section, subsequently maintain employment—

1) On a full-time or full-time equivalent basis; and

2) For a period of at least two years for every academic year for which assistance was received;

(e) Eligible employment. In order to meet the requirements of paragraph (d) of this section for any project funded under section 662 of the Act, be employed in a position in which—

1) At least 51 percent of the infants, toddlers, and children to whom the individual provides services are receiving special education, related services, or early intervention services from the individual;

2) The individual spends at least 51 percent of his or her time providing special education, related services, or early intervention services to infants, toddlers, and children with disabilities; or

3) If the position involves supervision (including in the capacity of a principal), teaching at the postsecondary level, research, policy, technical assistance, program development, or administration, the individual spends at least 51 percent of his or her time performing work related to the training for which a scholarship was received under section 662 of the Act.

(f) Time period. Meet the service obligation under paragraph (d) of this section as follows:

1) A scholar must complete the service obligation within the period ending not more than the sum of the number of years required in paragraph (d)(2) of this section, as appropriate, plus five additional years, from the date the scholar completes the training for which the scholarship assistance was awarded.

2) A scholar may begin eligible employment subsequent to the completion of one academic year of the training for which the scholarship assistance was received that otherwise meets the requirements of paragraph (1);

(g) Part-time scholars. If the scholar is pursuing coursework on a part-time basis, meet the service obligation in this section based on the accumulated academic years of training for which the scholarship is received;

(h) Information upon exit. Provide the grantee all requested information necessary for the grantee to meet the exit certification requirements under §304.23(c);

1) Information after exit. Within 60 days after exiting the program, and as necessary thereafter for any changes, provide the Department, via U.S. mail, all information that the Secretary needs to monitor the scholar’s service obligation under this section, including social security number, address, employment setting, and employment status;

(i) Repayment. If not fulfilling the requirements in this section, subject to the provisions in §304.31 regarding an exception or deferral, repay any scholarship received, plus interest, in an amount proportional to the service obligation not completed as follows:

1) The Secretary charges the scholar interest on the unpaid balance owed in
§ 304.31

(2)(i) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (4) of this section.
(ii) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.
(iii) No interest is charged for the period of time during which repayment has been deferred under § 304.31.
(3) Under the authority of the Debt Collection Act of 1982, as amended, the Secretary may impose reasonable collection costs.
(4) A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:
(i) The date the scholar informs the grantee or the Secretary that the scholar does not plan to fulfill the service obligation under the agreement.
(ii) 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 § 304.30(f).
(iii) Any date on which the scholar discontinues enrollment in the course of study under § 304.30(a).
(5) The scholar must make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.
(6) Any amount of the scholarship that has not been repaid pursuant to paragraphs (j)(1) through (j)(5) of this section will constitute a debt owed to the United States that may be collected by the Secretary in accordance with 34 CFR part 30.
(Approved by the Office of Management and Budget under control number 1820–0622)

§ 304.311

Requirements for obtaining an exception or deferral to performance or repayment under an agreement.

(a) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant an exception to the repayment requirement in § 304.30(j), in whole or part, if the scholar—
(1) Is unable to continue the course of study in § 304.30 or perform the service obligation because of a permanent disability; or
(2) Has died.
(b) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant a deferral of the repayment requirement in § 304.30(j) during the time the scholar—
(1) Is engaging in a full-time course of study at an institution of higher education;
(2) Is serving 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; or

(Authority: 20 U.S.C. 1462(h))

PART 350—DISABILITY AND REHABILITATION RESEARCH PROJECTS AND CENTERS PROGRAM

Subpart A—General

Sec. 350.1 What is the Disability and Rehabilitation Research Projects and Centers Program?
350.2 What is the purpose of the Disability and Rehabilitation Research Project and Centers Program?
350.3 Who is eligible for an award?
350.4 What regulations apply?
350.5 What definitions apply?

Subpart B—What Projects Does the Secretary Assist?
350.10 What are the general requirements for Disability and Rehabilitation Research Projects?
350.11 What are the general requirements for a Field-Initiated Project?
350.12 What are the general requirements for an Advanced Rehabilitation Research Training Project?
350.13 What must a grantee do in carrying out a research activity?
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?
350.16 What must a grantee do in carrying out a development activity?
350.17 What must a grantee do in carrying out a utilization activity?
350.18 What must a grantee do in carrying out a dissemination activity?
§ 350.19 What must a grantee do in carrying out a technical assistance activity?

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?

§ 350.21 What collaboration must a Rehabilitation Research and Training Center engage in?

§ 350.22 What activities must a Rehabilitation Research and Training Center conduct?

§ 350.23 What restriction exists on Rehabilitation Research and Training Centers regarding indirect costs?

Subpart D—What Rehabilitation Engineering Research Centers Does the Secretary Assist?

§ 350.30 What requirements must a Rehabilitation Engineering Research Center meet?

§ 350.31 What collaboration must a Rehabilitation Engineering Research Center engage in?

§ 350.32 What activities must a Rehabilitation Engineering Research Center conduct?

§ 350.33 What cooperation requirements must a Rehabilitation Engineering Research Center meet?

§ 350.34 Which Rehabilitation Engineering Research Centers must have an advisory committee?

§ 350.35 What are the requirements for the composition of an advisory committee?

Subpart E—How Does One Apply for an Award?

§ 350.40 What is required of each applicant regarding the needs of individuals with disabilities from minority backgrounds?

§ 350.41 What State agency review must an applicant under the Disability and Rehabilitation Research Projects and Centers Program obtain?

Subpart F—How Does the Secretary Make an Award?

§ 350.50 What is the peer review process for this Program?

§ 350.51 What is the purpose of peer review?

§ 350.52 What is the composition of a peer review panel?

§ 350.53 How does the Secretary evaluate an application?

§ 350.54 What selection criteria does the Secretary use in evaluating an application?

§ 350.55 What are the additional considerations for selecting Field-Initiated Project applications for funding?

Subpart G—What Conditions Must Be Met After an Award?

§ 350.60 How must a grantee conduct activities?

§ 350.61 What evaluation requirements must a grantee meet?

§ 350.62 What are the matching requirements?

§ 350.63 What are the requirements of a grantee relative to the Client Assistance Program?

§ 350.64 What is the required duration of the training in an Advanced Rehabilitation Research Training Project?

§ 350.65 What level of participation is required of trainees in an Advanced Rehabilitation Research Training Project?

§ 350.66 What must a grantee include in a patient application?

Authority: Sec. 204; 29 U.S.C. 761–762, unless otherwise noted.

Source: 62 FR 5713, Feb. 6, 1997, unless otherwise noted.

Subpart A—General

§ 350.1 What is the Disability and Rehabilitation Research Projects and Centers Program?

The Disability and Rehabilitation Research Projects and Centers Program provides grants to establish and support—

(a) The following Disability and Rehabilitation Research and Related Projects:

(1) Disability and Rehabilitation Research Projects.

(2) Field-Initiated Projects.

(3) Advanced Rehabilitation Research Training Projects; and

(b) The following Disability and Rehabilitation Research Centers:

(1) Rehabilitation Research and Training Centers.

(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).

(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).

(b) The regulations in this part 350.

(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

(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).

(b) The following definitions also apply to this part.


(Authority: Sec. 202(l)(1); 29 U.S.C. 761a(i)(1))

Assistive technology device means any item, piece of equipment, or product

274
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))

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
§ 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 grantee must provide expertise or information for use in problem-solving.

(Authority: Sec. 202; 29 U.S.C. 761a)

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;
§ 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.

(Authority: Secs. 204(b) and (b)(2)(K); 29 U.S.C. 762(b) and (b)(2)(K))

§ 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)(1) 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
§ 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.

§ 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—
§ 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))

Subpart E—How Does One Apply for an Award?

§ 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 ensure 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) 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.

(b)(1) In considering selection criteria in § 350.54, the Secretary selects one or more of the factors listed in the criteria except as provided for in paragraph (b)(2) of this section.

(2) Under § 350.54, the Secretary always considers the factor in paragraph (n)(2) of that section.

(c) The maximum possible score for an application is 100 points.

(d)(1) In the application package or a notice published in the Federal Register, the Secretary informs applicants of—

(i)(A) The selection criteria chosen; and
(B) The maximum possible score for each of the selection criteria; and

(ii)(A) The factors selected for considering the selection criteria; and

(B) If points are assigned to each factor, the maximum possible score for each factor under each criterion.

(2) If no points are assigned to each factor, the Secretary evaluates each factor equally.

(e) For Field-Initiated Projects, in addition to the selection criteria, the Secretary uses the additional considerations in selecting applications for funding as described in §350.55.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

§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, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials.

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities.

(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) If appropriate, 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 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.

(l) 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.

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas.

(iv) The extent to which the project staff includes outstanding scientists in the field.

(v) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority.

(o) Adequacy and accessibility of resources. (1) The Secretary considers the adequacy and accessibility of the applicant’s resources to implement the proposed project.
(2) In determining the adequacy and accessibility of resources, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate.

(ii) The quality of an applicant’s past performance in carrying out a grant.

(iii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research.

(iv) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202 and 204; 29 U.S.C. 761a and 762)

§ 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.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202 (g) and (i)(1); 29 U.S.C. 761a(g) and 761a(1)(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 and 204(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.

(3) 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.

(b)(1) 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.

(2) The Secretary determines at the time of the award whether the grantee must pay a portion of the project or center costs.

(Authority: Sec. 204; 29 U.S.C. 762)

§ 350.63 What are the requirements of a grantee relative to the Client Assistance Program?

All Projects and Centers that provide services to individuals with disabilities with funds awarded under this Program must—

(a) Advise those individuals who are applicants for or recipients of services under the Act, or their parents, family members, guardians, advocates, or authorized representatives, of the availability and purposes of the Client Assistance Program (CAP) funded under the Act; and

(b) Provide information on the means of seeking assistance under the CAP.

(Authority: Sec. 20; 29 U.S.C. 718a)

§ 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)

PART 356—DISABILITY AND REHABILITATION RESEARCH: RESEARCH FELLOWSHIPS

Subpart A—General

Sec.
356.1 What is the Research Fellowships Program?
356.2 Who is eligible for assistance under this program?
356.3 What regulations apply to this program?
356.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

356.10 What types of activities are authorized?
356.11 What types of problems may be researched under the fellowship program?

Subpart C—How Does One Apply for Assistance Under This Program?

356.20 What are the application procedures under this part?
356.21 What is the fellowship review process?

Subpart D—How Does the Secretary Select a Fellow?

356.30 What selection criteria are used for this program?
356.31 How does the Secretary evaluate an application under this part?
356.32 What are the special considerations in selecting applications for funding under this part?
§ 356.1 Subpart E—What Conditions Have To Be Met by a Fellow?

Subpart F—What are the Administrative Responsibilities of a Fellow?

356.40 What is the length of a Fellowship award?
356.41 What are the employment limitations during a fellowship period?
356.42 What acknowledgement of support is required?

Subpart F—What are the Administrative Responsibilities of a Fellow?

356.50 What kinds of payments are allowed under this program?
356.51 What reports are required?
356.52 Are there other requirements?

AUTHORITY: 29 U.S.C. 760–762, unless otherwise noted.

SOURCE: 46 FR 45312, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§ 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]

§ 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))


§ 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))

[49 FR 24979, June 18, 1984, as amended at 52 FR 30065, Aug. 12, 1987]

§ 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 where appropriate, required to carry out the proposed activity.

(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, as amended at 52 FR 30065, Aug. 12, 1987]

§ 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 increase the potential value of already planned research and related activities.

(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, as amended at 52 FR 30065, Aug. 12, 1987]

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))

[49 FR 24979, June 18, 1984]

§ 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 the 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))

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]

PART 359—DISABILITY AND REHABILITATION RESEARCH: SPECIAL PROJECTS AND DEMONSTRATIONS FOR SPINAL CORD INJURIES

Subpart A—General

Sec.

359.1 What is the Special Projects and Demonstrations for Spinal Cord Injuries Program?

359.2 Who is eligible for assistance under this program?

359.3 What regulations apply to this program?

359.4 What definitions apply to this program?

359.5–359.9 [Reserved]
Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 359.10 What types of projects are authorized under this program?
This program provides assistance for demonstration projects that—
(a) Provide comprehensive rehabilitation services to individuals with spinal cord injuries; and
(b) Conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

§ 359.11 What activities must each recipient carry out under this program?
Each recipient, whether administering a project separately under this part or in coordination with other activities supported under title II of the Act, shall—
(a) Establish a multidisciplinary system of providing rehabilitation services specifically designed to meet the special needs of individuals with spinal cord injuries, including emergency medical services, acute care, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.
(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.

(Approval: Secs. 21(b)(6) and 204(b)(4); 29 U.S.C. 718b and 762(b)(4))

50 FR 16676, Apr. 26, 1985, as amended at 58 FR 49420, Sept. 22, 1993

§§ 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;
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))

[50 FR 49420, Sept. 22, 1993]

§ 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]

§§ 359.33–359.39 [Reserved]

**PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM**

Subpart A—General

Sec.
361.1 Purpose.
361.2 Eligibility for a grant.
361.3 Authorized activities.
361.4 Applicable regulations.
361.5 Applicable definitions.

Subpart B—State Plan and Other Requirements for Vocational Rehabilitation Services

361.10 Submission, approval, and disapproval of the State plan.
361.11 Withholding of funds.
§ 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
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. 705(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. 709(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. 709(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;

(iii) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(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, including experiences in which the individual is provided appropriate supports and training.

(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.

(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 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.

(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:
§361.5  (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.
(11) Competitive employment means—
(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.
(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.
(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.

(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.

(15) Eligible individual means an applicant for vocational rehabilitation services who meets the eligibility requirements of §361.42(a).

(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, capabilities, interests, and informed choice.

(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 not ongoing operating expenses of the program.

(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—
§ 361.5

(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 796)

(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 §361.48(l), 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.

(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).

(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.

(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.

(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).

(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;

(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), 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.
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.

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.

Local workforce investment board means a local workforce investment board established under section 117 of the Workforce Investment Act of 1998.

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.

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).

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.

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

(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. 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.

(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.
(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. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual’s employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; to regain employment, e.g., the individual’s job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer 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.
(i) 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.

(Authority: Sections 12(c) and 102(c)(4) of the Act; 29 U.S.C. 706(c) and 722(c)(4))

(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.

(Authority: Section 7(12)(c) of the Act; 29 U.S.C. 706(c))

(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.

(Authority: Section 7(30) of the Act; 29 U.S.C. 706(30))

(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.

(Authority: Section 121(c) of the Act; 29 U.S.C. 741(c))

(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.

(Authority: Section 7(24) of the Act; 29 U.S.C. 706(24))

(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.

(Authority: Section 7(32) of the Act; 29 U.S.C. 706(32))

(49) State workforce investment board means a State workforce investment board established under section 111 of the Workforce Investment Act of 1998.

(Authority: Section 7(33) of the Act; 29 U.S.C. 706(33))

(50) Statewide workforce investment system means a system described in section 111(d)(2) of the Workforce Investment Act of 1998.

(Authority: Section 7(34) of the Act; 29 U.S.C. 706(34))

(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. 706(c) and 721)

(52) Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, 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. 706(20)(A) and 721)

(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
34 CFR Ch. III (7–1–12 Edition)

§361.5

(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 available from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(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.

(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.

(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.

Examples:
The following are examples of expenses that would meet the definition of transportation. These 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.

Authority: Sections 7(35)(B) and 12(c) of the Act; 29 U.S.C. 705(35)(B) and 709(c)

Authority: 103(a)(8) of the Act; 29 U.S.C. 723(a)(8)
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))


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 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.
§ 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 part 81.

(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 United States Court of Appeals for the circuit in 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)

(Authority: Sections 101(a) and (b), and 107(d) of the Act; 20 U.S.C. 1231g(a); and 29 U.S.C. 721(a) and (b), and 727(d))
§ 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)

Authority: Sections 101(a)(6) and (a)(10)(A) of the Act; 29 U.S.C. 721(a)(6) and (a)(10)(A)

§ 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 sub-division 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:

(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 vocational and other rehabilitation of individuals with disabilities, the State plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency’s vocational rehabilitation program under the State plan;

(ii) Has a full-time director;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit; and

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the 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
§ 361.14 Substitute State agency.

(a) General provisions. (1) If the Secretary has withheld all funding from a State under §361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State’s program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency must submit a State plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) Substitute agency matching share. The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to contribute if the State agency were carrying out the vocational rehabilitation program.

§ 361.15 Local administration.

(a) Local administrative agencies. (1) If the State plan provides for the administration of the plan by a local agency, the designated State agency must—

(i) Ensure that each local agency is under the supervision of the designated State unit or the sole local agency under the supervision of the State unit;

(ii) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services;

(iii) The determination to close the record of services of an individual who has achieved an employment outcome in accordance with §361.56;

(iv) Policy formulation and implementation;

(v) The allocation and expenditure of vocational rehabilitation funds;

(vi) 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.

