Memorandum to Presidents

OFFICE OF THE PROVOST

Date: June 21, 1977

From: Office of the University Counsel
and Vice Chancellor for Legal Affairs

Subject: Non-discrimination on the Basis of Handicap


The Rehabilitation Act provides that "...no otherwise qualified handicapped individual ...shall, solely by reason of his handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (P.L. 93-112, 516; 29 USC §706). The regulation governs employment practices, program accessibility and educational programs.

Employment

A qualified handicapped employee is one with a physical or mental impairment which limits a major life activity and who, with reasonable accommodation, can perform the essential functions of the job in question. (45 CFR subd. 84.1(j, k); all references are to part 45 of the Code of Federal Regulations unless otherwise noted). Persons are also covered who have a past record of handicap or who are regarded or treated by others as having such impairments.

Handicapping conditions include, among others, cosmetic disfigurement, anatomical loss, neurological impairments, loss of special sense organs, impairment of speech, heart, respiratory or lymphatic systems, retardation, alcoholism, drug addiction, and emotional or mental illness. These conditions are only considered handicapping if they impair a major life activity, such as walking, seeing, hearing and speaking and employment.

Participation in and opportunity for employment of the handicapped must be equal to that available to the non-handicapped. Benefits and services may not differ or be separate from those provided to non-handicapped unless a difference is necessary to render the benefits and services as effective as the benefits available to others.

The explanatory material accompanying the regulation permits an employer to hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others. If addiction or alcoholism prevents successful performance of the job the individual need not be provided an employment opportunity.
One of the provisions which HEW considers most important mandates that the employer make reasonable accommodation to the limitations of otherwise qualified handicapped applicants or employees. These accommodations may include modification of work schedules, job restructuring, provision of readers, interpreters, or specialized equipment. Only if such accommodation would impose an undue hardship on a college may it be avoided. (§84.12). Several factors, such as the cost of the accommodation and the size of the employer's budget will be considered by HEW if a question arises as to whether a specific accommodation is burdensome. As HEW explains,

"Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination." (42 Fed. Reg. 22688).

Inquiries may be made of applicants concerning their ability to perform job-related functions. With limited exceptions, they may not be asked whether they are handicapped, however. (§84.14). Since the two are in some instances related, great care should be taken to avoid questions which are prohibited by the regulation. Employers may only question applicants regarding handicap as part of affirmative action programs and programs to overcome limited participation by the handicapped. Such information must be voluntarily supplied, and the regulation provides safeguards to protect the confidentiality of these records. Where an employee has informed a college of his handicap, supervisors, managers and safety personnel may be notified if necessary.

Program Accessibility

Qualified handicapped persons may not be discriminated against because facilities are unuseable or inaccessible to them. (§84.21). To this end, the institution must remove physical barriers to full participation by handicapped individuals. Modifications such as reassignment of classes, and redesign of equipment must be complete within 60 days of the June 3, 1977 effective date. Necessary structural changes must begin as quickly as possible and must be completed within three years. (§84.22).

HEW explains that structural changes are required only where there is no other way to make programs accessible. For example, not all classrooms or buildings need be made physically accessible. Rescheduling of classes will be sufficient if it will permit handicapped students to participate in all required courses and a reasonable selection of elective courses. Where structural changes are necessary, each campus must develop a transition plan within six months which outlines the steps necessary to complete the changes. (§84.22(c)).

All new construction must comply with the American National Standard Institute accessibility standards. The Office for Capital Facilities has developed much information on existing facilities and the alterations necessary to comply with the regulation. John Grosvenor, Assistant Vice Chancellor for Capital Finance and Administration may be contacted for questions in this regard.
Students

Qualified handicapped students may not be subjected to discrimination in admission, housing, financial aid, extracurricular activities, employment, athletics, health, counseling and placement. A qualified handicapped student is one who meets the academic and technical admissions criteria that are essential to participation in the particular program. Handicapping conditions are the same as those listed for employees.

The regulation imposes several new conditions on admissions practices. (§84.42). With certain exceptions, no pre-admission inquiries may be made concerning handicap. Colleges may not establish limitations on the numbers of handicapped students who will be admitted or use criteria which have a disproportionate impact on the handicapped. Admissions tests must be designed so as to measure the student's ability and not his handicap.

As with employees, handicapped students must be provided with opportunities and benefits which are equal to those afforded others. Each college is expected to integrate the handicapped as much as possible into its regular programs. (§86.43). To render this "mainstreaming" effective colleges must undertake to modify unessential academic requirements, the length of time necessary to complete such requirements, alter examinations, and provide auxiliary aids such as taped texts, readers, interpreters and classroom equipment. These aids are intended to render programs accessible and need not be provided for personal use.

Qualified handicapped students should generally be permitted to participate in regularly offered physical education, athletic and intramural sports programs. Separate programs may be offered where necessary but in as integrated a setting as possible.

Housing must be convenient, accessible and comparable to that provided non-handicapped students. To the greatest extent possible, housing should not be segregated. A campus that assists in the provision of off-campus housing must assure itself that such housing, as a whole, does not result in discrimination based on handicap. Procedures developed under a similar provision in the regulation implementing Title IX of the Education Amendments of 1972 may be used.

