the student, the meaning of the evaluation data and the placement options; and

(4) Ensure that the placement decision is made in accordance with § 18.434.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

[45 FR 63268, Sept. 24, 1980, as amended at 68 FR 51370, Aug. 26, 2003]

§ 18.436 Procedural safeguards.

(a) A recipient that operates a public elementary or secondary education program shall implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services. The system shall include:

(1) Notice;

(2) An opportunity for the parents or guardian of the person to examine relevant records;

(3) An impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel; and

(4) Review procedure.

(b) Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 18.437 Nonacademic services.

(a) *General.* (1) Elementary, secondary, and adult education programs that receive Federal financial assistance shall provide nonacademic and extracurricular services and activities in a manner which gives handicapped students an equal opportunity for participation in these services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to

agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* Elementary, secondary, and adult education programs that receive Federal financial assistance and that provide personal, academic, or vocational counseling, guidance, or placement services to their students shall provide these services without discrimination on the basis of handicap and shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, an elementary, secondary, or adult education program or activity that receives Federal financial assistance may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural activities shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to non-handicapped students only if separation or differentiation is consistent with the requirements of § 18.434 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

[45 FR 63268, Sept. 24, 1980, as amended at 68 FR 51370, Aug. 26, 2003]

§ 18.438 Adult education.

A recipient that provides adult education may not, on the basis of handicap, exclude qualified handicapped persons. The recipient shall take into account the needs of these persons in determining the aid, benefits, or services to be provided.

[45 FR 63268, Sept. 24, 1980, as amended at 68 FR 51370, Aug. 26, 2003]