§ 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—

(ii) A separate local agency serving individuals who are blind may administer that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

(Approved by the Office of Management and Budget under control number 1820–0500)

(Authority: Sections 7(24) and 101(a)(2)(A) of the Act; 29 U.S.C. 705(24) and 721(a)(2)(A))

[66 FR 7253, Jan. 22, 2001]
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);
(1) 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, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;
(iv) The designated State unit transmits to the Council—
(A) All plans, reports, and other information required under this part to be submitted to the Secretary;
(B) All policies and information on all practices and procedures of general applicability provided to or used by rehabilitation personnel providing vocational rehabilitation services under this part; and
(C) Copies of due process hearing decisions issued under this part and transmitted in a manner to ensure that the identity of the participants in the hearings is kept confidential; and
(v) The State plan, and any revision to the State plan, includes a summary of input provided by the Council, including recommendations from the annual report of the Council, the review and analysis of consumer satisfaction described in §361.17(h)(4), and other reports prepared by the Council, and the designated State unit’s response to the input and recommendations, including explanations of reasons for rejecting any input or recommendation of the Council.

(b) 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))

§361.17
34 CFR Ch. III (7–1–12 Edition)

(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 under 34 CFR part 370, who must be the director of or other individual recommended by the Client Assistance Program;

(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;

(v) At least one representative of community rehabilitation program service providers;

(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 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 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
§ 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 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 105(g) of the Act.

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(Authority: Section 105 of the Act; 29 U.S.C. 725)

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—

(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 para-professional 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
§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 as required by the Rehabilitation Act Amendments of 1998; 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 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))
§ 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; or

(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.

§ 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.

§ 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
§ 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.

(5) Provide representation on the Local Workforce Investment Board

(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 under Title I of the Workforce Investment Act of 1998 and replicates those agreements at the local level between individual offices of the designated State unit and local entities carrying out the One-Stop service delivery system or other activities through the statewide workforce investment system.

(2) Cooperative agreements developed under paragraph (b)(1) of this section may provide for—

(i) Intercomponent training and technical assistance regarding—

(A) The availability and benefits of, and information on eligibility standards for, vocational rehabilitation services; and

(B) The promotion of equal, effective and meaningful participation by individuals with disabilities in the One-Stop service delivery system and other workforce investment activities through the promotion of program accessibility consistent with the requirements of the Americans with Disabilities Act of 1990 and section 504 of the Act, the use of nondiscriminatory policies and procedures, and the provision of reasonable accommodations, auxiliary aids and services, and rehabilitation technology for individuals with disabilities;

(ii) The use of information and financial management systems that link all of the partners of the One-Stop service delivery system to one another and to other electronic networks, including nonvisual electronic networks, and that relate to subjects such as employment statistics, job vacancies, career planning, and workforce investment activities;

(iii) The use of customer service features such as common intake and referral procedures, customer databases, resource information, and human services hotlines;

(iv) The establishment of cooperative efforts with employers to facilitate job placement and carry out other activities that the designated State unit and the employers determine to be appropriate;

(v) The identification of staff roles, responsibilities, and available resources and specification of the financial responsibility of each partner of the One-Stop service delivery system with respect to providing and paying for necessary services, consistent with the requirements of the Act, this part, other Federal requirements, and State law; and

(vi) The specification of procedures for resolving disputes among partners of the One-Stop service delivery system.

(Approved by the Office of Management and Budget under control number 1820-0500)


§ 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
§ 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) 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))


§ 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)

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))


§ 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)


§ 361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.

(a) Comprehensive statewide assessment. (1) The State plan must include—

(i) 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;
§ 361.29  

(B) Individuals with disabilities who are minorities and individuals with disabilities who have been unserved or 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.

(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 with disabilities who have been unserved or underserved by the vocational rehabilitation program;
(3) As applicable, the plan of the State for establishing, developing, or improving community rehabilitation programs;
(4) Strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 106 of the Act; and
(5) Strategies for assisting other components of the statewide workforce investment system in assisting individuals with disabilities.

\(\text{\textsection 361.30 Services to American Indians.}\)

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)(15) and 121(b)(3) of the Act; 29 U.S.C. 721(a)(15) and 741(b)(3))


\(\text{\textsection 361.31 Cooperative agreements with private nonprofit organizations.}\)

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))


\(\text{\textsection 361.32 Use of profitmaking organizations for on-the-job training in connection with selected projects.}\)

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 nonprofit agencies and organizations.

(Approved by the Office of Management and Budget under control number 1820-0500)


§ 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)(22) and 625(a) of the Act; 29 U.S.C. 721(a)(22) and 795(k))


§ 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(a) 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(i); and

(ii) The Statewide Independent Living Council, consistent with the plan prepared under 34 CFR 364.21(l).

(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)(18) of the Act; 29 U.S.C. 721(a)(18))


§ 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 in the State who apply for the services, 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 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;
(i) Provide a justification for the order of selection;
(ii) 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) Ensure 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 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
§ 361.37 Information and referral programs.

(a) General provisions. The State plan must assure that—

(1) The designated State agency will implement an information and referral 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, 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)(ii), and 721(a)(20))


§ 361.38 Protection, use, and release of personal information.

(a) General provisions. (1) 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—

(i) Specific safeguards are established to protect current and stored personal information;

(ii) All applicants and eligible individuals and, as appropriate, those individuals’ representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the State
unit’s need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;
(B) Explanation of the principal purposes for which the State unit intends to use or release the information;
(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the effects of not providing requested information;
(D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and
(E) Identification of other agencies to which information is routinely released;
(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.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(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)(2) and (c)(3) 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.

(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))

§ 361.40 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
§ 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 only 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 due to the severity of the applicant’s disability.

(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—

(i)(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))
(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).
(iii) 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 individual, including an individual whose eligibility for vocational 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.

(b) Interim determination of eligibility. (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 extended evaluation to make these determinations.

(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.

(ii) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic work settings.

(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that—

(A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(B) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual’s disability.

(iv) The designated State unit must provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(f) Extended evaluation for certain individuals with significant disabilities. (1) Under limited circumstances if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the State unit is able to make the determinations described in paragraph (e)(2)(iii) of this section, the designated State unit must conduct an extended evaluation to make these determinations.

(2) During the extended evaluation period, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(3) During the extended evaluation period, the designated State unit must develop a written plan for providing
§ 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 as defined in §361.5(b)(16).

(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. 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
§ 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 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 State unit or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;

(7) Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual’s representative and by a qualified vocational rehabilitation counselor employed by the designated State unit; and

(8) An IPE for a student with a disability receiving special education services is developed—

(i) In consideration of the student’s IEP; and

(ii) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under §361.22.

(e) Standards for developing the IPE. The designated State unit must establish and implement standards for the prompt development of IPEs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individuals.

(f) Data for preparing the IPE—

(1) Preparation without comprehensive assessment. To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual’s IPE must be determined based on the data used for the assessment of eligibility and priority for services under §361.42.

(2) Preparation based on comprehensive assessment.

(i) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the IPE of an eligible individual, the State unit must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual in accordance with the provisions of §361.5(b)(6)(ii).

(ii) In preparing the comprehensive assessment, the State unit must use, to
§ 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, capabilities, career interests, and informed choice.

(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

Authority: Sections 7(2)(B), 101(a)(9), 102(b)(1), 102(b)(2), 102(c) and 103(a)(1); 29 U.S.C. 705(2)(B), 721(a)(9), 722(b)(1), 722(b)(2), 722(c) and 723(a)(1)
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 coordinated with the IEP for that individual in terms of the goals, objectives, and services identified in the IEP.

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(Authority: Sections 101(a)(8), 101(a)(9), 102(b)(3), and 625(b)(6) of the Act; 29 U.S.C. 721(a)(8), 721(a)(9), 722(b)(3), and 796(k))


§ 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.
§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 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
(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)(10)).

(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)(57).

(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.

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(Authority: Section 103(a) of the Act; 29 U.S.C. 723(a))


§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 enterprise 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.

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(Authority: Sections 12(c), 101(a)(6)(A), and 103(b) of the Act; 29 U.S.C. 709(c), 721(a)(6), and 723(b))


§ 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

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(Authority: Sections 12(c) and 101(a)(6) of the Act and 29 U.S.C. 709(c) and 721(a)(b))

§ 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;

(ii) Specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) Entity that will provide the services;

(iv) Employment setting and the settings in which the services will be provided; and

(v) Methods available for procuring the services; and

(5) Ensuring that the availability and scope of informed choice is consistent with the obligations of the designated State agency under this part.

(c) Information and assistance in the selection of vocational rehabilitation services and service providers. In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the designated State unit must provide the...
individual or the individual’s representative, or assist the individual or the individual’s representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual’s employment outcome. This information must include, at a minimum, information relating to the—

(1) Cost, accessibility, and duration of potential services;
(2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;
(3) Qualifications of potential service providers;
(4) Types of services offered by the potential providers;
(5) Degree to which services are provided in integrated settings; and
(6) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(d) Methods or sources of information. In providing or assisting the individual or the individual’s representative in acquiring the information required under paragraph (c) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(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.

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(Authority: Sections 12(c), 101(a)(19); 102(b)(2)(B) and 102(d) of the Act; 29 U.S.C. 706(c), 723(a)(19); 722(b)(2)(B) and 722(d)

any other program and are available to
the individual at the time needed to
ensure the progress of the individual
toward achieving the employment out-
come in the individual’s IPE, the des-
ignated State unit must use those com-
parable services or benefits to meet, in
whole or part, the costs of the voca-
tional 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 individ-
ual’s IPE, the designated State unit
must provide vocational rehabilitation
services until those comparable serv-
ices and benefits become available.

(d) Interagency coordination. (1) The
State plan must assure that the Gov-
ernor, in consultation with the entity
in the State responsible for the voca-
tional rehabilitation program and
other appropriate agencies, will ensure
that an interagency agreement or
other mechanism for interagency co-
ordination takes effect between the
designated State vocational rehabilita-
tion unit and any appropriate public
entity, including the State entity re-
ponsible 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 voca-
tional 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 serv-
ices during the pendency of any inter-
agency dispute in accordance with the
provisions of paragraph (d)(3)(iii) of
this section.

(2) The Governor may meet the re-
quirements 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 enti-
ties that clearly identifies the respon-
sibilities 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 co-
ordination must include the following:

(i) Agency financial responsibility. An
identification of, or description of a
method for defining, the financial re-
sponsibility of the public entity for
providing the vocational rehabilitation
services other than those listed in
paragraph (b) of this section and a pro-
vision stating the financial respon-
sibility 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 reha-
bilitation services based on the terms
of the interagency agreement or other
mechanism for interagency coordina-
tion.

(iii) Interagency disputes. Information
specifying procedures for resolving
interagency disputes under the inter-
agency agreement or other mechanism
for interagency coordination, including
procedures under which the designated
State unit may initiate proceedings to
secure reimbursement from other pub-
lic entities or otherwise implement the
provisions of the agreement or mecha-
nism.

(iv) Procedures for coordination of serv-
ices. Information specifying policies
and procedures for public entities to
determine and identify interagency co-
ordination responsibilities of each pub-
lic entity to promote the coordination
and timely delivery of vocational reha-
bilitation services other than those
listed in paragraph (b) of this section.

(e) Responsibilities under other law.
(1) If a public entity (other than the des-
ignated 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 In-
vestment 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 voca-
tional rehabilitation services (e.g., in-
terpreter 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 pay for those services to the individual and may 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)

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 709(c) and 721(a)(8))


§ 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:
(A) Assessment for determining eligibility and priority for services under §361.48(a), except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual’s abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under §361.42(e) or an extended evaluation under §361.42(f).
(B) Assessment for determining vocational rehabilitation needs under §361.48(b).
(C) Vocational rehabilitation counseling and guidance under §361.48(c).
(D) Referral and other services under §361.48(d).
(E) Job-related services under §361.48(l).
(F) Personal assistance services under §361.48(n).
(G) Any auxiliary aid or service (e.g., interpreter services under §361.48(k), reader services under §361.48(l)) that an individual with a disability requires
under section 504 of the Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), or regulations implementing those laws, in order for the individual to participate in the VR program as authorized under this part; or

(ii) As a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act.

(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))


§ 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) and 721(a)(14))

[66 FR 7253, Jan. 22, 2001]

§ 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.

The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

(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
§ 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—

(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
§ 361.57

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

(ii) 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

(4) 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 both a designated State agency and a designated State unit under §361.13(b); or

(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 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:

(i) 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 reviewing 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.

(4) 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.

Subpart C—Financing of State Vocational Rehabilitation Programs

§ 361.60 Matching requirements.

(a) Federal share—(1) General. Except as provided in paragraph (a)(2) of this section, the 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 agency in accordance with State law and 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.

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)(ii).

(Approved by the Office of Management and Budget under control number 1820–0500)

§ 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 construction of facilities for community rehabilitation program purposes.


§ 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 program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Act; 29 U.S.C. 721(a)(17) and 731(a)(2))

§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.

(Authority: Section 108 of the Act; 29 U.S.C. 728; 34 CFR 80.25)

§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 reallocates these funds to other States that can use these 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. 728(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...
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:

(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) Equal access to services. A DSU must ensure that individuals from minority backgrounds have equal access to VR services.

(3) Employment outcomes. 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.

(4) 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.

(i) 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 with earnings equivalent to at least the minimum wage.

(iv) 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.

(v) 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).

(vi) 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—(1) 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. (1)(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>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Equal or exceed previous perfor-</td>
</tr>
<tr>
<td></td>
<td>mance period.</td>
</tr>
<tr>
<td>1.2</td>
<td>55.8%</td>
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<tr>
<td>1.3</td>
<td>72.8%</td>
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<tr>
<td>1.4</td>
<td>62.4%</td>
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<tr>
<td>1.5</td>
<td>.52 (Ratio)</td>
</tr>
<tr>
<td>1.6</td>
<td>53.0 (Math. Difference)</td>
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(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.

(Authority: 29 U.S.C. 726(a))

§ 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
(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 in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at closure was “personal income.”

(7) The number of individuals exiting the VR program who are individuals from a minority background.

(8) The number of non-minority individuals exiting the VR program.

(9) The number of individuals from a minority background exiting the VR program after receiving services under an IPE.

(10) 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).

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(Authority: 29 U.S.C. 726(b) and (c))

§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.
Subpart F—What Post-Award Conditions Must Be Met by a State?

363.50 What collaborative agreements must the State develop?
363.51 What are the allowable administrative costs?
363.52 What are the information collection and reporting requirements?
363.53 What special conditions apply to services and activities under this program?
363.54 What requirements must a State meet before it provides for the transition of an individual to extended services?
363.55 What are the requirements for successfully rehabilitating an individual in supported employment?
363.56 What notice requirements apply to this program?

Authority: 29 U.S.C. 795j–q, unless otherwise noted.

Source: 59 FR 8331, Feb. 18, 1993, unless otherwise noted.

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 the basis of a comprehensive assessment of rehabilitation needs, including an evaluation of rehabilitation, career, and job needs.

Authority: 29 U.S.C. 795m)

§ 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. 795l)
§ 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 (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).

(b) The regulations in this part 363.

(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—

(A) Work—

(i) 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

§ 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
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 under special circumstances, especially at the request of the individual, the individualized written rehabilitation program 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 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 rehabilitation services described in 34 CFR part 361; and
(I) Any service similar to the foregoing services.
(Authority: 29 U.S.C. 706(18), 711(c), and 795j)

Subpart B—How Does a State Apply for a Grant?

§363.10 What documents must a State submit to receive a grant?

To receive a grant under this part, a State must submit to the Secretary, as part of the State plan under 34 CFR part 361, a State plan supplement that meets the requirements of §363.11.
(Authority: 29 U.S.C. 795n)
§ 363.11 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.

(b) A cooperative agreement or memorandum of understanding must, at a minimum, specify the following:

(1) The supported employment services to be provided by the designated State unit with funds received under this part.

(2) The extended services to be provided by relevant State agencies, private nonprofit organizations, or other sources following the cessation of supported employment services under this part.

(3) The estimated funds to be expended by the participating party or parties in implementing the agreement or memorandum.

(4) The projected number of individuals with the most severe disabilities who will receive supported employment services and extended services under the agreement or memorandum.

(Approved by the Office of Management and Budget under control number 1820–0500)

(Authority: 29 U.S.C. 795n)

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. 795k)

§ 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. 795k)

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 State agencies, private nonprofit organizations, and other available funding sources to ensure collaboration in a plan to provide supported employment services and extended services to individuals with the most severe disabilities.

(b) A cooperative agreement or memorandum of understanding must, at a minimum, specify the following:

(1) The supported employment services to be provided by the designated State unit with funds received under this part.

(2) The extended services to be provided by relevant State agencies, private nonprofit organizations, or other sources following the cessation of supported employment services under this part.

(3) The estimated funds to be expended by the participating party or parties in the agreement or memorandum.

(4) The projected number of individuals with the most severe disabilities who will receive supported employment services and extended services under the agreement or memorandum.

(Approved by the Office of Management and Budget under control number 1820–0500)

(Authority: 29 U.S.C. 795n)

§ 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
§ 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)
§ 364.26 What are the requirements for cooperation, coordination, and working relationships?

§ 364.27 What are the requirements for coordinating independent living (IL) services?