Each campus must designate an individual responsible for coordination of efforts to comply with the regulation. To permit the resolution of complaints, a grievance procedure must be established. The University grievance procedure in Memorandum to Presidents 77-2 pursuant to Title IX of the Education Amendments of 1972 meets the requirements of this section.

The regulation requires each institution to take several positive steps to implement its provisions. These follow in list form for easy reference.

Immediately

1. Designate person to coordinate compliance efforts (§84.7).

2. Establish a grievance procedure (§84.7).

Sixty Days - August 2, 1977

1. Make programs accessible by temporary means if structural changes are required (§84.22).
Ninety Days - September 1, 1977

1. Notify participants in programs, beneficiaries, applicants, employees and unions that the college does not discriminate based upon handicap. Include this information in all recruiting material. ($84.8).

Six Months - December 3, 1977

Development of transition plan setting forth steps required to complete structural changes. ($84.22(d)).

One Year - June 3, 1978

1. An evaluation of policies, practices and their effect on the handicapped. Evaluation must be carried out with the assistance of interested persons including the handicapped ($84.6).

2. Modification of policies and practices to accord with the regulation. A list of those who were consulted, the scope of review, and nature of changes must be maintained for three years.

Three Years

Structural changes in existing buildings to make programs accessible. This is not a waiting period and changes should be made as expeditiously as possible ($84.22(d)).

In addition, assurances that programs receiving federal funds will be operated in compliance with the regulation must accompany applications for funds. These assurances will be required when forms are available from the Department of Health, Education and Welfare.

Enforcement of compliance with the regulation will be temporarily carried out under Executive Order 11914 and those procedures established pursuant to Title VI of the Civil Rights Act of 1964. These requirements are found in CFR 80.6 - 80.10 and 81. They outline procedures for investigation, termination of federal assistance, hearings, and appellate review. HEW will attempt to elicit voluntary compliance, and if this fails may take such measures as the termination of financial assistance. Should your college receive any communication concerning enforcement from the Department, this office should be contacted immediately.
Everard K. Pinneo, Assistant Vice Chancellor for Educational Services, is responsible for the coordination of University compliance with the regulation. Questions relating to its application should be referred to either that office or Counsel's office, as appropriate. Mr. Pinneo should be informed of the name of the person designated to coordinate compliance efforts on your campus.

This memorandum addressed to:

Presidents, State-operated campuses

Copies for information to:

Presidents, Community Colleges
Deans, Statutory Colleges
President Rose
Vice President Cooke
WEDNESDAY, MAY 4, 1977
PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

NONDISCRIMINATION ON BASIS OF HANDICAP

Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 34—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: This regulation implements section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706, with regard to federal financial assistance administered by the Department of Health, Education, and Welfare. Section 504 provides that "no otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." The regulation, which applies to all recipients of federal financial assistance from the Department of Health, Education, and Welfare, is intended to ensure that federal programs and activities are operated without discrimination on the basis of handicap. The regulation defines and forbids acts of discrimination against handicapped individuals, and individuals in employment and in the operation of programs and activities receiving assistance from the Department. As employers, recipients must make reasonable accommodation to the handicaps of applicants and employees unless the accommodation would cause the employer undue hardship. As providers of services, recipients are required to make programs operated by them accessible to handicapped persons, to ensure that new facilities are constructed so as to be readily accessible to handicapped persons, and to operate their programs in a nondiscriminatory manner.

EFFECTIVE DATE: June 3, 1977.

FOR FURTHER INFORMATION CONTACT:


SUPPLEMENTARY INFORMATION:

BACKGROUND:

As part of the Rehabilitation Act of 1973 ("Public Law 93-112") Congress enacted section 504, which provides that "no otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." In the same statute, Congress defined the term "handicapped individual" as "any individual who (a) has a physical or mental disability which for such individual constitutes a substantial impediment to employment and (b) can reasonably be expected to lose employability from vocational rehabilitation services." However, the following year, in section 111(a) of the Rehabilitation Act Amendments of 1974 (Public Law 93-518), Congress amended the definition of "handicapped individual" for purposes of section 504 and the other provisions of titles IV and V of the Rehabilitation Act to be not limited to the discussion of employability. For purposes of section 504 of the Act, a "handicapped individual" is defined as "any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment." With this amendment Congress made clear that section 504 was intended to forbid discrimination against all handicapped individuals, regardless of their need for or ability to benefit from vocational rehabilitation services. Section 504 of the first Federal civil rights law, protecting the rights of handicapped persons and affecting Federal programs, programs and activities, and the Department has engaged has, however, provided a basis for an initial resolution of those issues. The Secretary believes the resulting regulation offers genuine promise of providing a cost-sharing program for ending discrimination against handicapped persons.

RULEMAKING HISTORY

On May 17, 1976, the Department published a Notice of Intent to Issue Proposed Rules, seeking public comment on 15 identified critical issues. 41 FR 20296. A draft proposal rule was attached to the Notice of Intent, as was a statement on the basis of the estimated costs and benefits of the draft proposal, prepared in accordance with the requirements of Executive Order 11931.