§ 364.28 What requirements relate to IL services for older individuals who are blind?

§ 364.29 What are the requirements for coordinating Federal and State sources of funding?

§ 364.30 What notice must be given about the Client Assistance Program (CAP)?

§ 364.31 What are the affirmative action requirements?

§ 364.32 What are the requirements for outreach?

§ 364.33 What is required to meet minority needs?

§ 364.34 What are the fiscal and accounting requirements?

§ 364.35 What records must be maintained?

§ 364.36 What are the reporting requirements?

§ 364.37 What access to records must be provided?

§ 364.38 What methods of evaluation must the State plan include?

§ 364.39 What requirements apply to the administration of grants under the Centers for Independent Living program?

§ 364.40 Who is eligible to receive IL services?

§ 364.41 What assurances must be included regarding eligibility?

§ 364.42 What objectives and information must be included in the State plan?

§ 364.43 What requirements apply to the provision of State IL services?

Subpart D—What Conditions Must Be Met After an Award?

§ 364.50 What requirements apply to the processing of referrals and applications?

§ 364.51 What requirements apply to determinations of eligibility or ineligibility?

§ 364.52 What are the requirements for an IL plan?

§ 364.53 What records must be maintained for the individual?

§ 364.54 What are the durational limitations on IL services?

§ 364.55 What standards shall service providers meet?

§ 364.56 What are the special requirements pertaining to the protection, use, and release of personal information?

§ 364.57 What functions and responsibilities may the State delegate?

§ 364.58 What appeal procedures must be available to consumers?

§ 364.59 May an individual's ability to pay be considered in determining his or her participation in the costs of IL services?

Authority: 29 Awarding Grants U.S.C. 796-796f-5, unless otherwise noted.

Source: 59 FR 43887, Aug. 15, 1994, unless otherwise noted.
§ 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).

(b) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(c) 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.

(d) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(e) 34 CFR part 82 (New Restrictions on Lobbying).

(f) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(g) 34 CFR part 86 (Drug-Free Schools and Campuses).

(h) The regulations in this part 364.

(i) The regulations in 34 CFR parts 365 and 366 as applicable.

§ 364.4 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part and 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.

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.
Attendant 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.


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—

(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. 706(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 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;
§ 364.4

(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 unserved 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. 711(c))

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(f) 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.

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).

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.

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.

§ 364.5 What is program income and how may it be used?

(a) Definition. Program income means gross income received by a grantee under title VII of the Act that is directly generated by an activity supported under 34 CFR parts 365, 366, or 367.

(b) Sources. Sources of program income include, but are not limited to, payments received from workers’ compensation funds or fees for services to defray part or all of the costs of services provided to particular consumers.

(c) Use of program income. (1) Program income, whenever earned, must be used for the provision of IL services or the administration of the State plan, as appropriate.

(2) A service provider is authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 34 CFR 80.25(g)(1); or
§ 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 meeting the requirements in subpart C of this part.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 796c(a)(1))

§ 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.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 796c(a)(4))

§ 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
§ 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.

(i) Judicial review. A State may appeal the Secretary’s final decision to withhold, reduce, limit, or terminate payment of funds to a State under title VII of the Act 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.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 727(c)–(d) and 796d–1(a))

Subpart C—What Are the State Plan Requirements?

§ 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—
§ 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

(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;

(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.

(2) The State plan must assure that the DSU and SILC establish and maintain a written description of procedures for conducting public meetings in accordance with the following requirements:

(i) The DSU and SILC shall provide appropriate and sufficient notice of the public meetings. Appropriate and sufficient notice means notice provided at least 30 days prior to the public meeting through various media available to the general public, such as newspapers and public service announcements, and through specific contacts with appropriate constituency groups and organizations identified by the DSU and SILC.

(ii) The DSU and SILC shall make reasonable accommodation to individuals with disabilities who rely on alternative modes of communication in the conduct of the public meetings, including providing sign language interpreters and audio-loops.

(iii) The DSU and SILC shall provide the notices of the public meetings, any written material provided prior to or at the public meetings, and the approved State plan in accessible formats for individuals who rely on alternative modes of communication.

(h) The State plan must assure that, at the public meetings to develop the State plan, the DSU and SILC identify those provisions in the State plan that are State-imposed requirements. For purposes of this section, a State-imposed requirement includes any State law, regulation, rule, or policy relating to the DSU’s administration or operation of IL programs under title VII of the Act, including any rule or policy implementing any Federal law, regulation, or guideline, that is beyond what would be required to comply with the regulations in 34 CFR parts 364, 365, 366, and 367.

(i) The State plan also must address how the specific requirements in §§364.21 through 364.43 and in §§364.56 and 364.59 will be met.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c (a) and (m)(6)
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 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 1 of title VII of the Act, part C of title I of the Act, and from other
§ 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.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(c))

§ 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.
§ 364.28 What are the requirements for 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
§ 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.

(c) Cross-reference: See 34 CFR 366.30(a).

(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. 718a 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 underserved 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(c), 718b(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 (5))

§ 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. 796c(n))

§ 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. 796c (g) and (h), 796f-1(d), and 796f-2(d))
§ 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. 706(15)(B) and 796b)

§ 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. 706(15)(B) and 796b)

§ 364.42 What objectives and information must be included in the State plan?

(a) The State plan must specifically describe—

(1) The objectives to be achieved;

(2) The financial plan for the use of Federal and non-Federal funds to meet these objectives. The financial plan must identify the source and amounts of other Federal and non-Federal funds to be used to meet these objectives; and

(3) How funds received under sections 711, 721, and 752 of the Act will further these objectives.

(b) The objectives required by paragraph (a) of this section must address—

(1) The overall goals and mission of the State’s IL programs and services;

(2) The various priorities for the types of services and populations to be served; and

(3) The types of services to be provided.

(c) 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) The State plan must establish timeframes for the achievement of the objectives required by paragraph (a) of this section.

(e) The State plan must explain how the objectives required by paragraph (a) of this section are consistent with and further the purpose of chapter 1 of title VII of the Act, as stated in section 701 of the Act and §364.2.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 706(15)(B) and 796b)

§ 364.43 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—

(1) An appropriate staff member of the service provider; and

(2) The individual.

(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
Off. of Spec. Educ. and Rehab. Services, Education § 364.52

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(c)-(f), and 796f-4(b)(2))

**Subpart D—What Conditions Must Be Met After an Award?**

§ 364.50 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.

(Approved by the Office of Management and Budget under control number 1820-0527)

(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.

(b) Ineligibility. (1) If a determination is made that an applicant for IL services is not an individual with a significant disability, the service provider shall provide documentation of the ineligibility determination that is dated and signed by an appropriate staff member.

(2)(i) The service provider may determine an applicant to be ineligible for IL services only after full consultation with the applicant or, if the applicant chooses, the applicant’s parent, guardian, or other legally authorized advocate or representative, or after providing a clear opportunity for this consultation.

(ii) The service provider shall notify the applicant in writing of the action taken and inform the applicant or, if the applicant chooses, the applicant’s parent, guardian, or other legally authorized advocate or representative, of the applicant’s rights and the means by which the applicant may appeal the action taken. (Cross-reference: See §364.58(a).)

(iii) The service provider shall provide a detailed explanation of the availability and purposes of the CAP established within the State under section 112 of the Act, including information on how to contact the program.

(iv) If appropriate, the service provider shall refer the applicant to other agencies and facilities, including the State’s VR program under 34 CFR part 361.

(c) Review of ineligibility determination.

(1) If an applicant for IL services has been found ineligible, the service provider shall review the applicant’s ineligibility at least once within 12 months after the ineligibility determination has been made and whenever the service provider determines that the applicant’s status has materially changed.

(2) The review need not be conducted in situations where the applicant has refused the review, the applicant is no longer present in the State, or the applicant’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 796c(e))

§ 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
§ 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 796(c)(4)(B))}

§ 364.54 What are the durational limitations on IL services?

The service provider may not impose any uniform durational limitations on

(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.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796(e) and (j))
§ 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—
(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;
(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
§ 364.57 What functions and responsibilities may the State delegate?

A DSU may carry out the functions and responsibilities described in §§364.50, 364.51 (subject to 364.43(d)), 364.52, 364.53, and 364.56 or, except as otherwise provided, may delegate these functions and responsibilities to the appropriate service provider with which the DSU subgrants or contracts to provide IL services.

(Authority: 29 U.S.C. 711(c))

§ 364.58 What appeal procedures must be available to consumers?

Each service provider shall—

(a) Establish policies and procedures that an individual may use to obtain review of decisions made by the service provider concerning the individual’s request for IL services or the provision of IL services to the individual; and

(b) Use formats that are accessible to inform each individual who seeks or is receiving IL services from the service provider about the procedures required by paragraph (a) of this section.

(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

Subpart A—General

§ 365.1 What is the State Independent Living Services (SILS) program?

365.3 What regulations apply?

Subpart B—How Does the Secretary Make a Grant to a State?

365.10 How does a State apply for a grant?

365.11 How is the allotment of Federal funds for State independent living (IL) services computed?

365.12 How are payments from allotments for IL services made?

365.13 What requirements apply if the State’s non-Federal share is in cash?

365.14 What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?

365.15 What requirements apply if the State’s non-Federal share is in kind?

365.16 What requirements apply to refunds and rebates?

Subpart C—For What Purpose Are Funds Authorized or Required To Be Used?

365.20 What are the authorized uses of funds?

365.21 What funds may the State use to provide the IL core services?

365.22 What additional IL services may the State provide?

365.23 How does a State make a subgrant or enter into a contract?

Subpart D—What Conditions Must Be Met After an Award?

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.

Subpart A—General

§ 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); and

(b) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act;
§ 365.2

(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)

§ 365.3 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)
(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

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State’s share for—

(i) Providing particular services (e.g., personal assistance services);

(ii) Serving individuals with certain types of disabilities (e.g., older individuals who are blind);

(iii) Providing services to specific groups that State or Federal law permits to be targeted for services (e.g., children of migrant laborers); or

(iv) Carrying out particular types of administrative activities permissible under State law.

(b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will 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.

(c) The receipt 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 from the DSU is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the grant, subgrant, or contract was awarded under the State’s regular competitive procedures.

(d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

§ 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)
§ 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) and 796e–1(b))

§ 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 conditions 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.
§ 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.

§ 366.1 What is the Centers for Independent Living (CIL) program?

§ 366.2 What agencies are eligible for assistance under the CIL program?

§ 366.3 What activities may the Secretary fund?

§ 366.4 What regulations apply?

§ 366.5 What definitions apply to this program?

§ 366.6 How are program funds allotted?

Subpart B—Training and Technical Assistance

§ 366.10 What agencies are eligible for assistance to provide training and technical assistance?

§ 366.11 What financial assistance does the Secretary provide for training and technical assistance?

§ 366.12 How does the Secretary make an award?

§ 366.13 How does the Secretary determine funding priorities?

§ 366.14 How does the Secretary evaluate an application?

§ 366.15 What selection criteria does the Secretary use?

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?

§ 366.21 What are the application requirements for existing eligible agencies?

§ 366.22 What is the order of priorities?

§ 366.23 What grants must be made to existing eligible agencies?

§ 366.24 How is an award made to a new center?

§ 366.25 What additional factor does the Secretary use in making a grant for a new center under §366.24?

§ 366.26 How does the Secretary evaluate an application?

§ 366.27 What selection criteria does the Secretary use?

§ 366.28 Under what circumstances may the Secretary award a grant to a center in one State to serve individuals in another State?

Subpart D—Grants to Centers in States in Which State Funding Equals or Exceeds Federal Funding

§ 366.29 When may the Director of the designated State unit (DSU) award grants to centers?

§ 366.30 What are earmarked funds?

§ 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?

AWARDING GRANTS

§ 366.32 Under what circumstances may the DSU make grants?

§ 366.33 What are the application requirements for existing eligible agencies?

§ 366.34 What is the order of priorities?

§ 366.35 What grants must be made to existing eligible agencies?

§ 366.36 How is an award made to a new center?

§ 366.37 What procedures does the Director of the DSU (Director) use in making a grant for a new center?

§ 366.38 What are the procedures for review of centers?
§ 366.39 What procedures does the Secretary use for enforcement?

§ 366.40 How does the Director initiate enforcement procedures?

§ 366.41 What must be included in an initial written notice from the Director?

§ 366.42 When does a Director issue a final written decision?

§ 366.43 What must be included in the Director’s final written decision?

§ 366.44 How does a center appeal a decision included in a Director’s initial written notice or a Director’s final written decision?

Subpart F—Assurances for Centers

§ 366.50 What assurances shall a center provide and comply with?

Subpart G—Evaluation Standards and Compliance Indicators

§ 366.60 What are project evaluation standards?

§ 366.61 What are the compliance indicators?

§ 366.62 What are the requirements for continuation funding?

§ 366.63 What evidence must a center present to demonstrate that it is in minimum compliance with the evaluation standards?

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 364.26 for establishing a statewide network of centers.

(Authority: 29 U.S.C. 796f, 796f-1(a)(2), and 796f-2(a)(1)(A)(ii))
§ 366.5 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

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))
§ 366.6 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)


Subpart B—Training and Technical Assistance

§ 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, including consideration of—
   (1) The objectives of the project; and
   (2) How the objectives further training and technical assistance 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 applicant identified those needs;
   (3) How those needs will be met by the project; and
   (4) The benefits to be gained by meeting those needs.

(c) 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.

(d) 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—
   (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 (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.

(f) 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
§ 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—

...
§ 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 part C of title VII of the Act on September 30, 1993, if it was awarded a grant on or before that date, i.e., during FY 1993.

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

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

§ 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 underserved 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) If the establishment of a new center under this subpart must be consistent with the design included in the State plan pursuant to 34 CFR 364.24 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 364.23.

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

(Authority: 29 U.S.C. 796f-1(d))

§ 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.

(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—
   (i) 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 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 under-represented, 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—
§ 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 meetings the requirements of part C of chapter 1...
§ 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 1995. It also meets this requirement in FY 1996. However, in reviewing the State’s application to administer the CIL program in FY 1998, 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))

AWARDING GRANTS

§ 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
§ 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 (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,
§ 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 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 described in paragraph (a) of this section; or

(2) The date that 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))
§ 366.41 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;

(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 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 (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.

(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))
§ 366.44 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 in section 725 (b) and (c) of the Act and in 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.

(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 (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.
§ 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, 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 (l))

§ 366.46 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;

(i) 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 unserved or underserved by programs 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 unserved 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;

(n) The center will prepare and submit to the DSU, if the center received a grant from the Director, or to the Secretary, if the center received a grant from the Secretary, within 90 days of the end of each fiscal year, the annual performance report that is required to be prepared pursuant to paragraph (h) of this section and that contains the information described in paragraph (i) of this section; and

(o) An IL plan as described in section 704(e) of the Act will be developed for each individual who will receive services under this part unless the individual signs a waiver stating that an IL plan is unnecessary.

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

(Authority: 29 U.S.C. 796f–4)

Subpart G—Evaluation Standards and Compliance Indicators

SOURCE: 60 FR 39221, Aug. 1, 1995, unless otherwise noted.

§ 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—
§ 366.61 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 (b) 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), 7964–1(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. 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—

(i) Employees in decisionmaking positions; and

(ii) 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.

(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 underserved 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

§ 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
§ 367.4

to help an older individual who is blind 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 (Nonprocurement) 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
§ 367.11 What assurances must a DSA include in its application?

An application for a grant under section 752(i) 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.
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.

(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) 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.

(4) (Cross-reference: See 34 CFR 75.590.)

(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
§ 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 section 753 of the Act is equal to or greater than $13,000,000, grants under this part are made to States from allotments under section 752(c)(2) of the Act.

(b) Subparts A, B, D, and E of this part govern the award of formula grants under this part.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

§ 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.

(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(i) 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 paragraph is subject to the requirements of section 752(1) of the Act and §§367.10 and 367.11.

(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
§ 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.
§ 369.2  
(b) The Secretary awards financial assistance through the following programs—

(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.

(6) Projects with Industry (34 CFR part 379).


§ 369.3  
What regulations apply to these programs?

(a) Vocational rehabilitation service projects for American Indians with disabilities. Governing bodies of Indian tribes and consortia of those governing bodies located on Federal and State reservations are eligible for assistance to support projects for providing vocational rehabilitation services to American Indians with disabilities.

(Authority: Sec. 130 of the Act; 29 U.S.C. 750)

(b) Special projects and demonstrations for providing vocational rehabilitation services to individuals with disabilities. States and public and other nonprofit agencies and organizations are eligible for expanding or otherwise improving vocational rehabilitation services to individuals with disabilities.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777(a)(1))

(c) Vocational rehabilitation service projects for migratory agricultural workers and seasonal farmworkers with disabilities. State vocational rehabilitation agencies, local agencies administering vocational rehabilitation programs under written agreements with State agencies, and nonprofit agencies working in collaboration with State vocational rehabilitation agencies are eligible for assistance to support projects for providing vocational rehabilitation services to migratory agricultural workers or seasonal farmworkers with disabilities.

(Authority: Sec. 312 of the Act; 29 U.S.C. 777(b))

(d) Projects for initiating special recreation programs for individuals with disabilities. State and other public agencies and private nonprofit agencies and organizations are eligible for assistance to support projects for initiating special recreation programs for individuals with disabilities.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

(e) Projects with industry. Any designated State unit, labor union, community rehabilitation program provider, Indian tribe or tribal organization employer, trade association, or other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities is eligible for assistance to support a project with industry.

(Authority: Sec. 621 of the Act; 29 U.S.C. 795(g))

(f) Special projects and demonstrations for providing transitional rehabilitation services to youths with disabilities. State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Authority: Sec. 311(c) of the Act; 29 U.S.C. 777a(c))

§ 369.3  
What regulations apply to these programs?

The following regulations apply to the programs listed in § 369.1(b):
§ 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

(b) The following definitions also apply to programs under Vocational Rehabilitation Service Projects:

(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.

(Authority: Sec. 7(25) of the Act; 29 U.S.C. 706(25))
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.

(Authority: Sec 7(5) of the Act; 29 U.S.C. 706(5))

Individual who is blind means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

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))

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 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 means—

(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. 731(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.

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

(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 776(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))

§ 370.16 How does the Secretary review an appeal of a redesignation?

§ 370.17 When does a redesignation become effective?

Subpart C—How Does a State Apply for a Grant?

§ 370.20 What must be included in a request for a grant?

Subpart D—How Does the Secretary Allocate and Reallocation Funds to a State?

§ 370.30 How does the Secretary allocate funds?

§ 370.31 How does the Secretary reallocate funds?

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

§ 370.40 What are allowable costs?

§ 370.41 What conflict of interest provision applies to employees of a designated agency?

§ 370.42 What access must the CAP be afforded to policymaking and administrative personnel?

§ 370.43 What requirement applies to the use of mediation procedures?

§ 370.44 What reporting requirement applies to each designated agency?

§ 370.45 What limitation applies to the pursuit of legal remedies?

§ 370.46 What consultation requirement applies to a Governor of a State?

§ 370.47 When must grant funds be obligated?

§ 370.48 What are the special requirements pertaining to the protection, use, and release of personal information?

AUTHORITY: 29 U.S.C. 732, unless otherwise noted.

SOURCE: 60 FR 55766, Nov. 2, 1995, unless otherwise noted.

Subpart A—General

§ 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 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
§ 370.3

(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 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
§ 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). 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 to 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 Act, in which case “State” does not mean or include Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.


§ 370.7 What shall the designated agency do to make its services accessible?

The designated agency shall provide, as appropriate, the CAP services described in §370.4 in formats that are accessible to clients or client applicants who seek or receive CAP services.

(Authority: 29 U.S.C. 711(c))

Subpart B—What Requirements Apply to Redesignation?

§ 370.10 When do the requirements for redesignation apply?

(a) The Governor may not redesignate the agency designated pursuant to section 112(c) of the Act and §370.2(b) without good cause and without complying with the requirements of §§370.10 through 370.17.

(b) For purposes of §§370.10 through 370.17, a “redesignation of” or “to redesignate” a designated agency means any change in or transfer of the designation of an agency previously designated by the Governor to conduct the State’s CAP to a new or different agency, unit, or organization, including—

(1) A decision by a designated agency to cancel its existing contract with another entity with which it has previously contracted to carry out and operate all or part of its responsibilities under the CAP (including providing advisory, assistance, or advocacy services to eligible clients and client applicants); or

(2) A decision by a designated agency not to renew its existing contract with another entity with which it has previously contracted. Therefore, an agency that is carrying out a State’s CAP under a contract with a designated agency is considered a designated agency for purposes of §§370.10 through 370.17.

(c) For purposes of paragraph (a) of this section, a designated agency that does not renew a contract for CAP services because it is following State procurement laws that require contracts to be awarded through a competitive bidding process is presumed to have good cause for not renewing an existing contract. However, this presumption may be rebutted.

(d) If State procurement laws require a designated agency to award a contract through a competitive bidding process, the designated agency must hold public hearings on the request for proposal before awarding the new contract.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))
§ 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
(2) Advise the designated agency that it has at least 30 days from receipt of the notice of proposed redesignation to respond to the Governor and that the response must be in writing.

(c) The notice of proposed redesignation must be published in a place and manner that provides the SRAC, the SILC, individuals with disabilities or their representatives, and the public with at least 30 days to submit oral or written comments to the Governor.

(d) Following public notice, public hearings concerning the proposed redesignation must be conducted in an accessible format that provides individuals with disabilities or their representatives an opportunity for comment. The Governor shall maintain a written public record of these hearings.

(e) The Governor shall fully consider any public comments before issuing a written decision to redesignate.

(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))

§ 370.12 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 Governor received the designated agency’s timely response.

(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 to the Governor’s notice of proposed redesignation and may be accompanied by any other written submissions or documentation the designated agency wishes the Secretary to consider.

(f) As part of its submissions under this section, the designated agency 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 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 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.

(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))

§ 370.16 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.
§ 370.30 How does the Secretary allocate funds?

(a) The Secretary allocates the funds available under this part for any fiscal year to the States on the basis of the relative population of each State. The Secretary allocates at least $50,000 to each State, unless the provisions of section 112(e)(1)(D) of the Act (which provides for increasing the minimum allotment if the appropriation for the
§ 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))

§ 370.44 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.

(Approved by the Office of Management and Budget under control number 1820–0520)

(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 identifying 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))

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

Subpart A—General

§ 371.1 What is the Vocational Rehabilitation Services Program for American Indians with Disabilities?

This program is designed to provide vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Secs. 100(a)(2) and 130(a) of the Act; 29 U.S.C. 720(a)(2) and 750(a))

[60 FR 58137, Nov. 24, 1995]

§ 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;
§ 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
§ 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.

(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.

(c) Priority in the delivery of vocational rehabilitation service will be given to those American Indians with disabilities who are the most severely disabled.

(d) An order of selection of individuals with disabilities to be served under the program will be specified if services cannot be provided to all eligible American Indians with disabilities who apply.

(e) All vocational rehabilitation services will be provided according to an individualized written rehabilitation program which has been developed jointly by the representative of the service providing organization and each American Indian with disabilities being served.

(f) American Indians with disabilities living on Federal or State reservations where service programs are being carried out under this part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery on the reservation.

(g) Cooperative working arrangements will be developed with the designated State unit, or designated State units, as appropriate, which are providing vocational rehabilitation services to other individuals with disabilities who reside in the State or States being served.

(h) Any similar benefits available to American Indians with disabilities under any other program which might meet in whole or in part the cost of any vocational rehabilitation service will be fully considered in the provision of vocational rehabilitation services in accordance with 34 CFR part 361.

(i) Any American Indian with disabilities who is an applicant or recipient of services, and who is dissatisfied with a determination made by a counselor or coordinator under this program and files a request for a review, will be afforded a review under procedures developed by the grantee comparable to those under the provisions of section 102(d) (1)–(3) of the Act.

(j) Minimum standards will be established for community rehabilitation programs and providers of service which will be comparable to the standards set by the designated State unit.
§ 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.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

[52 FR 30556, Aug. 14, 1987]

§ 371.40  What are the matching requirements?

(a) Federal share. Except as provided in paragraph (c) of this section, the Federal share may not be more than 90 percent of the total cost of the project.

(b) Non-Federal share. The non-Federal share of the cost of the project may be in cash or in kind, fairly valued.

(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))
§ 373.2 Who is eligible for assistance?

(a) The following types of organizations are eligible for assistance under this program:
   (1) State vocational rehabilitation agencies.
   (2) Community rehabilitation programs.
   (3) Indian tribes or tribal organizations.
   (4) Other public or nonprofit agencies or organizations, including institutions of higher education.
   (5) For-profit organizations, if the Secretary considers them to be appropriate.
   (6) Consortia that meet the requirements of 34 CFR 75.128 and 75.129.
   (7) Other organizations identified by the Secretary and published in the Federal Register.

(b) In competitions held under this program, the Secretary may limit petitions to one or more types of these organizations.

(Authority: 29 U.S.C. 711(c) and 773(b)(2))

§ 373.3 What regulations apply?

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).
   (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) 35 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)).

(b) The regulations in this part 373.

(c) The regulations in 48 CFR part 31 (Contracts Cost Principles and Procedures).

(Authority: 29 U.S.C. 711(c))

§ 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 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;

**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))

§ 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) Unservd and underserved populations.
(3) Unservd 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 773(b)(4) and (5))

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(a))

§373.11 What other factors does the Secretary consider when making a grant?

(a) The Secretary funds only those applications submitted in response to
§ 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.
§ 376.4 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 380.20.

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711(c) and 777a(b))

§ 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.
(c) The definitions of “Competitive employment”, “Integrated setting”, “On-going support services”, “Transitional employment”, and “Time-limited services” in 34 CFR part 360.
(d) The following definitions also apply to 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 nonprofit 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
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))

§ 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

Sec.

377.1 What is the Demonstration Projects to Increase Client Choice Program?

377.2 Who is eligible for an award?

377.3 What types of activities may the Secretary fund?

377.4 What regulations apply?

377.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

377.10 How does an eligible entity apply for an award?

377.11 What is the content of an application for an award?

Subpart C—How Does the Secretary Make an Award?

377.20 How does the Secretary evaluate an application?

377.21 What selection criteria does the Secretary use?
§ 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.

(b) Projects may also use these funds to demonstrate additional ways to increase the choices available to clients in the rehabilitation process.

(Authority: Secs. 802(g)(1) and 802(g)(2)(A) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1) and (2))

§ 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).

(b) The 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)

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(8)(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. 718b and 29 U.S.C. 797a(g)(2), (3), (5), (6), and (7))

Subpart C—How Does the Secretary Make an Award?

§ 377.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §377.21.

(b) The Secretary awards up to 100 points for these criteria.
§ 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 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—
§ 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) Project 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,
PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

§ 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. 722(a)(3) and 795(a)(3))

§ 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;
(2) The individual requires vocational services to prepare for, secure, retain, or regain employment; and

(b) The recipient of the grant under which the services are provided may determine an individual’s eligibility for services under this program, to the extent that the determination is appropriate and consistent with the requirements of section 102(a) of the Act. See Appendix B to this part for further information.

(c) Except as provided in paragraph (d) of this section, an individual who has a disability or is blind, as determined pursuant to title II or title XVI of the Social Security Act (42 U.S.C. 401–433 and 1381–1385)—

(1) Is considered to be an individual with a significant disability; and
(2) Is presumed to be eligible for vocational rehabilitation (VR) services under this program (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual).

(d) The DSU or recipient of the grant involved may deny an individual services if the DSU or recipient of the grant involved can demonstrate, by clear and convincing evidence, that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the significance of the disability of the individual.

(Authority: 29 U.S.C. 722(a)(3) and 795(a)(3))

§ 379.4 What regulations apply?

The following regulations apply to the Projects With Industry 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).
(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 and Alcohol Abuse Prevention).

(b) The regulations in this part 379.

(Authority: 29 U.S.C. 711(c) and 795)
§ 379.5 What definitions apply?

(a) The following terms used in this part are defined in 34 CFR part 361:

- Act
- Community rehabilitation program
- Designated State unit
- Individual who is blind
- Individual with a disability
- Individual with a significant disability
- Physical or mental impairment
- 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 with disabilities interact with non-disabled individuals, other than non-disabled individuals who are providing services to them, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(4) Job readiness training, as used in §379.41(a), means—

(i) Training in job-seeking skills;

(ii) Training in the preparation of resumes or job applications;

(iii) Training in interviewing skills;

(iv) Participating in a job club; or

(v) Other related activities that may assist an individual to secure competitive employment.

(5) Job training, as used in this part, means one or more of the following training activities provided prior to placement, as that term is defined in §379.5(b)(7):

(i) Occupational skills training.

(ii) On-the-job training.

(iii) Workplace training combined with related instruction.

(iv) Job skill upgrading and retraining.

(v) Training to enhance basic work skills and workplace competencies.

(vi) On-site job coaching.

(6) Person served means an individual for whom services by a PWI project have been initiated with the objective that those services will result in a placement in competitive employment.

(7) Placement means the attainment of competitive employment by a person who has received services from a PWI project and has maintained employment for a period of at least 90 days.

(Authority: 29 U.S.C. 711(c) and 795)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 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
§ 379.11 What additional types of project activities may be authorized under this program?

The Secretary may include, as part of agreements with grant recipients under this program, authority for the grant recipients to provide technical assistance to—

(a) Assist employers in hiring individuals with disabilities;

(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)

§ 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; and

(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) 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)
(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 underserved 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 non-disabled 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 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.

(Authority: Section 611 of the Act; 29 U.S.C. 795)

[65 FR 18218, Apr. 6, 2000; 65 FR 36633, June 9, 2000]
§ 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 determine the quality of the proposed evaluation plan with respect to—

(i) Evaluating project operations and outcomes;

(ii) Involving the BAC in evaluating the project’s 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;

(iii) Meeting the annual evaluation reporting requirements in §379.21(a)(6);

(iv) Determining compliance with the indicators; and

(v) Addressing any deficiencies identified through project evaluation.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795)

§ 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. 795(e)(2) and 795(f)(4))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 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.
§ 379.42 What are the special requirements pertaining to the Client Assistance Program?

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: 29 U.S.C. 718a)

§ 379.43 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.

(c) 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.

(d) The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without the written consent of the individual.

(e) The final product of the project may not reveal any personally identifying information without the written consent of the individual or his or her representative.

(Authority: 29 U.S.C. 711(c))

§ 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.

(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.

(Authority: 29 U.S.C. 711(c) and 795)

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

SOURCE: 65 FR 18219, Apr. 6, 2000, unless otherwise noted.
§ 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)

§ 379.51 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.

Authority: Sections 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; 29 U.S.C. 795(f)(1)

§ 379.53 What are the minimum performance levels for each compliance indicator?

(a) Primary compliance indicators—
(1) Placement rate. The project places individuals it serves into competitive employment as follows:
(i) No less than 50 percent during fiscal year (FY) 2001.
(ii) No less than 51 percent during FY 2002.
(iii) No less than 52 percent during FY 2003.
(iv) No less than 54 percent during FY 2004.
(v) 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 placed 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.

(c) Projected 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; 29 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).

(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—PRESUMPTION 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:

\[ X = \frac{(Y \times \text{Max. Fed. % of Total})}{Y} - \text{Am't. of Fed. Funds in FY} \]

\( X \) = Required Match (provided in cash or through third party in-kind contributions)

\( Y \) = 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 $400,000, the amount of the required match is $100,000, calculated as follows:

\[ X = \frac{(400,000 \times .8)}{400,000} = 100,000 \]
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?

380.14 What other factors does the Secretary consider in reviewing an application?

380.15 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?

380.21 What information requirement applies to this program?

AUTHORITY: 29 U.S.C 711(c) and 777a(c), unless otherwise noted.

SOURCE: 54 FR 12400, Mar. 22, 1989, unless otherwise noted.
§ 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?

This program is designed to provide grants for special projects and demonstrations to expand or otherwise improve the provision of supported employment services to individuals with the most severe disabilities, including projects that demonstrate the effectiveness of natural supports or other alternative approaches for supporting and maintaining individuals in supported employment, and grants for technical assistance projects.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))


§ 380.2 Who is eligible for an award?

(a) Applications for Statewide demonstration projects under §380.4 may be submitted by public and nonprofit community rehabilitation programs, designated State units, and other public and private agencies and organizations.

(b) Applications for community-based projects under §380.5 may be submitted by public and nonprofit community rehabilitation programs, designated State units, and other public and private agencies and organizations.

(c) Applications for technical assistance projects under §380.6 may be submitted by public agencies and nonprofit private organizations that have experience in training and provision of supported employment services.

(Authority: 29 U.S.C. 777a(c))


§ 380.3 What types of projects are authorized?

The following types of projects may be funded under this program:

(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;
§ 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 work site 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.

§ 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.
(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.

§ 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.

§ 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 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
(5) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grantees)).
(6) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 380.
§ 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:
(i) Designated State unit
(ii) Community rehabilitation program
(iii) Individual with a severe disability
(c) Other definitions. The following definitions also apply to this part:
(1) 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 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. Ongoing 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 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 8342, 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]
PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

Subpart A—General

Sec.
381.1 What is the Protection and Advocacy of Individual Rights program?
381.2 Who is eligible for an award?
381.3 What activities may the Secretary fund?
381.4 What regulations apply?
381.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

381.10 What are the application requirements?

Subpart C—How Does the Secretary Make an Award?

381.20 How does the Secretary evaluate an application?
381.22 How does the Secretary allocate funds under this program?

Subpart D—What Conditions Must Be Met After an Award?

381.30 How are services to be administered?
381.31 What are the requirements pertaining to the protection, use, and release of personal information?
381.32 What are the reporting requirements?
381.33 What are the requirements related to the use of funds provided under this part?

AUTHORITY: 29 U.S.C. 794e, unless otherwise noted.
SOURCE: 58 FR 43022, Aug. 12, 1993, unless otherwise noted.

Subpart A—General

§ 381.1 What is the Protection and Advocacy of Individual Rights program?