Over three hundred written comments were received in response to the Notice of Intent. The written comments were supplemented by a series of ten meetings conducted by the Office of Civil Rights at various locations across the country.

On July 16, 1976, the Department published a Notice of Proposed Rulemaking, analyzing comments received on the critical issues identified in the Notice of Intent and setting forth a revised proposed regulation for public comment. 41 FR 29548. The initial 60-day comment period was extended in response to numerous requests until October 14, 1976. Additional comments received since that date have also been considered to the extent feasible. A total of more than 1,000 comments were received in response to the July 16 Notice of Proposed Rulemaking; they have been analyzed along with approximately 150 comments sent in response to May 17 Notice that were received during the first comment period. Finally, an additional twenty-two roundtable meetings were held after publication of the July 16 Notice, again designed to inform interested persons and organizations of the proposed regulation and to solicit their comments and recommendations. Transcripts of all these meetings were made and analyzed along with the final rulemaking history.
ten comments. Copies of these transcripts, as well as the written comments, are available for public inspection in Room 5400, 330 Independence Avenue, S.W., Washington, D.C. 20201.

The Secretary believes that both the wide-ranging and class-based comments expressed at the public meetings have illuminated the complex issues involved in implementing section 504 in an effective and workable fashion. The Secretary's review of the comments of interested parties, and the explanation for changes in the proposed regulation, are set forth in the section-by-section analysis of each subpart of the regulation, which appears as Appendix A to the regulation. As that analysis explains, a number of provisions in the proposed regulation have been eliminated as duplicative or unnecessary; others have been shortened or clarified. The goal throughout has been to design a regulation that preserves the essential elements of a strong and effective program for ensuring equal access while avoiding the imposition of unnecessary or counterproductive administrative obligations on recipients.

OVERVIEW OF REGULATION

The regulation is divided into seven subparts. Subpart A (General Provisions) defines the important terms that are used throughout the regulation and sets forth the general terms and conditions that apply. Subpart B (Employee Benefits) sets forth the general requirements of the regulation—program accessibility. All new facilities are required to be constructed so as to be readily accessible to and usable by handicapped persons. Existing facilities need not be made physically accessible, but all recipients must ensure that programs conducted in these facilities are readily accessible. While flexibility is allowed in choosing methods that in fact make programs in existing facilities accessible, structural changes in such facilities may be undertaken only if other means of ensuring program accessibility are available.

Subparts A, B, and C of the regulation, as well as subpart G—which incorporates, by reference, the Department's procedures under title VI of the Civil Rights Act of 1964—apply to all recipients of financial assistance from the Department. The remaining subparts of the regulation contain more specific requirements applicable to three major classes of recipients identified in the Act: elementary schools; secondary schools; and public and non-profit institutions of higher education.

Subpart D is concerned with preschool elementary, and secondary education. Its provisions have been closely coordinated with those of the Education for All Handicapped Children Act of 1975 (Pub. L. 94-142). They require, basically, that recipients operating public education programs provide a free appropriate education to each qualified handicapped child in the most normal setting appropriate. The regulation also sets forth evaluation requirements designed to ensure the proper classification and placement of handicapped children, and due process procedures for resolving disputes over placement of students. While the Department does not intend to review individual placement decisions, it does intend to ensure that testing and evaluation methods used by the recipients are carried out, and that school systems provide an adequate opportunity for parents to challenge and seek review of those criteria, decisions, and the Department has a high priority on pursuing cases in which a pattern or practice of discriminatory placements may be involved.

Subpart E deals with postsecondary education. It describes discrimination against handicapped persons in postsecondary education, not to discriminate against handicapped persons in studies, or to make reasonable accommodations for handicapped persons to fulfill academic requirements, and to ensure that they are not effectively excluded from programs because of the absence of appropriate auxiliary services. Groups of colleges must not establish consortia exclusively for handicapped students.

Finally, Subpart F deals with health, welfare, and other social services programs, which are intended to end discrimination in providing such services and requires larger recipients to provide auxiliary aids to handicapped individuals where necessary. Specific provisions require hospitals, not to discriminate against individuals who need medical services and to establish emergency room procedures for communication with persons with impaired hearing. Under Subpart G, federal agencies and service providers may satisfy their program accessibility obligations with respect to existing facilities by arranging to meet beneficiaries in accessible locations. In addition, small providers may refer patients or other beneficiaries to accessible providers as a "last resort" alternative to making significant structural changes.

EXECUTIVE ORDER 11914

Under Executive Order 11914 (41 FR 1781, April 26, 1976), the Department is required to promulgate regulations implementing Section 504. This responsibility will be fulfilled promptly and independently from this regulation. The Department does, however, expect to incorporate the definition of handicapped person adopted in § 114.3 (f) of this regulation in the standards for determining what persons are covered by the Act. The Secretary also anticipates that the relevant provisions of Subparts A, B, and C of the regulation will be the basis for guidelines, pursuant to the Executive Order, as to what are discriminatory practices.

ECONOMIC IMPACT

The Department has previously certified, in issuing the Notice of Intent and the Notice of Proposed Rulemaking, that the economic and inflationary impact of the proposed regulation had been carefully evaluated in accordance with OMB Circular A-110. That analysis, which was printed at 41 FR 20312 (May 17, 1976), has been revised and updated, and is available on request.

SECTION-BY-SECTION ANALYSIS OF REGULATION

Appended to the final regulation is a section-by-section analysis of the regulation, which describes the basis and purpose of the various changes, and comments on the basis for any changes made from the proposed regulation published in July 1976.

In consideration of the foregoing, Part 1194 is hereby ordered to be added to title 45 of the Code of Federal Regulations.


JOSEPH A. CALIFANO, JR.
Secretary, Department of Health, Education, and Welfare.

Subpart G—General Provisions

Sec. 1194.1 Purpose.
1194.2 Application.
1194.3 Definitions.
1194.4 Discrimination prohibited.
1194.5 Requirements.
1194.6 Arrangements voluntary, non-discriminatory.
1194.7 Designation of responsible employee.

1194.8 Notice.
1194.9 Administrative requirements for small recipients.
1194.10 Effect of state or local law or other requirements on recipients.
1194.11 Effect of state or local law or other requirements on recipients.
1194.12 Reasonable accommodation.
1194.13 Employment criteria.
1194.14 Employment inquiries.

1194.15-1194.20 [Reserved]

Subpart H—Employment Practices

1194.21 Discrimination prohibited.
1194.22 Reasonable accommodation.
1194.23 Employment criteria.

1194.24-.26 [Reserved]

Subpart I—Program Accessibility

1194.31 Discrimination prohibited.
1194.33 Existing facilities.
1194.34 Construction.

1194.34-.36.40 [Reserved]

Subpart J—Preschool, Elementary, Secondary Education

1194.31 Application of this subpart.
1194.32 Interpretation of methods.
1194.33 Free appropriate public education.
1194.33 Educational setting.

1194.33-.36 Evaluation and placement.
RULES AND REGULATIONS

any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through an agency, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) “Applicant for assistance” means a person who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) “Federal financial assistance” means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(iii) Real and personal property or any interest in or use of such property, including:

(a) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(b) Proceeds from any arrangement between the Department and another person or organization for the development, design, construction, operation, or maintenance of any property or facility which benefits the Department.

(i) “Facility” means all or any portion of a building, structure, equipment, real estate, parking lot, or other real or personal property or interest in such property.

(j) “Handicapped person.” (1) “Handicapped person” means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities; (ii) Has a record of such an impairment; or (iii) Is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section:

(i) “Physical or mental impairment” means a physiological disorder or condition, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory and发音 or speech organs; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; (ii) Any medical or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; (iii) “Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(k) “Has a record of such an impairment” means a person who has been determined to have a physical or mental impairment which substantially limits one or more major life activities.

(l) “Has been regarded as having an impairment” means a person who has been regarded by any entity as having a mental or physical impairment that substantially limits one or more major life activities.

(m) “Is regarded as having an impairment” means (A) a physical or mental impairment that does not substantially limit major life activities; (B) a physical or mental impairment that limits major life activities, but that is treated by a recipient as constituting such a limitation; (C) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (D) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(n) “Qualified handicapped person” means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to the handicapped person; or (iii) whom a state is required to provide a free appropriate public education under §612 of the Education of the Handicapped Act; and

(3) With respect to secondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admittance or participation in the recipient’s education program and is otherwise qualified to receive such services.

(4) With respect to other services, a handicapped person who meets the customary eligibility requirements for the receipt of such services.

(5) (a) “Handicap” means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§34.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) Discriminatory actions prohibited.

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual arrangements, use any criteria or standards, or otherwise engage in any discriminatory action.

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from any aid, benefit, or service.

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from any aid, benefit, or service that is not equal to that afforded others.

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others.

(iv) Provide different or separate aid, benefit, or service to a handicapped person, unless such aid, benefit, or service are as effective as those provided to others.

(v) Aid or perpetuate discrimination against a qualified handicapped person.
by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person, or an organization to which he or she is a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or parallel programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not identical.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of excluding handicapped persons from participation in programs or activities of the recipient, or (ii) that permit the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State or political subdivision.

A recipient, in determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them access to, or otherwise denying them equal use of, any program or activity, or (ii) that have the effect of denying an equal benefit of access to the handicapped; or (iii) that permit discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State or political subdivision.

(5) If used in this section, the word "benefit" means a program, or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Programs limited by Federal law. The rights of nonhandicapped persons from the benefit of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 34.5 Assurances required.

(a) Assurances. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form approved by the Director, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Duties or obligations. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used, for the purpose for which Federal financial assistance is extended, to involve the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal, social, or community services, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording any subsequent transfer of the property shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used, for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b) (2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument also includes a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transfer of property is involved, the Department may assign the right to enforce the covenant to the buyer of the property or, in the event of a breach of the covenant, the Department may foreclose on the property.

(d) Self-evaluation. (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, the policies, practices, and procedures that result in discrimination that occurred or will occur to handicapped persons who would be participants in the program at the time discrimination occurred or who are participants in the program at the time of the evaluation.