This program is designed to support a system in each State to protect the legal and human rights of eligible individuals with disabilities.

(Authority: Sec. 509(a) of the Act; 29 U.S.C. 794e(a))

§ 381.2 Who is eligible for an award?

(a) A protection and advocacy system that is established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (DDA), 42 U.S.C. 6041–6043, and that 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))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8343, Feb. 18, 1994]

§ 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.

464
(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.
(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)).
§ 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 is a State or local government agency, except for—
   (i) Section 76.103;
   (ii) Sections 76.125 through 76.137;
   (iii) Sections 76.300 through 76.401;
   (iv) Section 76.704;
   (v) Section 76.734; and
   (vi) Section 76.740.
(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), if the eligible system is a State or local government agency.
(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 (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
(10) 34 CFR part 86 (Drug-Free Schools and Campuses).
(b) The regulations in this part 381.
(c) The regulations in 34 CFR 369.43, 369.46 and 369.48 relating to certain conditions that must be met by grantees.
(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e).
§ 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
   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.

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 Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association takes effect), except for purposes of the section 509(c)(3)(B) and (c)(4) of the Act, in which case State does not mean or include Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e)
[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

Subpart B—How Does One Apply for an Award?

§ 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.

Subpart C—How Does the Secretary Make an Award?

§ 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 (f))

§ 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: Sec. 509(c)-(e) of the Act; 29 U.S.C. 794e(c)-(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 381.30 How are services to be administered?

(a) Each eligible system shall carry out the protection and advocacy program authorized under this part.

(b) An eligible system may not award a grant or subgrant to another entity to carry out, in whole or in part, the protection and advocacy program authorized under this part.
§ 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 the individual's advocate from the eligible system), has been obtained in writing. An eligible system may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraph (d) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements must be given complete access to all—

(1) Records of the eligible system receiving funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d)(1) The privilege of a person or eligible system not to produce documents or provide information pursuant to paragraph (c) of this section is governed by the principles of common law as interpreted by the courts of the United States, except that, for purposes of any periodic audit, report, or evaluation of the performance of the eligible system established or assisted under this part, the Secretary does not require the eligible system to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the PAIR program.

(2) However, notwithstanding paragraph (d)(1) of this section, if an audit, monitoring review, State plan assurance review, evaluation, or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the eligible system has violated its legislative mandate or misused Federal funds, the eligible system shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the PAIR program, in accordance with the
principles of common law as interpreted by the courts of the United States.

(Authority: Secs. 12 and 509(h) of the Act; 29 U.S.C. 711(c) and 794e(h))
[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

§ 381.32 What are the reporting requirements?
Each eligible system shall provide to the Secretary, no later than 90 days after the end of each fiscal year, an annual report that includes information on the following:
(a) The types of services and activities undertaken by the eligible system and how these services and activities addressed the objectives and priorities developed pursuant to §381.10(e).
(b) The total number of individuals, by race, color, national origin, gender, age, and disabling condition, who requested services from the eligible system and the total number of individuals, by race, color, national origin, gender, age, and disabling condition, who were served by the eligible system.
(c) The types of disabilities represented by individuals served by the eligible system.
(d) The types of issues being addressed on behalf of individuals served by the eligible system.
(e) Any other information that the Secretary may require.

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

(Authority: Secs. 12(c), 13, and 509(l) of the Act; 29 U.S.C. 711(c), 712, and 794e(l))
[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

§ 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]

PART 385—REHABILITATION TRAINING

Subpart A—General

Sec. 385.1 What is the Rehabilitation Training program?
385.2 Who is eligible for assistance under these programs?
385.3 What regulations apply to these programs?
385.4 What definitions apply to these programs?

Subpart B [Reserved]

Subpart C—How Does One Apply for a Grant?

385.20 What are the application procedures for these programs?
§ 385.1

Subpart D—How Does the Secretary Make a Grant?

385.30 [Reserved]
385.31 How does the Secretary evaluate an application?
385.33 What other factors does the Secretary consider in reviewing an application?

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?
385.41 What are the requirements affecting the collection of data from designated State agencies?
385.42 What are the requirements affecting the dissemination of training materials?
385.43 What requirements apply to the training of rehabilitation counselors and other rehabilitation personnel?
385.44 What requirement applies to the training of individuals with disabilities?
385.45 What additional application requirements apply to the training of individuals with disabilities?
385.46 What limitations apply to the rate of pay for experts or consultants appointed or serving under contract under the Rehabilitation Training program?

Authority: 29 U.S.C. 711(c), 772, and 774, unless otherwise noted.

Source: 45 FR 86379, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 385.1 What is the Rehabilitation Training program?

(a) The Rehabilitation Training program is designed to—

(1) Ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs, through supported employment programs, through independent living services programs, and through client assistance programs;

(2) Maintain and upgrade basic skills and knowledge of personnel employed to provide state-of-the-art service delivery systems and rehabilitation technology services; and

(3) Provide training and information to individuals with disabilities, the parents, families, guardians, advocates, and authorized representatives of the 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)

[59 FR 8344, Feb. 18, 1994]

§ 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)

[59 FR 8345, Feb. 18, 1994]

§ 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:
§ 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

(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 or unserved 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

(xx) 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 perform if the individual did not have a disability. The services shall be designed to increase the individual’s control in life and ability to perform everyday activities on or off the job.

Qualified personnel: (1) For designated State agencies or designated State units, means personnel who have met standards that are consistent with existing national or State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing vocational rehabilitation services.

(2) For other than designated State agencies or designated State units, means personnel who have met existing State certification or licensure requirements, or in the absence of State requirements, have met professionally accepted requirements established by national certification boards.

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.

State includes, 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 (until the Compact of Free Association with Palau takes effect).

Stipend means financial assistance on behalf of individuals in support of their training, as opposed to salary payment for services provided within the project.

Supported employment means—

(1) Competitive work in integrated work settings for individuals with the most severe disabilities—

(A) For whom competitive employment has not traditionally occurred; or
(B) For whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(ii) Who, because of the nature and severity of their disability, need intensive supported employment services from the designated State unit and extended services after transition in order to perform this work.

(2) Transitional employment for individuals with the most severe disabilities due to mental illness.

Supported employment services means ongoing support services and other appropriate services needed to support and maintain an individual with most severe disability in supported employment, that are—

(1) Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in entering or maintaining integrated, competitive employment;

(2) Based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and

(3) Provided by the designated State unit for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or co-ordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized written rehabilitation program.

Vocational rehabilitation services means the same as the term is defined in 34 CFR 369.4(b).

(Authority: Secs. 7, 12(c), and 101(a)(7) of the Act; 29 U.S.C. 706, 711(c), and 721(a)(7))


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))

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))

§ 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 Program must be submitted to any information clearinghouse designated by the Secretary.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 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 390 shall train those counselors and personnel as 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. 12(c) of the Act; 29 U.S.C. 711(c))

§ 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. 12(c) of the Act; 29 U.S.C. 711(c))

§ 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
Subpart C—What Conditions Must Be Met After an Award?

386.40 What are the matching requirements?
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 774, 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 programs.

Subpart B [Reserved]
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;
(30) The use, applications, and benefits of assistive technology devices and assistive technology services; and
(31) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: 29 U.S.C. 711 and 771a)

§ 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;
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—

(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)


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.
(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 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.

(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.
§ 386.34

(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).

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
§ 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.

§ 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.

(b) Documentation. (1) Documentation must be provided to substantiate the grounds for a deferral or exception.
   (2) Documentation necessary to substantiate an exception under §386.41(a)(1) or a deferral under §386.41(b)(5) must include a sworn affidavit from a qualified physician or other evidence of disability satisfactory to the Secretary.
   (3) Documentation to substantiate an exception under §386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

§ 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.
(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))

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

Subpart A—General

Sec.

387.1 What is the Experimental and Innovative Training Program?

387.2 Who is eligible for assistance under this program?

387.3 What regulations apply to this program?

387.4 What definitions apply to this program?

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?

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

387.30 What additional selection criteria are used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

387.40 What are the matching requirements?

387.41 What are the allowable costs?

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

Source: 45 FR 86383, Dec. 30, 1980, unless otherwise noted.

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 in providing rehabilitation services to individuals with disabilities; and

(b) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services by State and other rehabilitation agencies.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)


§ 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 C [Reserved]
§ 387.30

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

(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 714, unless otherwise noted.

_Source:_ 59 FR 40178, Aug. 5, 1994, unless otherwise noted.

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 does not apply for an award during an announced competition, no funds may be made available for in-service training of the staff of that designated State agency under this program until there is a new competition for funding. At least 15 percent of the sums appropriated to carry out section 302 of the Act must be allocated to designated State agencies to be used, directly or indirectly, for projects for in-service training of rehabilitation personnel.

_Authority:_ 29 U.S.C. 771a(g)(3)

§ 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) The 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;
§ 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. 711(c) and 711a)

§ 388.6 What definitions apply?

The definitions in 34 CFR part 385 apply to this program.

(Authority: 29 U.S.C. 711(c) and 711a)

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 personnel in providing vocational rehabilitation services to individuals with disabilities that will result in employment outcomes or otherwise contribute to more effective management of the State unit program;

(ii) That the State unit in-service training plan responds to needs identified in their training needs assessment and the proposed training relates to the unit’s State plan, particularly the requirements in section 101(a)(7) of the Rehabilitation Act for each designated State unit to develop a comprehensive system of personnel development;

(iii) The need for in-service training methods and materials that will improve the effectiveness of services to individuals with disabilities assisted under the Rehabilitation Act and ensure employment outcomes; and

(iv) The State has conducted a needs assessment of the in-service training needs for all of the State unit employees.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

(a) of this section, the Secretary reserves the remaining funds to be allocated based on the quality of the application as determined by competitive reviews conducted by the Department using the criteria in §388.20 and the priorities in §388.22.

(c) Prior to award, negotiations may be conducted with applicants to resolve any problems or weaknesses in the application identified by the review process.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 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 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)
§ 389.1 What is the Rehabilitation Continuing Education Program?

This program is designed to support training centers that serve either a Federal region or another geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 389.2 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)

§ 389.3 What regulations apply to this program?

The following regulations apply to this program—
(a) 34 CFR part 385 (Rehabilitation Training); and
(b) The regulations in this part 389.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)
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))

[82 FR 10405, Mar. 6, 1997]

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)

§ 390.2 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)

§ 390.3 What regulations apply to this program?

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 390.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 390.4 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?

§ 390.10 What types of projects are authorized under this program?

(a) Projects under this program are designed to provide short-term training and technical instruction in areas of special significance to the vocational, medical, social, and psychological rehabilitation programs, supported employment programs, independent living services programs, and client assistance programs.

(b) Short-term training projects may be of regional or national scope.

(c) Conferences and meetings in which training is not the primary focus may not be supported under this program.

(Authority: Secs. 12(a)(2) and 302 of the Act; 29 U.S.C. 711(a)(2) and 714)


Subpart C [Reserved]

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)


PART 395—VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL AND OTHER PROPERTY

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.

(z) **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 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 as the sole State agency 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; or

(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
§ 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.

(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.

§ 395.8 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) 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.

**§ 395.9 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.

(b) 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.

(c) The State licensing agency shall further set out the method of determining the charge for each of the above purposes listed in paragraph (b) of this section, which will be determined with the active participation of the State Committee of Blind Vendors and which will be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required for that purpose. The State licensing agency shall maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this section, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

**§ 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
§ 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.

(b) If the State licensing agency permits any agency or organization other than a vendor to hold any right, title to, or interest in vending facilities or stock, the arrangement shall be one permitted by State law and shall specify in writing that all such right, title to, or interest is held by such agency or organization as the nominee of the State licensing agency for program purposes and subject to the paramount right of the State licensing agency to direct and control the use, transfer, and disposition of such vending facilities or stock.

§ 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
§ 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 ensure 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 of the United States 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

(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 of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, 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 (c) of this section, in which event the suspension of the designation shall not become effective and the requirement to place funds in escrow shall be terminated.
§ 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.

(c) The determination that a building contains a satisfactory site or sites under paragraph (a) or (b) of this section shall be made after consultation between the State licensing agency and the head of the department, agency, or instrumentality of the United States which is planning to acquire or otherwise occupy such building. In order to make such determination, effective on the publication date of this part each such department, agency, or instrumentality shall provide to the appropriate State licensing agency written notice of its intention to acquire or otherwise occupy such building. Such written notice shall be by certified or registered mail with return receipt and shall be provided as early as practicable but no later than 60 days prior to such intended action. The written notice shall indicate that a satisfactory site or sites for the location and operation of a vending facility by blind persons is included in the plans for the building to be acquired or otherwise occupied and shall further assure that the State licensing agency shall be afforded the opportunity to determine whether such building includes a satisfactory site or sites for a vending facility. The written notice shall further assure that the State licensing agency, subject to the approval of the head of the Federal property managing department, agency, or instrumentality, shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to the completion of the final space layout of the building. The receipt of such written notice shall be acknowledged in writing promptly by the State licensing agency but no later than within 30 days and the State licensing agency shall indicate at that time whether it is interested in establishing a vending facility. A copy of the written notice to the State licensing agency and the State licensing agency’s acknowledgment shall be provided to the Secretary.

(d) When, after a written notice has been provided under paragraph (c) of this section, the State licensing agency determines that the number of persons using the Federal property is or will be insufficient to support a vending facility, and the Secretary concurs with 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
§ 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 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 such 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, except as indicated under paragraph (d) of this section. The total amount of such income accruing 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 accrue 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).

(d) Effective January 2, 1975, 30 per centum of all vending machine income from vending machines, which are not in direct competition with a vending facility operated by a blind vendor and which are on Federal property at which at least 50 per centum of the total hours worked on the premises occurs during a period other than normal working hours, shall accrue to the
§ 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.
§ 395.37 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 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.

(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
§ 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.

34 CFR Ch. III (7–1–12 Edition)

§ 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

(c) Other definitions. The following definitions also apply to this part:
   Existing program that has demonstrated its capacity for providing interpreter training services means an established program with:
   (1) A record of training interpreters who are serving the deaf and deaf-blind communities; and

   (2) An established curriculum that is suitable for training interpreters.

   Individual who is deaf means an individual who has a hearing impairment of such severity that the individual must depend primarily upon visual modes, such as sign language, lip reading, and gestures, or reading and writing to facilitate communication.

   Individual who is deaf-blind means an individual—
   (1)(i) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions;
   (ii) Who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and
   (iii) For whom the combination of impairments described in paragraphs (1)(i) and (ii) of this definition causes extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;
   (3) Who meets any other requirements that the Secretary may prescribe.

   Interpreter for individuals who are deaf means a qualified professional who uses sign language skills, cued speech, or oral interpreting skills, as appropriate to the needs of individuals who are deaf, to facilitate communication between individuals who are deaf and other individuals.

   Interpreter for individuals who are deaf-blind means a qualified professional who uses tactile or other manual language or fingerspelling modes, as
§ 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))

Subpart B [Reserved]

Subpart C—How Does One Apply for an Award?

§ 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;

(d) An assurance that any interpreter trained or retrained under this program shall meet any minimum standards of competency that the Secretary may establish;

(e) An assurance that the project shall cooperate or coordinate its activities, as appropriate, with the activities of other projects funded under this program; and

(f) The descriptions required in 34 CFR 385.45 with regard to the training of individuals with disabilities, including those from minority groups, for rehabilitation careers.

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

(Authority: 29 U.S.C. 718(b)(6), 771a(a)(5), and 771a(f))

Subpart D—How Does the Secretary Make an Award?

§ 396.30 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 in §396.31.

(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. 771a(f))


§ 396.31 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 396.30(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) Demonstrated relationships with service providers and consumers. The Secretary reviews each application to determine the extent to which—

(1) The proposed interpreter training project was developed in consultation with service providers;

(2) The training is appropriate to the needs of both individuals who are deaf and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or individuals who are deaf-blind in the geographical area to be served by the training project;
§ 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))


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(Authority: 29 U.S.C. 771a(f))

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.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected
Table of CFR Titles and Chapters
(Revised as of July 1, 2012)

Title 1—General Provisions

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
III Administrative Conference of the United States (Parts 300—399)
IV Miscellaneous Agencies (Parts 400—500)

Title 2—Grants and Agreements

SUBTITLE A—Office of Management and Budget Guidance for Grants and Agreements
I Office of Management and Budget Governmentwide Guidance for Grants and Agreements (Parts 2—199)
II Office of Management and Budget Circulars and Guidance (200—299)

SUBTITLE B—Federal Agency Regulations for Grants and Agreements
III Department of Health and Human Services (Parts 300—399)
IV Department of Agriculture (Parts 400—499)
VI Department of State (Parts 600—699)
VII Agency for International Development (Parts 700—799)
VIII Department of Veterans Affairs (Parts 800—899)
IX Department of Energy (Parts 900—999)
XI Department of Defense (Parts 1100—1199)
XII Department of Transportation (Parts 1200—1299)
XIII Department of Commerce (Parts 1300—1399)
XIV Department of the Interior (Parts 1400—1499)
XV Environmental Protection Agency (Parts 1500—1599)
XVIII National Aeronautics and Space Administration (Parts 1800—1899)
XX United States Nuclear Regulatory Commission (Parts 2000—2099)
XXII Corporation for National and Community Service (Parts 2200—2299)
XXIII Social Security Administration (Parts 2300—2399)
XXIV Housing and Urban Development (Parts 2400—2499)
XXV National Science Foundation (Parts 2500—2599)
XXVI National Archives and Records Administration (Parts 2600—2699)
XXVII Small Business Administration (Parts 2700—2799)
XXVIII Department of Justice (Parts 2800—2899)
Title 2—Grants and Agreements—Continued

Chap.