(ii) If a recipient discriminates against handicapped persons who are no longer participants in the program, the Director may require the recipient to take remedial action or to take such action as the Director deems necessary to overcome the effects of discrimination.

(iii) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the Director shall take such remedial action as he deems appropriate to correct the results of discrimination.

§ 34.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action. (1) If the Director determines that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall be required to take such remedial action as the Director deems necessary to overcome the effects of discrimination.

(b) Remedial action. (1) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the Director shall require the recipient to take remedial action to correct the results of discrimination.

(c) Remedial action. (1) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall be required to take remedial action to correct the results of discrimination.

(d) Remedial action. (1) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall be required to take remedial action to correct the results of discrimination.

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(g) Remedial action. (1) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall be required to take remedial action to correct the results of discrimination.

(h) Remedial action. (1) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall be required to take remedial action to correct the results of discrimination.

(i) Remedial action. (1) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall be required to take remedial action to correct the results of discrimination.

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(o) Remedial action. (1) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall be required to take remedial action to correct the results of discrimination.

(p) Remedial action. (1) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall be required to take remedial action to correct the results of discrimination.

(q) Remedial action. (1) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall be required to take remedial action to correct the results of discrimination.
§ 84.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 84.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 84.7(a). A recipient shall make initial notification required by this paragraph within 30 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices in print publications, newspapers and magazines, placement of notices in recipients’ publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in these materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate notices in existing materials or publications or by revising and reissuing the materials and publications.

§ 84.9 Administrative requirements for small recipients.

The Director may require any recipient with fewer than fifteen employees, or any recipient that employs fifteen or more persons with §§ 84.7 and 84.8, in whole or in part, when the Director finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 84.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obstructed by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

§ 84.11 Discrimination prohibited.

(a) General. (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient furnishing needed assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under such Act.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped persons to discrimination prohibited by this subpart. The relationship referred to in this subparagraph include relationships with employers and referral agencies, with contractors providing services or facilities to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 84.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) making facilities used by the recipient readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient’s program, factors to be considered include:

(1) The overall size of the recipient’s program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient’s operations, including the composition and structure of the recipient’s workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 84.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test scores or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons as are not shown by the Director to be available.

(b) A recipient shall select and administer tests or other criteria concerning employment so as to best ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accu-
rately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensor, manual, or speaking skills (except where these skills are the factors that the test purports to measure).

§ 84.14 Preemployment inquiries.
(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.
(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §84.6(b)(2), a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §84.6(b), or a recipient is taking remedial action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped.

Provided, that:
(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action, obligations or its voluntary or affirmative action efforts; and
(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.
(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, Provided, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such examination are obtained in a manner consistent with the requirements of this part.
(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be treated as confidential and maintained in separate forms that shall be accorded confidentiality to medical records, except that:
(1) Supervisors and managers may be informed, regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;
(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

§ 84.15—84.20 [Reserved]

Subpart C—Program Accessibility
§ 84.21 Discrimination prohibited.
No qualified handicapped person shall, because of a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, or be subjected to discrimination in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 84.22 Existing facilities.
(a) Program accessibility. A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is accessible to and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.
(b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, assignment of services to accessible buildings; assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative times or locations; existing facilities and construction of new facilities in conformance with the requirements of §84.25, or any other methods that result in making its program or activity accessible to handicapped persons.

§ 84.23 New construction.
(a) Design and construction. Each facility or part of a facility constructed or altered in whole or in part shall be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by handicapped persons.
(b) Alteration. Each facility or part of a facility which is altered or, for the use of a recipient, is required to be altered in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.
(c) American National Standards Institute accessibility standards. Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to and usable by Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971)), is incorporated by reference in this part, shall be considered to comply with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods are authorized when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

1 Copies obtainable from American National Standards Institute, Inc., 1450 Broadway, New York, N.Y. 10018.
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§§ 84.32-84.39. (Reserved).

Subpart D—Preschool, Elementary, and Secondary Education

§ 84.31 Application of this subpart.

Subpart D applies to preschool, elementary, and secondary education programs and activities that receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 84.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall:
(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 84.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet the unique educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 84.35 and 84.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standards established in paragraph (b)(1) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program—other than the one that it operates—so long as it is carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education. (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian.

(2) It may consist either of the provision of services directly by the recipient or the placement of a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart.

(3) Nothing in this section shall be construed to create a third-party obligation to provide or pay for services provided to a handicapped person.

(4) Transportation. If a recipient places a handicapped person in or refers such person to a program not operated by the recipient, the recipient is responsible for providing transportation to and from the program. The program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(5) Residential placement. If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person, because of his or her handicap or because of the need for medical care and room and board, the recipient shall provide at no cost to the person or his or her parents or guardian.

(d) Placement of handicapped persons by parents. (1) Placement of handicapped persons by parents. A handicapped person is placed in a program if, in accordance with the requirements of this section and § 84.34, a free appropriate public education to a handicapped person and the person's parents or guardian cannot be placed in a private school, the recipient is not required to place the handicapped person in a program in accordance with the requirements of this section.

(2) Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 84.36.

(e) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education program, as the effective date of this part, of which that person is handicapped. A recipient may not be placed in a program, or referred to a program, unless it is carrying out the requirements of this section.

§ 84.34 Educational settings.

(a) Academic setting. A recipient to whom this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction who is not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the handicapped person with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment operated by the recipient or referred to a program not operated by the recipient shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing, or in requiring for the provision of, nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities described in § 84.37 of this part, a recipient shall ensure that handicapped persons participate in such activities to the maximum extent appropriate to the needs of the handicapped person.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a), (b), or (c), of this section, operates a facility that is not comparable to the facilities, services, and activitiesêtes in this section, it shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 84.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section, or the program will be in a residential program if the recipient elects to operate in a residential program, of each person who is handicapped or is believed to need special educational services before placing any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to whom this subpart applies shall establish standards and procedures for the evaluation and placement of persons who are handicapped or are believed to need special education or related services. These procedures shall include:

(1) Tests and other evaluation materials have been selected for the specific purpose for which they are used and are administered by trained personnel in accordance with instructions provided by their producers;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected, and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level and that no other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
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sources is documented and carefully considered. (d) Ensure that the placement decision is made in conjunction with § 84.34.
(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation to determine whether a handicapped student needs special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.
§ 84.36 Procedural safeguards.
A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to student requested activities, procedures for the identification, evaluation; and educational placement of persons who, because of handicap, need or are believed to need special instruction. A recipient shall establish a system of procedural safeguards that includes notice; an opportunity for the parents or guardians of the person to examine relevant records; an impartial hearing with opportunity for participation by the person’s parents or guardian and representation by a knowledgeable and competent person as the recipient may allow; and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.
§ 84.37 Nonacademic services.
(a) General. (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such activities. (2) Nonacademic and extracurricular services and activities may include counseling services; physical recreational and athletic activities; and programs and activities sponsored by or sponsored interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.
(b) Admissions. In administering its admission policies, a recipient to which this subpart applies shall:
(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted; and
(2) May not make use of any test or criterion for admission that has a disproportionate adverse impact on handicapped persons unless the test or criterion, as used by the recipient, has been validated as a predictor of success in the education programs or activities in question and which alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available.
(3) Shall assure itself that (i) admissions tests are selected and administered so as to ensure that, when a test is administered to an applicant who has a handicap, it measures the attributes that a handicap is a factor in determining the admittance to the education programs or activities, and (ii) admissions tests are administered in facilities that are accessible to handicapped persons.

Subpart E—Postsecondary Education
§ 84.41 Application of this subpart.
Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities that receive or benefit from Federal financial assistance and to recipients that receive or benefit from Federal financial assistance for the operation of such programs or activities.
§ 84.42 Admissions and recruitment.
(a) General. Qualifying handicapped persons may not, on the basis of handicap, be denied admission or be subjected to different treatment or conditions that result in the limitation in participation in its federally assisted program or activity pursuant to § 84.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped; Provided, That, the recipient states clearly on any written questionnaire used for this purpose that the information is being requested on a voluntary basis, that it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.
(b) Procedures. For the purpose of recruiting, a recipient may have an applicant for admission. The recipient may base its judgment on the first year grades, but shall conduct peri-
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licpied validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 34.43 Treatment of students; general.
(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall not discriminate against the handicapped student in the education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped students.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 34.44 Academic adjustments.
(a) Academic requirements. A recipient to which this subpart applies may make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of handicap, against qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of taped lessons, taped notes, textbooks, or books in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations. In its course examinations or other procedures for evaluating students, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills. The following factors are included among the factors that the test purports to measure.

(d) Auxiliary aids. (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that handicapped students be provided the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters, or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom assistants for use by students with manual impairments, and other similar services and actions. Recipients need not provide aides, individually prescribed devices, readers for the blind, or other devices or services of a personal nature.

§ 34.45 Housing.
(a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same level of quality and at the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' accommodation is at least as wide, comparable to that of nonhandicapped students.

(b) Other housing. A recipient that assists any agency, organization, or person in making arrangements for the housing of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 34.46 Financial and employment assistance to students.
(a) Provision of financial assistance.

(1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i) charge a handicap; provide less assistance than is provided to nonhandicapped persons; limit eligibility for assistance; or otherwise discriminate or (ii) obrant any aid or cash assistance otherwise otherwise benefit from federal financial assistance for the operation of such programs or activities.

(b) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 34.47 Nonacademic services.
(a) Physical education and athletics.

(1) In providing physical education courses and athletics and other programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or other intercollegiate or intramural athletics program to handicapped students on an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of this subpart.

§ 34.48 Counseling and placement services.
A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services on a nondiscriminatory basis.

§ 34.49 Health, Welfare, and Social Services.

§ 34.50 Application of this subpart.

§ 34.51 Application of this subpart.
Subpart F applies to health, welfare, and other social service programs and activities that receive benefits under federal financial assistance and to recipients of such assistance who receive benefits under federal financial assistance for the operation of such programs or activities.
or progressive conditions that are most commonly called "mental retardation. The Department intends, however, to give particular attention in its enforcement of section 504 to discrimination against handicapped persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973.