XXX Department of Homeland Security (Parts 3000—3099)
XXXI Institute of Museum and Library Services (Parts 3100—3199)
XXXII National Endowment for the Arts (Parts 3200—3299)
XXXIII National Endowment for the Humanities (Parts 3300—3399)
XXXIV Department of Education (Parts 3400—3499)
XXXV Export-Import Bank of the United States (Parts 3500—3599)
XXXVII Peace Corps (Parts 3700—3799)
LVIII Election Assistance Commission (Parts 5800—5899)

Title 3—The President

I Executive Office of the President (Parts 100—199)

Title 4—Accounts

I Government Accountability Office (Parts 1—199)
II Recovery Accountability and Transparency Board (Parts 200—299)

Title 5—Administrative Personnel

I Office of Personnel Management (Parts 1—1199)
II Merit Systems Protection Board (Parts 1200—1299)
III Office of Management and Budget (Parts 1300—1399)
V The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
VIII Office of Special Counsel (Parts 1800—1899)
IX Appalachian Regional Commission (Parts 1900—1999)
XI Armed Forces Retirement Home (Parts 2100—2199)
XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI Office of Government Ethics (Parts 2600—2699)
XXI Department of the Treasury (Parts 3100—3199)
XXII Federal Deposit Insurance Corporation (Parts 3200—3299)
XXIII Department of Energy (Parts 3300—3399)
XXIV Federal Energy Regulatory Commission (Parts 3400—3499)
XXV Department of the Interior (Parts 3500—3599)
XXVI Department of Defense (Parts 3600—3699)
XXVIII Department of Justice (Parts 3800—3899)
XXIX Federal Communications Commission (Parts 3900—3999)
XXX Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI Farm Credit Administration (Parts 4100—4199)
Title 5—Administrative Personnel—Continued

XXXIII Overseas Private Investment Corporation (Parts 4300—4399)
XXXIV Securities and Exchange Commission (Parts 4400—4499)
XXXV Office of Personnel Management (Parts 4500—4599)
XXXVII Federal Election Commission (Parts 4700—4799)
XL Interstate Commerce Commission (Parts 5000—5099)
XLI Commodity Futures Trading Commission (Parts 5100—5199)
XLII Department of Labor (Parts 5200—5299)
XLIII National Science Foundation (Parts 5300—5399)
XLV Department of Health and Human Services (Parts 5500—5599)
XLVI Postal Rate Commission (Parts 5600—5699)
XLVII Federal Trade Commission (Parts 5700—5799)
XLVIII Nuclear Regulatory Commission (Parts 5800—5899)
XLIX Federal Labor Relations Authority (Parts 5900—5999)
L Department of Transportation (Parts 6000—6099)
LII Export-Import Bank of the United States (Parts 6200—6299)
LIII Department of Education (Parts 6300—6399)
LIV Environmental Protection Agency (Parts 6400—6499)
LV National Endowment for the Arts (Parts 6500—6599)
LVI National Endowment for the Humanities (Parts 6600—6699)
LVII General Services Administration (Parts 6700—6799)
LVIII Board of Governors of the Federal Reserve System (Parts 6800—6899)
LIX National Aeronautics and Space Administration (Parts 6900—6999)
LX United States Postal Service (Parts 7000—7099)
LXI National Labor Relations Board (Parts 7100—7199)
LXII Equal Employment Opportunity Commission (Parts 7200—7299)
LXIII Inter-American Foundation (Parts 7300—7399)
LXIV Merit Systems Protection Board (Parts 7400—7499)
LXV Department of Housing and Urban Development (Parts 7500—7599)
LXVI National Archives and Records Administration (Parts 7600—7699)
LXVII Institute of Museum and Library Services (Parts 7700—7799)
LXVIII Commission on Civil Rights (Parts 7800—7899)
LXIX Tennessee Valley Authority (Parts 7900—7999)
LXX Court Services and Offender Supervision Agency for the District of Columbia (Parts 8000—8099)
LXXI Consumer Product Safety Commission (Parts 8100—8199)
LXXII Department of Agriculture (Parts 8300—8399)
LXXIII Federal Mine Safety and Health Review Commission (Parts 8400—8499)
LXXIV Federal Retirement Thrift Investment Board (Parts 8600—8699)
LXXVII Office of Management and Budget (Parts 8700—8799)
LXXX Federal Housing Finance Agency (Parts 9000—9099)
LXXXII Special Inspector General for Iraq Reconstruction (Parts 9200—9299)
Title 5—Administrative Personnel—Continued

LXXXIII Special Inspector General for Afghanistan Reconstruction (Parts 9300—9399)
LXXXIV Bureau of Consumer Financial Protection (Parts 9400—9499)

Title 6—Domestic Security

I Department of Homeland Security, Office of the Secretary (Parts 1—99)

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)
SUBTITLE B—Regulations of the Department of Agriculture
I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)
II Food and Nutrition Service, Department of Agriculture (Parts 210—299)
III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)
IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)
V Agricultural Research Service, Department of Agriculture (Parts 500—599)
VI Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)
VII Farm Service Agency, Department of Agriculture (Parts 700—799)
VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)
IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)
XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)
Title 7—Agriculture—Continued

XVIII Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

XX Local Television Loan Guarantee Board (Parts 2200—2299)

XXV Office of Advocacy and Outreach, Department of Agriculture (Parts 2500—2599)

XXVI Office of Inspector General, Department of Agriculture (Parts 2600—2699)

XXVII Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)

XXVIII Office of Operations, Department of Agriculture (Parts 2800—2899)

XXIX Office of Energy Policy and New Uses, Department of Agriculture (Parts 2900—2999)

XXX Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)

XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)

XXXII Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)

XXXIII Office of Transportation, Department of Agriculture (Parts 3300—3399)

XXXIV National Institute of Food and Agriculture (Parts 3400—3499)

XXXV Rural Housing Service, Department of Agriculture (Parts 3500—3599)

XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)

XXXVII Economic Research Service, Department of Agriculture (Parts 3700—3799)

XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)

XLI [Reserved]

XLII Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)

Title 8—Aliens and Nationality

I Department of Homeland Security (Immigration and Naturalization) (Parts 1—499)

V Executive Office for Immigration Review, Department of Justice (Parts 1000—1399)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

II Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)
Title 9—Animals and Animal Products—Continued

III Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)
II Department of Energy (Parts 200—699)
III Department of Energy (Parts 700—999)
X Department of Energy (General Provisions) (Parts 1000—1099)
XIII Nuclear Waste Technical Review Board (Parts 1300—1399)
XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)
XVIII Northeast Interstate Low-Level Radioactive Waste Commission (Parts 1800—1899)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—9099)
II Election Assistance Commission (Parts 9400—9499)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)
II Federal Reserve System (Parts 200—299)
III Federal Deposit Insurance Corporation (Parts 300—399)
IV Export-Import Bank of the United States (Parts 400—499)
V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI Farm Credit Administration (Parts 600—699)
VII National Credit Union Administration (Parts 700—799)
VIII Federal Financing Bank (Parts 800—899)
IX Federal Housing Finance Board (Parts 900—999)
X Bureau of Consumer Financial Protection (Parts 1000—1099)
XI Federal Financial Institutions Examination Council (Parts 1100—1199)
XII Federal Housing Finance Agency (Parts 1200—1299)
XIII Financial Stability Oversight Council (Parts 1300—1399)
XIV Farm Credit System Insurance Corporation (Parts 1400—1499)
XV Department of the Treasury (Parts 1500—1599)
XVI Office of Financial Research (Parts 1600—1699)
XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)
XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

518
Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)

III Economic Development Administration, Department of Commerce (Parts 300—399)

IV Emergency Steel Guarantee Loan Board (Parts 400—499)

V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)

II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—1199)

V National Aeronautics and Space Administration (Parts 1200—1299)

VI Air Transportation System Stabilization (Parts 1300—1399)

Title 15—Commerce and Foreign Trade

SUBTITLE A—Office of the Secretary of Commerce (Parts 0—29)

SUBTITLE B—Regulations Relating to Commerce and Foreign Trade

I Bureau of the Census, Department of Commerce (Parts 30—199)

II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)

VII Bureau of Industry and Security, Department of Commerce (Parts 700—799)

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

XI Technology Administration, Department of Commerce (Parts 1100—1199)

XIII East-West Foreign Trade Board (Parts 1300—1399)

XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—Regulations Relating to Foreign Trade Agreements

XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—Regulations Relating to Telecommunications and Information

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)
Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)

II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury (Parts 0—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV U.S. Immigration and Customs Enforcement, Department of Homeland Security (Parts 400—599)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)

III Social Security Administration (Parts 400—499)

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)

V Employment and Training Administration, Department of Labor (Parts 600—699)

VI Office of Workers' Compensation Programs, Department of Labor (Parts 700—799)

VII Benefits Review Board, Department of Labor (Parts 800—899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)

IX Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 1000—1099)
Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)
III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)
II Agency for International Development (Parts 200—299)
III Peace Corps (Parts 300—399)
IV International Joint Commission, United States and Canada (Parts 400—499)
V Broadcasting Board of Governors (Parts 500—599)
VII Overseas Private Investment Corporation (Parts 700—799)
IX Foreign Service Grievance Board (Parts 900—999)
X Inter-American Foundation (Parts 1000—1099)
XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII United States International Development Cooperation Agency (Parts 1200—1299)
XIII Millennium Challenge Corporation (Parts 1300—1399)
XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV African Development Foundation (Parts 1500—1599)
XVI Japan-United States Friendship Commission (Parts 1600—1699)
XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)
II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)
III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)
Subtitle B—Regulations Relating to Housing and Urban Development
I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)
Title 24—Housing and Urban Development—Continued

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

IV Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XV Emergency Mortgage Insurance and Loan Programs, Department of Housing and Urban Development (Parts 2700—2799)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXIV Board of Directors of the HOPE for Homeowners Program (Parts 4000—4099)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

III National Indian Gaming Commission, Department of the Interior (Parts 500—599)

IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)

V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)
Title 25—Indians—Continued

VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)
VII Office of the Special Trustee for American Indians, Department of the Interior (Parts 1200—1299)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—End)

Title 27—Alcohol, Tobacco Products and Firearms

I Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (Parts 1—399)
II Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 400—699)

Title 28—Judicial Administration

I Department of Justice (Parts 0—299)
III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
V Bureau of Prisons, Department of Justice (Parts 500—599)
VI Offices of Independent Counsel, Department of Justice (Parts 600—699)
VII Office of Independent Counsel (Parts 700—799)
VIII Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)
IX National Crime Prevention and Privacy Compact Council (Parts 900—999)
XI Department of Justice and Department of State (Parts 1100—1199)

Title 29—Labor

Subtitle A—Office of the Secretary of Labor (Parts 0—99)
Subtitle B—Regulations Relating to Labor
I National Labor Relations Board (Parts 100—199)
II Office of Labor-Management Standards, Department of Labor (Parts 200—299)
III National Railroad Adjustment Board (Parts 300—399)
IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V Wage and Hour Division, Department of Labor (Parts 500—899)
IX Construction Industry Collective Bargaining Commission (Parts 900—999)
X National Mediation Board (Parts 1200—1299)
XII Federal Mediation and Conciliation Service (Parts 1400—1499)
XIV Equal Employment Opportunity Commission (Parts 1600—1699)
Title 29—Labor—Continued

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV Employee Benefits Security Administration, Department of Labor (Parts 2500—2599)
XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)
XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II Bureau of Safety and Environmental Enforcement, Department of the Interior (Parts 200—299)
IV Geological Survey, Department of the Interior (Parts 400—499)
V Bureau of Ocean Energy Management, Department of the Interior (Parts 500—599)
VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)
XII Office of Natural Resources Revenue, Department of the Interior (Parts 1200—1299)

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY (PARTS 0—50)
SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE
I Monetary Offices, Department of the Treasury (Parts 51—199)
II Fiscal Service, Department of the Treasury (Parts 200—399)
IV Secret Service, Department of the Treasury (Parts 400—499)
V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)
VIII Office of International Investment, Department of the Treasury (Parts 800—899)
IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)
X Financial Crimes Enforcement Network, Department of the Treasury (Parts 1000—1099)

Title 32—National Defense

SUBTITLE A—DEPARTMENT OF DEFENSE
I Office of the Secretary of Defense (Parts 1—399)
**Title 32—National Defense—Continued**

- **V** Department of the Army (Parts 400—699)
- **VI** Department of the Navy (Parts 700—799)
- **VII** Department of the Air Force (Parts 800—1099)

**Subtitle B—Other Regulations Relating to National Defense**

- **XII** Defense Logistics Agency (Parts 1200—1299)
- **XVI** Selective Service System (Parts 1600—1699)
- **XVII** Office of the Director of National Intelligence (Parts 1700—1799)
- **XVIII** National Counterintelligence Center (Parts 1800—1899)
- **XIX** Central Intelligence Agency (Parts 1900—1999)
- **XX** Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)
- **XXI** National Security Council (Parts 2100—2199)
- **XXIV** Office of Science and Technology Policy (Parts 2400—2499)
- **XXVII** Office for Micronesian Status Negotiations (Parts 2700—2799)
- **XXVIII** Office of the Vice President of the United States (Parts 2800—2899)

**Title 33—Navigation and Navigable Waters**

- **I** Coast Guard, Department of Homeland Security (Parts 1—199)
- **II** Corps of Engineers, Department of the Army (Parts 200—399)
- **IV** Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

**Title 34—Education**

**Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)**

**Subtitle B—Regulations of the Offices of the Department of Education**

- **I** Office for Civil Rights, Department of Education (Parts 100—199)
- **II** Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
- **III** Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
- **IV** Office of Vocational and Adult Education, Department of Education (Parts 400—499)
- **V** Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)
- **VI** Office of Postsecondary Education, Department of Education (Parts 600—699)
- **VII** Office of Educational Research and Improvement, Department of Education [Reserved]

**Subtitle C—Regulations Relating to Education**

- **XI** National Institute for Literacy (Parts 1100—1199)
- **XII** National Council on Disability (Parts 1200—1299)
Title 35—Reserved

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)
II Forest Service, Department of Agriculture (Parts 200—299)
III Corps of Engineers, Department of the Army (Parts 300—399)
IV American Battle Monuments Commission (Parts 400—499)
V Smithsonian Institution (Parts 500—599)
VI [Reserved]
VII Library of Congress (Parts 700—799)
VIII Advisory Council on Historic Preservation (Parts 800—899)
IX Pennsylvania Avenue Development Corporation (Parts 900—999)
X Presidio Trust (Parts 1000—1099)
XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII National Archives and Records Administration (Parts 1200—1299)
XV Oklahoma City National Memorial Trust (Parts 1500—1599)
XVI Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Parts 1600—1699)

Title 37—Patents, Trademarks, and Copyrights

I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)
II Copyright Office, Library of Congress (Parts 200—299)
III Copyright Royalty Board, Library of Congress (Parts 300—399)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)
V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—199)
II Armed Forces Retirement Home (Parts 200—299)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)
III Postal Regulatory Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—1099)
IV Environmental Protection Agency and Department of Justice (Parts 1400—1499)
V Council on Environmental Quality (Parts 1500—1599)

526
Title 40—Protection of Environment—Continued

Chap.