The definition of handicapped person also includes specific limitations on what persons are classified as handicapped under the regulation. The Department's definition specifies that only physical and mental handicaps are included. Thus, environmental or economic disadvantage are not in themselves covered, nor are persons records, age, or homophobia. Of course, if a person has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.

In paragraph (1) (A) (1), "physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in section 602 of the Education of the Handicapped Act, as amended. Paragraph (1) (A) (2) defines "mental retardation" to include "the imposibility of mental retardation to describe such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia."

Paragraph (1) (B) (1) has been shortened, but it remains an important change. Under the definition of clause (C), which made explicit the inclusion of any condition which is mental or physical but whose precise nature is subject to change, paragraphs (A) and (B) clearly comprehend such conditions.

The second part of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment that substantially limits any major life activity, and a definition of "record" in paragraph (1) (B) (3), persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition, are protected from discrimination. Under paragraph (1) (B) (4), examples of the first group are persons with histories of mental or emotional illness, persons with a record of a physical or mental impairment but who have been misclassified as mentally retarded.

The third part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. It includes, many persons who are ordinarily considered to be handicapped, but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated as if they were handicapped.

4. Drug addicts and alcoholics. As was the case during the first comment period, the issue of drug addicts and alcoholics within the definition of handicapped person was of major concern to many commenters. The Department's arguments present on this issue and the comments similar during the two comment periods, as was the preference of commenters for a definition similar to that proposed by the Attorney General. The Secretary believes that the Congress, by enacting section 504 of the Rehabilitation Act, intended to include addicts and alcoholics as handicapped persons within the definition of handicapped person. The Secretary understands the concerns that underlie the comments on this question, and recognizes that application and enforcement of section 504 with respect to drug addicts presents sensitive and difficult questions that must be taken into account in interpreting the statute.

The Secretary has carefully examined the issue and has obtained a legal opinion from the Attorney General. This opinion concludes that addicts and alcoholics are "physical or mental impairments" within the meaning of section 7 (d) of the Rehabilitation Act, and that section 504 of the Act provides that drug addicts and alcoholics are thereby handicapped for purposes of section 504 if their impairments substantially limit their ability to engage in major life activities. The Secretary therefore believes that he is without authority to exclude these conditions from the definition. There is a medical and legal consensus that alcoholism and drug addiction are diseases, although there is disagreement as to whether they are primarily mental or physical. In addition, while Congress did not focus specifically on the problems of drug addiction and alcoholism, it was aware of the committee that considered the Rehabilitation Act of 1973. The Department's long-standing practice of treating addicts and alcoholics as handicapped individuals eligible for rehabilitation services under the Vocational Rehabilitation Act, and the substantial medical evidence that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by some commenters. The Secretary believes that the statute and the regulation apply only to discrimination against qualified handicapped persons, and that the impairment must exist in their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that addicts and alcoholics are thereby excluded from coverage under the Act.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis that it judges all other applicants and employees. Thus, they are primarily regarded as handicapped persons including drug addicts and alcoholics—past performance records, aberrant behavior, disruptive, abrasive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession of use or sale of alcohol, and they are provided that such rules are enforced against all employees.

With respect to services, there is evidence that drug addicts and alcoholics are often denied treatment at hospitals for conditions unrelated to their addiction or alcoholism. The Department has been in correspondence with the Office of Treatment and Rehabilitation Act of 1970 (22 U.S.C. 1741) and section 327 of the Comprehensive Health Services Act. Still, the Department has not been able to establish that any selection criterion that tends to screen out handicapped persons is essential to the efficient delivery of services. Consequently, the Department wants to follow the regulation with respect to preschool, elementary, and secondary programs, in terms of age. Several
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11. Self-evaluation. Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether they are meeting the requirements of the Act, whether their programs are effective in serving all eligible children, and whether they are complying with the requirements of the Act. The self-evaluation must be conducted in a manner consistent with the requirements of the Act. Paragraph (c) also requires recipients to report the results of the self-evaluation to the Department of Education.

12. Grievance procedure. Section 64.7 (formerly 34.6) requires recipients with federal financial assistance to establish a procedure for the resolution of complaints. The procedure must be available to any individual who believes that there has been a violation of the Act.

The addition to paragraph (b) (2) of the phrase "in the most integrated setting appropriate to the person's needs" is intended to enhance the general concept. A new paragraph (b) (3) has also been added to § 64.4, requiring recipients to give qualified handicapped persons the opportunity of participating in regular programs despite the existence of an individual's separate education program. This paragraph has been revised in response to comments in the form of questions of persons who would have covered them in the pre-amended regulations, or if not, what the changes in the programs of others have been.

Paragraphs (a), (b), and (c) have also been amended in response to comments in the form of questions of persons who would have covered them in the pre-amended regulations, or if not, what the changes in the programs of others have been.

(continued...)

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14. Inconsistent State laws. Section 84.10 (a) states that compliance with the regulations is not intended to create hardships to employers who are exempt from the regulations or to the qualified handicapped persons or to the employees who are handicapped by reason of a physical or mental handicap.