VI Chemical Safety and Hazard Investigation Board (Parts 1600—1699)

VII Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)

Title 41—Public Contracts and Property Management

SUBTITLE A—FEDERAL PROCUREMENT REGULATIONS SYSTEM [NOTE]

SUBTITLE B—OTHER PROVISIONS RELATING TO PUBLIC CONTRACTS

50 Public Contracts, Department of Labor (Parts 50–1—50–999)

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

61 Office of the Assistant Secretary for Veterans’ Employment and Training Service, Department of Labor (Parts 61–1—61–999)

62–100 [Reserved]

SUBTITLE C—FEDERAL PROPERTY MANAGEMENT REGULATIONS SYSTEM

101 Federal Property Management Regulations (Parts 101–1—101–99)

102 Federal Management Regulation (Parts 102–1—102–299)

103–104 [Reserved]

105 General Services Administration (Parts 105–1—105–999)

109 Department of Energy Property Management Regulations (Parts 109–1—109–99)

114 Department of the Interior (Parts 114–1—114–99)

115 Environmental Protection Agency (Parts 115–1—115–99)

128 Department of Justice (Parts 128–1—128–99)

129–200 [Reserved]

SUBTITLE D—OTHER PROVISIONS RELATING TO PROPERTY MANAGEMENT [RESERVED]

SUBTITLE E—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM [RESERVED]

SUBTITLE F—FEDERAL TRAVEL REGULATION SYSTEM

300 General (Parts 300–1—300–99)

301 Temporary Duty (TDY) Travel Allowances (Parts 301–1—301–99)

302 Relocation Allowances (Parts 302–1—302–99)

303 Payment of Expenses Connected with the Death of Certain Employees (Part 303–1—303–99)

304 Payment of Travel Expenses from a Non-Federal Source (Parts 304–1—304–99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)
Title 42—Public Health—Continued

IV Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—599)
V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)
SUBTITLE B—Regulations relating to Public Lands
I Bureau of Reclamation, Department of the Interior (Parts 400—999)
II Bureau of Land Management, Department of the Interior (Parts 1000—9999)
III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10099)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency, Department of Homeland Security (Parts 0—399)
IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services (Parts 1—199)
SUBTITLE B—Regulations relating to Public Welfare
II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)
III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)
IV Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)
V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)
VI National Science Foundation (Parts 600—699)
VII Commission on Civil Rights (Parts 700—799)
VIII Office of Personnel Management (Parts 800—899) [Reserved]
X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)
XI National Foundation on the Arts and the Humanities (Parts 1100—1199)
XII Corporation for National and Community Service (Parts 1200—1299)
Chap.  Title 45—Public Welfare—Continued

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)
XVI Legal Services Corporation (Parts 1600—1699)
XVII National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XXI Commission on Fine Arts (Parts 2100—2199)
XXIII Arctic Research Commission (Part 2301)
XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)
XXV Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I Coast Guard, Department of Homeland Security (Parts 1—199)
II Maritime Administration, Department of Transportation (Parts 200—399)
III Coast Guard (Great Lakes Pilotage), Department of Homeland Security (Parts 400—499)
IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)
II Office of Science and Technology Policy and National Security Council (Parts 200—299)
III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)
IV National Telecommunications and Information Administration, Department of Commerce, and National Highway Traffic Safety Administration, Department of Transportation (Parts 400—499)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 0—99)
2 Defense Acquisition Regulations System, Department of Defense (Parts 200—299)
3 Health and Human Services (Parts 300—399)
4 Department of Agriculture (Parts 400—499)
5 General Services Administration (Parts 500—599)
6 Department of State (Parts 600—699)
7 Agency for International Development (Parts 700—799)
8 Department of Veterans Affairs (Parts 800—899)
9 Department of Energy (Parts 900—999)
10 Department of the Treasury (Parts 1000—1099)
12 Department of Transportation (Parts 1200—1299)
Title 48—Federal Acquisition Regulations System—Continued

13 Department of Commerce (Parts 1300—1399)
14 Department of the Interior (Parts 1400—1499)
15 Environmental Protection Agency (Parts 1500—1599)
16 Office of Personnel Management, Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
17 Office of Personnel Management (Parts 1700—1799)
18 National Aeronautics and Space Administration (Parts 1800—1899)
19 Broadcasting Board of Governors (Parts 1900—1999)
20 Nuclear Regulatory Commission (Parts 2000—2099)
21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)
23 Social Security Administration (Parts 2300—2399)
24 Department of Housing and Urban Development (Parts 2400—2499)
25 National Science Foundation (Parts 2500—2599)
28 Department of Justice (Parts 2800—2899)
29 Department of Labor (Parts 2900—2999)
30 Department of Homeland Security, Homeland Security Acquisition Regulation (HSAR) (Parts 3000—3099)
34 Department of Education Acquisition Regulation (Parts 3400—3499)
51 Department of the Army Acquisition Regulations (Parts 5100—5199)
52 Department of the Navy Acquisition Regulations (Parts 5200—5299)
53 Department of the Air Force Federal Acquisition Regulation Supplement [Reserved]
54 Defense Logistics Agency, Department of Defense (Parts 5400—5499)
57 African Development Foundation (Parts 5700—5799)
61 Civilian Board of Contract Appeals, General Services Administration (Parts 6100—6199)
63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)
99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

SUBTITLE A—Office of the Secretary of Transportation (Parts 1—99)
SUBTITLE B—Other Regulations Relating to Transportation
I Pipeline and Hazardous Materials Safety Administration, Department of Transportation (Parts 100—199)
II Federal Railroad Administration, Department of Transportation (Parts 200—299)
Title 49—Transportation—Continued

III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)
IV Coast Guard, Department of Homeland Security (Parts 400—499)
V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)
VI Federal Transit Administration, Department of Transportation (Parts 600—699)
VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
VIII National Transportation Safety Board (Parts 800—999)
X Surface Transportation Board, Department of Transportation (Parts 1000—1399)
XI Research and Innovative Technology Administration, Department of Transportation [Reserved]
XII Transportation Security Administration, Department of Homeland Security (Parts 1500—1699)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)
II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)
III International Fishing and Related Activities (Parts 300—399)
IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)
V Marine Mammal Commission (Parts 500—599)
VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index
List of Agency Prepared Indexes
Parallel Tables of Statutory Authorities and Rules
List of CFR Titles, Chapters, Subchapters, and Parts
Alphabetical List of Agencies Appearing in the CFR
## Alphabetical List of Agencies Appearing in the CFR
(Revised as of July 1, 2012)

<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Committee of the Federal Register</td>
<td>1, I</td>
</tr>
<tr>
<td>Administrative Conference of the United States</td>
<td>1, III</td>
</tr>
<tr>
<td>Advisory Council on Historic Preservation</td>
<td>36, VIII</td>
</tr>
<tr>
<td>Advocacy and Outreach, Office of</td>
<td>7, XXV</td>
</tr>
<tr>
<td>African Development Foundation</td>
<td>22, XV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 57</td>
</tr>
<tr>
<td>Agency for International Development</td>
<td>2, VII; 22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, 1, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>2, IV; 5, LXXIII</td>
</tr>
<tr>
<td>Advocacy and Outreach, Office of</td>
<td>7, XXV</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, 1, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Energy Policy and New Uses, Office of</td>
<td>2, IX; 7, XXIX</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 4</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII; 9, II</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>National Institute of Food and Agriculture</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Operations, Office of</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII, L</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV, L</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVII</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVI, XVIII, XLII, L</td>
</tr>
<tr>
<td>Secretary of Agriculture, Office of</td>
<td>7, Subtitle A</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation Supplement</td>
<td>48, 53</td>
</tr>
<tr>
<td>Air Transportation Stabilization Board</td>
<td>14, VI</td>
</tr>
<tr>
<td>Alcohol and Tobacco Tax and Trade Bureau</td>
<td>26, I</td>
</tr>
<tr>
<td>Alcohol, Tobacco, Firearms, and Explosives, Bureau of AMTRAK</td>
<td>27, II</td>
</tr>
<tr>
<td>American Battle Monuments Commission</td>
<td>36, IV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>35, VII</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Appalachian Regional Commission</td>
<td>5, IX</td>
</tr>
<tr>
<td>Architectural and Transportation Barriers Compliance Board</td>
<td>36, XI</td>
</tr>
<tr>
<td>Arctic Research Commission</td>
<td>45, XXIII</td>
</tr>
<tr>
<td>Armed Forces Retirement Home</td>
<td>5, XI</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, SI</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of</td>
<td>34, V</td>
</tr>
<tr>
<td>Blind or Severely Disabled, Committee for Purchase from</td>
<td>41, SI</td>
</tr>
<tr>
<td>People Who Are</td>
<td></td>
</tr>
<tr>
<td>Broadcasting Board of Governors</td>
<td>22, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 19</td>
</tr>
<tr>
<td>Bureau of Ocean Energy Management, Regulation, and Enforcement</td>
<td>30, II</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Centers for Medicare &amp; Medicaid Services</td>
<td>42, IV</td>
</tr>
<tr>
<td>Central Intelligence Agency</td>
<td>32, XIX</td>
</tr>
<tr>
<td>Chemical Safety and Hazardous Investigation Board</td>
<td>40, VI</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Civil Rights, Commission on</td>
<td>5, LXVIII; 45, VII</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, 1</td>
</tr>
<tr>
<td>Court Services and Offender Supervision Agency for the District of</td>
<td>5, LXX</td>
</tr>
<tr>
<td>Columbia</td>
<td></td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commerce Department</td>
<td>2, XIII; 44, IV; 50, VI</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 13</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Industry and Security, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Telecommunications and Information</td>
<td>15, XXIII; 47, III, IV</td>
</tr>
<tr>
<td>Administration</td>
<td></td>
</tr>
<tr>
<td>National Weather Service</td>
<td>15, IX</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary for</td>
<td></td>
</tr>
<tr>
<td>Secretary of Commerce, Office of</td>
<td>15, Subtitle A</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>13, III</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>5, XLI; 17, I</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Secretary for</td>
<td></td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Construction Industry Collective Bargaining Commission</td>
<td>29, IX</td>
</tr>
<tr>
<td>Consumer Financial Protection Bureau</td>
<td>12, X</td>
</tr>
<tr>
<td>Consumer Product Safety Commission</td>
<td>5, LXXI; 16, II</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Copyright Royalty Board</td>
<td>37, III</td>
</tr>
<tr>
<td>Corporation for National and Community Service</td>
<td>2, XXII; 45, XII, XXV</td>
</tr>
<tr>
<td>Cost Accounting Standards Board</td>
<td>48, 99</td>
</tr>
<tr>
<td>Council on Environmental Quality</td>
<td>40, V</td>
</tr>
<tr>
<td>Court Services and Offender Supervision Agency for the District of</td>
<td>5, LXX; 28, VIII</td>
</tr>
<tr>
<td>Columbia</td>
<td></td>
</tr>
</tbody>
</table>

534
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs and Border Protection</td>
<td>19, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Department</td>
<td>2, XI; 5, XXVI; 32, Subtitle A; 49, VII</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V; 33, II; 36, III; 48, 51</td>
</tr>
<tr>
<td>Defense Acquisition Regulations System</td>
<td>48, 2</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, I; XII; 48, 54</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI; 48, 52</td>
</tr>
<tr>
<td>Secretary of Defense, Office of</td>
<td>2, XI; 32, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, XII; 48, 54</td>
</tr>
<tr>
<td>Defense Nuclear Facilities Safety Board</td>
<td>10, XVII</td>
</tr>
<tr>
<td>Delaware River Basin Commission</td>
<td>18, III</td>
</tr>
<tr>
<td>District of Columbia, Court Services and Offender Supervision Agency for the Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>East-West Foreign Trade Board</td>
<td>15, XIII</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Education, Department of</td>
<td>2, XXXIV; 5, LIII</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 34</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>Secretary of Education, Office of</td>
<td>34, Subtitle A</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of Vocational and Adult Education, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of Election Assistance Commission</td>
<td>34, IV</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of Emergency Oil and Gas Guaranteed Loan Board</td>
<td>34, IV</td>
</tr>
<tr>
<td>Emergency Steel Guarantee Loan Board</td>
<td>13, V</td>
</tr>
<tr>
<td>Employee Benefits Security Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Employees’ Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Energy, Department of</td>
<td>2, IX; 9, XXIII; 10, II, III, X</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 9</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 109</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXXIX</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>2, XV; 5, LIV; 49, I, IV, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 15</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 115</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>5, LXIII; 29, XIV</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for Executive Office of the President Administration, Office of</td>
<td>24, I</td>
</tr>
<tr>
<td></td>
<td>3, I</td>
</tr>
<tr>
<td></td>
<td>5, XV</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Environmental Quality, Council on Management and Budget, Office of</td>
<td>40, V</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>2, Subtitle A; 5, III, LXXVII; 14, VI; 48, 99</td>
</tr>
<tr>
<td>National Security Council</td>
<td>21, III</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>32, XXI; 47, 2</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV; 47, II</td>
</tr>
<tr>
<td>Trade Representative, Office of the United States</td>
<td>15, XX</td>
</tr>
<tr>
<td>Export-Import Bank of the United States</td>
<td>2, XXXV; 5, LII; 12, IV</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Farm Credit Administration</td>
<td>5, XXX; 12, VI</td>
</tr>
<tr>
<td>Farm Credit System Insurance Corporation</td>
<td>5, XXX; 12, XIV</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 1</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>5, XXIX; 47, I</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 69</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Federal Deposit Insurance Corporation</td>
<td>5, XXII; 12, III</td>
</tr>
<tr>
<td>Federal Election Commission</td>
<td>5, XXXVII; 11, I</td>
</tr>
<tr>
<td>Federal Emergency Management Agency</td>
<td>44, I</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Federal Financial Institutions Examination Council</td>
<td>12, XI</td>
</tr>
<tr>
<td>Federal Financing Bank</td>
<td>12, VIII</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corporation</td>
<td>1, IV</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight Office</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Federal Housing Finance Agency</td>
<td>5, LXXX; 12, XII</td>
</tr>
<tr>
<td>Federal Housing Finance Board</td>
<td>12, IX</td>
</tr>
<tr>
<td>Federal Labor Relations Authority</td>
<td>5, XIV, XLIX; 22, XIV</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Federal Management Regulation</td>
<td>41, 102</td>
</tr>
<tr>
<td>Federal Maritime Commission</td>
<td>46, IV</td>
</tr>
<tr>
<td>Federal Mediation and Conciliation Service</td>
<td>29, XII</td>
</tr>
<tr>
<td>Federal Mine Safety and Health Review Commission</td>
<td>5, LXXIV; 29, XXVII</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Federal Procurement Policy Office</td>
<td>48, 99</td>
</tr>
<tr>
<td>Federal Property Management Regulations</td>
<td>41, 101</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Register, Administrative Committee of</td>
<td>1, I</td>
</tr>
<tr>
<td>Federal Register, Office of</td>
<td>1, II</td>
</tr>
<tr>
<td>Federal Reserve System</td>
<td>12, II</td>
</tr>
<tr>
<td>Board of Governors</td>
<td>5, LVII</td>
</tr>
<tr>
<td>Federal Retirement Thrift Investment Board</td>
<td>5, VI, LXXVI</td>
</tr>
<tr>
<td>Federal Service Impasses Panel</td>
<td>5, XIV</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
<td>5, XLVII; 16, I</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>Financial Crimes Enforcement Network</td>
<td>31, X</td>
</tr>
<tr>
<td>Financial Research Office</td>
<td>12, XVI</td>
</tr>
<tr>
<td>Financial Stability Oversight Council</td>
<td>12, XIII</td>
</tr>
<tr>
<td>Fine Arts, Commission on</td>
<td>45, XXI</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, III</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Foreign Service Grievance Board</td>
<td>22, IX</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Foreign Service Impasse Disputes Panel</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign Service Labor Relations Board</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>General Services Administration</td>
<td>5, LVII; 41, 105</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 61</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 5</td>
</tr>
<tr>
<td>Federal Management Regulation</td>
<td>41, 102</td>
</tr>
<tr>
<td>Federal Property Management Regulations</td>
<td>41, 101</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>General</td>
<td>41, 300</td>
</tr>
<tr>
<td>Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 302</td>
</tr>
<tr>
<td>Temporary Duty (TDY) Travel Allowances</td>
<td>41, 301</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Government Accountability Office</td>
<td>4, 1</td>
</tr>
<tr>
<td>Government Ethics, Office of</td>
<td>5, XVI</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII; 9, II</td>
</tr>
<tr>
<td>Harry S. Truman Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>Health and Human Services, Department of</td>
<td>2, III; 5, XLV; 45, Subtitle A,</td>
</tr>
<tr>
<td>Centers for Medicare &amp; Medicaid Services</td>
<td>42, IV</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 3</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Inspector General (Health Care), Office of</td>
<td>42, V</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Homeland Security, Department of</td>
<td>2, XXX; 6, I; 8, I</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Customs and Border Protection</td>
<td>19, I</td>
</tr>
<tr>
<td>Federal Emergency Management Agency</td>
<td>44, I</td>
</tr>
<tr>
<td>Human Resources Management and Labor Relations Systems</td>
<td>5, XCVII</td>
</tr>
<tr>
<td>Immigration and Customs Enforcement Bureau</td>
<td>19, IV</td>
</tr>
<tr>
<td>Transportation Security Administration</td>
<td>49, XII</td>
</tr>
<tr>
<td>HOPE for Homeowners Program, Board of Directors of</td>
<td>24, XXIV</td>
</tr>
<tr>
<td>Housing and Urban Development, Department of</td>
<td>2, XXIV; 5, LXV; 24, Subtitle B,</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 24</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight, Office of</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Housing, Office of, and Multifamily Housing Assistance</td>
<td>24, IV</td>
</tr>
<tr>
<td>Restructuring, Office of</td>
<td>24, XII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>24, IX</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, Subtitle A, VII</td>
</tr>
<tr>
<td>Secretary, Office of</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant Secretary for</td>
<td>24, IV</td>
</tr>
<tr>
<td>Housing, Office of, and Multifamily Housing Assistance</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Restructuring, Office of</td>
<td>24, X</td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Immigration and Customs Enforcement Bureau</td>
<td>19, IV</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Immigration Review, Executive Office for</td>
<td>8, V</td>
</tr>
<tr>
<td>Independent Counsel, Office of</td>
<td>28, VII</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Industry and Security, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>1, XXVII</td>
</tr>
<tr>
<td>Information Security Oversight Office, National Archives and Records</td>
<td>32, XX</td>
</tr>
<tr>
<td>Records Administration</td>
<td></td>
</tr>
<tr>
<td>Inspector General</td>
<td></td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>Health and Human Services Department</td>
<td>42, V</td>
</tr>
<tr>
<td>Housing and Urban Development Department</td>
<td>24, XII, XV</td>
</tr>
<tr>
<td>Institute of Peace, United States</td>
<td>22, XVII</td>
</tr>
<tr>
<td>Inter-American Foundation</td>
<td>5, LXIII; 22, X</td>
</tr>
<tr>
<td>Interior Department</td>
<td>2, XIV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Bureau of Ocean Energy Management, Regulation, and Enforcement</td>
<td>30, II</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 14</td>
</tr>
<tr>
<td>Federal Property Management Regulations System</td>
<td>41, 114</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>Natural Resource Revenue, Office of</td>
<td>30, XII</td>
</tr>
<tr>
<td>Ocean Energy Management, Bureau of</td>
<td>30, V</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Secretary of the Interior, Office of</td>
<td>2, XIV; 43, Subtitle A</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Boundary and Water Commission, United States</td>
<td>22, XI</td>
</tr>
<tr>
<td>and Mexico, United States Section</td>
<td></td>
</tr>
<tr>
<td>International Development, United States Agency for</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>International Development Cooperation Agency, United States</td>
<td>22, XII</td>
</tr>
<tr>
<td>States</td>
<td></td>
</tr>
<tr>
<td>International Joint Commission, United States and Canada</td>
<td>22, IV</td>
</tr>
<tr>
<td>International Organizations Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>International Trade Commission, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Interstate Commerce Commission</td>
<td>5, XL</td>
</tr>
<tr>
<td>Investment Security, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Iraq Reconstruction, Special Inspector General for</td>
<td>5, LXXVII</td>
</tr>
<tr>
<td>James Madison Memorial Fellowship Foundation</td>
<td>45, XXIV</td>
</tr>
<tr>
<td>Japan–United States Friendship Commission</td>
<td>22, XVI</td>
</tr>
<tr>
<td>Joint Board for the Enrollment of Actuaries</td>
<td>20, VIII</td>
</tr>
<tr>
<td>Justice Department</td>
<td>2, XXVIII; 5, XXVIII; 29, I, XI, 40, IV</td>
</tr>
<tr>
<td>Alcohol, Tobacco, Firearms, and Explosives, Bureau of</td>
<td>27, II</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 28</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Immigration Review, Executive Office for</td>
<td>8, V</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 129</td>
</tr>
<tr>
<td>Labor Department</td>
<td>5, XLII</td>
</tr>
</tbody>
</table>

538
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Benefits Security Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Employees' Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 29</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Procurement Regulations System</td>
<td>41, 50</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Office of Workers' Compensation Programs</td>
<td>20, VII</td>
</tr>
<tr>
<td>Public Contracts</td>
<td>41, 50</td>
</tr>
<tr>
<td>Secretary of Labor, Office of</td>
<td>29, Subtitle A</td>
</tr>
<tr>
<td>Veterans' Employment and Training Service, Office of the</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Assistant Secretary for</td>
<td></td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Workers' Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Legal Services Corporation</td>
<td>45, XVI</td>
</tr>
<tr>
<td>Library of Congress</td>
<td>36, VII</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Copyright Royalty Board</td>
<td>37, III</td>
</tr>
<tr>
<td>Local Television Loan Guarantee Board</td>
<td>7, XX</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III, LXXVII; 14, VI; 48, 99</td>
</tr>
<tr>
<td>Marine Mammal Commission</td>
<td>50, V</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>Merit Systems Protection Board</td>
<td>5, II, LXIV</td>
</tr>
<tr>
<td>Micronesian Status Negotiations, Office for</td>
<td>32, XXVII</td>
</tr>
<tr>
<td>Millennium Challenge Corporation</td>
<td>22, XIII</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Minority Business Development Agency</td>
<td>15, XIV</td>
</tr>
<tr>
<td>Miscellaneous Agencies</td>
<td>1, IV</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation</td>
<td>36, XVI</td>
</tr>
<tr>
<td>Museum and Library Services, Institute of</td>
<td>2, XXXI</td>
</tr>
<tr>
<td>National Aeronautics and Space Administration</td>
<td>2, XVIII; 5, LIX; 14, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 18</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>National and Community Service, Corporation for</td>
<td>2, XXII; 45, XII, XXV</td>
</tr>
<tr>
<td>National Archives and Records Administration</td>
<td>2, XXVI; 5, LXVI; 36, XII</td>
</tr>
<tr>
<td>Information Security Oversight Office</td>
<td>32, XX</td>
</tr>
<tr>
<td>National Capital Planning Commission</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission for Employment Policy</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission on Libraries and Information Science</td>
<td>45, XVII</td>
</tr>
<tr>
<td>National Council on Disability</td>
<td>34, XII</td>
</tr>
<tr>
<td>National Counterintelligence Center</td>
<td>32, XVIII</td>
</tr>
<tr>
<td>National Credit Union Administration</td>
<td>12, VII</td>
</tr>
<tr>
<td>National Crime Prevention and Privacy Compact Council</td>
<td>28, IX</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Endowment for the Arts</td>
<td>2, XXXII</td>
</tr>
<tr>
<td>National Endowment for the Humanities</td>
<td>2, XXXIII</td>
</tr>
<tr>
<td>National Foundation on the Arts and the Humanities</td>
<td>45, XI</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III; 47, VI; 49, V</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Institute for Literacy</td>
<td>34, XI</td>
</tr>
<tr>
<td>National Institute of Food and Agriculture</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Intelligence, Office of Director of</td>
<td>32, XVII</td>
</tr>
<tr>
<td>National Labor Relations Board</td>
<td>5, LXI; 29, I</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV</td>
</tr>
<tr>
<td>National Mediation Board</td>
<td>29, X</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>National Railroad Adjustment Board</td>
<td>29, III</td>
</tr>
<tr>
<td>National Railroad Passenger Corporation (AMTRAK)</td>
<td>49, VII</td>
</tr>
<tr>
<td>National Science Foundation</td>
<td>2, XXV; 5, XLIII; 45, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 25</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XIX</td>
</tr>
<tr>
<td>National Security Council and Office of Science and Technology Policy</td>
<td>47, II</td>
</tr>
<tr>
<td>National Telecommunications and Information Administration</td>
<td>15, XXIII; 47, III, IV</td>
</tr>
<tr>
<td>National Transportation Safety Board</td>
<td>49, VIII</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Natural Resource Revenue, Office of</td>
<td>30, XII</td>
</tr>
<tr>
<td>Navajo and Hopi Indian Relocation, Office of</td>
<td>25, IV</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 52</td>
</tr>
<tr>
<td>Neighborhood Reinvestment Corporation</td>
<td>24, XXV</td>
</tr>
<tr>
<td>Northeast Interstate Low-Level Radioactive Waste Commission</td>
<td>10, XVIII</td>
</tr>
<tr>
<td>Nuclear Regulatory Commission</td>
<td>2, XX; 5, XLVIII; 10, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 20</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Occupational Safety and Health Review Commission</td>
<td>29, XX</td>
</tr>
<tr>
<td>Ocean Energy Management, Bureau of</td>
<td>30, V</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Office of Workers’ Compensation Programs</td>
<td>20, VII</td>
</tr>
<tr>
<td>Oklahoma City National Memorial Trust</td>
<td>36, XV</td>
</tr>
<tr>
<td>Operations Office</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Overseas Private Investment Corporation</td>
<td>5, XXXIII; 22, VII</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Peace Corps</td>
<td>2, XXXVII; 22, III</td>
</tr>
<tr>
<td>Pennsylvania Avenue Development Corporation</td>
<td>36, IX</td>
</tr>
<tr>
<td>Pension Benefit Guaranty Corporation</td>
<td>29, XL</td>
</tr>
<tr>
<td>Personnel Management, Office of</td>
<td>5, 1, XXXV; 45, VIII</td>
</tr>
<tr>
<td>Human Resources Management and Labor Relations</td>
<td>5, XCVII</td>
</tr>
<tr>
<td>Systems, Department of Homeland Security</td>
<td>29, XX</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 17</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Pipeline and Hazardous Materials Safety Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Postal Regulatory Commission</td>
<td>5, XLVI; 39, III</td>
</tr>
<tr>
<td>Postal Service, United States</td>
<td>5, IX; 39, 1</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>President’s Commission on White House Fellowships</td>
<td>1, IV</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Presidio Trust</td>
<td>36, X</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary</td>
<td>41, 50</td>
</tr>
<tr>
<td>Public Contracts, Department of Labor</td>
<td>24, IX</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>42, I</td>
</tr>
<tr>
<td>Railroad Retirement Board</td>
<td>20, II</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Recovery Accountability and Transparency Board</td>
<td>4, II</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 302</td>
</tr>
<tr>
<td>Research and Innovative Technology Administration</td>
<td>49, XI</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII, L</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV, L</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII, L</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of, and National</td>
<td>47, II</td>
</tr>
<tr>
<td>Security Council</td>
<td></td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>5, XXXIV; 17, II</td>
</tr>
<tr>
<td>Selective Service System</td>
<td>32, XVI</td>
</tr>
<tr>
<td>Small Business Administration</td>
<td>2, XXVII; 13, I</td>
</tr>
<tr>
<td>Smithsonian Institution</td>
<td>36, V</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>2, XXIII; 20, III; 48, 23</td>
</tr>
<tr>
<td>Soldiers’ and Airmen’s Home, United States</td>
<td>5, XI</td>
</tr>
<tr>
<td>Special Counsel, Office of</td>
<td>5, VIII</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>State Department</td>
<td>2, VII; 22, I; 28, XI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 6</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Susquehanna River Basin Commission</td>
<td>18, VIII</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Tennessee Valley Authority</td>
<td>5, L, XIX; 18, XIII</td>
</tr>
<tr>
<td>Thrift Supervision Office, Department of the Treasury</td>
<td>12, V</td>
</tr>
<tr>
<td>Trade Representative, United States, Office of</td>
<td>15, XX</td>
</tr>
<tr>
<td>Transportation, Department of</td>
<td>2, XII; 5, L</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 63</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 12</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III; 47, IV; 49, V</td>
</tr>
<tr>
<td>Pipeline and Hazardous Materials Safety Administration</td>
<td>49, 1</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Secretary of Transportation, Office of</td>
<td>14, II; 49, Subtitle A</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>Transportation Security Administration</td>
<td>49, XII</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Travel Allowances, Temporary Duty (TDY)</td>
<td>41, 393</td>
</tr>
<tr>
<td>Treasury Department</td>
<td>5, XXI; 12, XV; 17, IV;</td>
</tr>
<tr>
<td>Alcohol and Tobacco Tax and Trade Bureau</td>
<td>31, IX</td>
</tr>
<tr>
<td>Community Development Financial Institutions Fund</td>
<td>12, XVIII</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Customs and Border Protection</td>
<td>19, I</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 10</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Financial Crimes Enforcement Network</td>
<td>31, X</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>Investment Security, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Secretary of the Treasury, Office of</td>
<td>31, Subtitle A</td>
</tr>
<tr>
<td>Thrift Supervision, Office of</td>
<td>12, V</td>
</tr>
<tr>
<td>Truman, Harry S. Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>United States and Canada, International Joint Commission</td>
<td>22, IV</td>
</tr>
<tr>
<td>United States and Mexico, International Boundary and Water Commission, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>Utah Reclamation Mitigation and Conservation Commission</td>
<td></td>
</tr>
<tr>
<td>Veterans Affairs Department</td>
<td>2, VIII; 38, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 8</td>
</tr>
<tr>
<td>Veterans' Employment and Training Service, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Vice President of the United States, Office of</td>
<td>32, XXVIII</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Water Resources Council</td>
<td>18, VI</td>
</tr>
<tr>
<td>Workers' Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
</tbody>
</table>
# List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations that were made by documents published in the Federal Register since January 1, 2001, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.


## 34 CFR

### 2001

<table>
<thead>
<tr>
<th>Section</th>
<th>Revised/Added</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>300.233</td>
<td>(a)(1) revised; (a)(3) added</td>
<td>1476</td>
</tr>
<tr>
<td></td>
<td>Regulation at 66 FR 1476 eff. date delayed</td>
<td>8770</td>
</tr>
<tr>
<td>300</td>
<td>Appendix C added</td>
<td>1476</td>
</tr>
<tr>
<td>300.233</td>
<td>Regulation at 66 FR 1476 eff. date delayed</td>
<td>8770</td>
</tr>
<tr>
<td>361</td>
<td>Revised</td>
<td>13239</td>
</tr>
<tr>
<td>361</td>
<td>Regulation at 66 FR 4382 eff. date delayed</td>
<td>8770</td>
</tr>
<tr>
<td>361.5</td>
<td>Technical correction</td>
<td>13239</td>
</tr>
<tr>
<td>361.5</td>
<td>(b)(16) and (19) revised</td>
<td>7252</td>
</tr>
<tr>
<td>361.5</td>
<td>Regulation at 66 FR 7252 eff. date confirmed</td>
<td>8770</td>
</tr>
<tr>
<td>361.10</td>
<td>OMB number pending</td>
<td>4389</td>
</tr>
<tr>
<td>361.12</td>
<td>OMB number pending</td>
<td>4390</td>
</tr>
<tr>
<td>361.13</td>
<td>OMB number pending</td>
<td>4390</td>
</tr>
<tr>
<td>361.14</td>
<td>OMB number pending</td>
<td>4391</td>
</tr>
<tr>
<td>361.15</td>
<td>OMB number pending</td>
<td>4391</td>
</tr>
<tr>
<td>361.16</td>
<td>OMB number pending</td>
<td>4391</td>
</tr>
<tr>
<td>361.17</td>
<td>OMB number pending</td>
<td>4392</td>
</tr>
<tr>
<td>361.18</td>
<td>OMB number pending</td>
<td>4394</td>
</tr>
<tr>
<td>361.19</td>
<td>OMB number pending</td>
<td>4395</td>
</tr>
<tr>
<td>361.20</td>
<td>OMB number pending</td>
<td>4395</td>
</tr>
<tr>
<td>361.21</td>
<td>OMB number pending</td>
<td>4395</td>
</tr>
</tbody>
</table>

## 34 CFR—Continued

### 2001—Continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Revised/Added</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>361.22</td>
<td>OMB number pending</td>
<td>4395</td>
</tr>
<tr>
<td>361.23</td>
<td>OMB number pending</td>
<td>4396</td>
</tr>
<tr>
<td>361.24</td>
<td>OMB number pending</td>
<td>4396</td>
</tr>
<tr>
<td>361.25</td>
<td>OMB number pending</td>
<td>4397</td>
</tr>
<tr>
<td>361.26</td>
<td>OMB number pending</td>
<td>4397</td>
</tr>
<tr>
<td>361.27</td>
<td>OMB number pending</td>
<td>4397</td>
</tr>
<tr>
<td>361.28</td>
<td>OMB number pending</td>
<td>4397</td>
</tr>
<tr>
<td>361.29</td>
<td>OMB number pending</td>
<td>4397</td>
</tr>
<tr>
<td>361.30</td>
<td>OMB number pending</td>
<td>4398</td>
</tr>
<tr>
<td>361.31</td>
<td>OMB number pending</td>
<td>4398</td>
</tr>
<tr>
<td>361.32</td>
<td>OMB number pending</td>
<td>4398</td>
</tr>
<tr>
<td>361.33</td>
<td>OMB number pending</td>
<td>4398</td>
</tr>
<tr>
<td>361.34</td>
<td>OMB number pending</td>
<td>4399</td>
</tr>
<tr>
<td>361.35</td>
<td>OMB number pending</td>
<td>4399</td>
</tr>
<tr>
<td>361.36</td>
<td>OMB number pending</td>
<td>4399</td>
</tr>
<tr>
<td>361.37</td>
<td>OMB number pending</td>
<td>4400</td>
</tr>
<tr>
<td>361.38</td>
<td>OMB number pending</td>
<td>4400</td>
</tr>
<tr>
<td>361.39</td>
<td>OMB number pending</td>
<td>4401</td>
</tr>
</tbody>
</table>

543
<table>
<thead>
<tr>
<th>CFR Section</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter III</td>
<td>34 CFR</td>
<td>34 CFR</td>
<td>34 CFR</td>
<td>34 CFR</td>
</tr>
<tr>
<td>300</td>
<td>Revised</td>
<td>(No regulations published)</td>
<td>Revised</td>
<td>Revised</td>
</tr>
<tr>
<td>300.8</td>
<td>(c)(3) correctly amended</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>300.9</td>
<td>(a) and (c)(1) correctly amended</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>300.10</td>
<td>(c) heading, introductory text, (2) and (e) introductory text correctly amended</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>300.103</td>
<td>(a) correctly amended</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>300.118</td>
<td>Correctly amended</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>300.137</td>
<td>(b)(1) correctly amended</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>300.160</td>
<td>Added</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>300.162</td>
<td>(c)(1) correctly amended</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>300.172</td>
<td>(c)(1) introductory text correctly amended</td>
<td></td>
<td></td>
<td></td>
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