15. Subpart B—Employment Practices

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's regulations implementing Section 504 of the Rehabilitation Act of 1973. Section 84.93 prescribes requirements for nondiscrimination in the regulated activities of the Department.

10. Discriminatory practices. Section 84.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (a) provides that persons with disabilities, including the blind, are entitled to the benefits and services of the Department.

16. Inconsistent State laws. Section 84.10 (a) states that compliance with the regulations is not intended to create hardships to employers who are exempt from the regulations or to the qualified handicapped persons or to the employees who are handicapped by reason of a physical or mental handicap.
Finally, the revised provision allows an employer to condition offers of employment to handicapped persons on the results of medical examinations, so long as the examination results are used in a nondiscriminatory manner and the results are treated on a confidential basis.

15. *Specific acts of Discrimination, Sections 41.15 (retaliatory harassment), 41.17 (job classification and structure) and 41.18 (fringe benefits) have been deleted.

16. *Sections 41.11 and 41.12 (discrimination in promotion and advancement) have been reorganized.

The deletion of these sections in no way in effect removes the substantive obligations if employers subject to this regulation from those set forth in the July 18 proposed regulation. These deletions bring the regulation closer in line with the Department of Labor's section 504 regulation.

Proposed § 41.16.2, concerning fringe benefits, has been deleted, in deference to benefits established on an actuarial basis. Section 41.11 simply bars discrimination in providing fringe benefits and does not address actuarial differences. The Department believes that currently available data and experience do not demonstrate a case for promulgating a regulation in lieu of an actuarial basis.

**Subpart C—Program Accessibility**

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because their facilities are inaccessible or unusable.

20. Existing Facilities. Section 41.23 mandates nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipient's program or activity, which is being operated by an entity, must be readily accessible to and usable by handicapped persons. Paragraph (a) and (b) makes clear the recipient's obligation to make each of its existing facilities accessible to handicapped persons if its program or activity is operated as a whole. Paragraph (c) places the responsibility on the recipient's program or activity to make existing facilities accessible to handicapped persons if the activity is operated as a whole. Paragraph (c) places the responsibility on the recipient's program or activity to make existing facilities accessible to handicapped persons if the activity is operated as a whole.

Nondiscrimination in regard to existing facilities is necessary to determine qualifications of the applicant. Discrimination of this nature is not caused by the recipient's employment condition, and accommodation that might be required.

It has been concluded that a general prohibition of employment inquiries is appropriate. However, a sentence has been added to paragraph (a) (2) to make clear that an employer may not discriminate on the basis of previous employment experience in a discriminatory manner. This inquiry is not limited to the determination of qualifications.

21. New Facilities. Section 41.23 mandates nondiscrimination in regard to new facilities as was included in the proposed regulation. The section states that a recipient's program or activity must be readily accessible to and usable by handicapped persons.

Under revised § 41.23(b), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider in the area, even if the provider is not itself accessible. Recipients are responsible for determining how to market their facilities to the handicapped.

22. Accessibility of Health, Welfare, and Social Services. Section 41.23 mandates nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipient's program or activity, which is being operated by an entity, must be readily accessible to and usable by handicapped persons. Paragraph (a) and (b) makes clear the recipient's obligation to make each of its existing facilities accessible to handicapped persons if its program or activity is operated as a whole. Paragraph (c) places the responsibility on the recipient's program or activity to make existing facilities accessible to handicapped persons if the activity is operated as a whole. Paragraph (c) places the responsibility on the recipient's program or activity to make existing facilities accessible to handicapped persons if the activity is operated as a whole.

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staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural and post-construction modifications or to make whatever changes have to be permitted in the recipient’s programs or facilities in order to provide accessibility standard. The regulation continues to provide that certain structural changes must be made promptly, but the regulation continues to require that as far as is practical, the facilities be made accessible promptly and as expeditiously as possible.

Further, the Department’s belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural conditions will be met promptly to comply with § 4.42 (a) and (b).

Section 4.42(d) requires that programs be made accessible by meeting structural changes must be made promptly, and as practical and as expeditiously as possible within thirty days. Only where structural changes in fac-

The proposed, § 4.43(c) required compliance with the American National Standards Institute (ANSI) standard on building access-

The regulation now requires that the program accessibility standard would result in the segregation of handicapped persons in the provision of services. The regulation will not be applied to permit such a result. See § 4.45(a) and (b), prohibiting unnecessarily separate treatment; § 4.45(b), requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs and the same standard to secondary education.

We have received some comments from organizations representing persons on the subject of requiring, or over an extended period of time, a barrier-free environment—that is, requiring a barrier-free environment in existing facilities. The Department has considered these comments but has decided to take no further action in this time, concerning these suggestions, believing that such action should only be considered in light of experience in implement-

21. New construction. Section 4.43(a) requires that all new facilities, as well as alterations to existing facilities, be designed and con-

22. Subpart D generally conforms to the standards for the education of handicapped persons in §§ 4.38 and 4.43(a), and 4.43(b) applies only to public programs and $4.43 applies only to private programs; $4.43 applies only to private programs; § 4.43(a) and (b) apply only to public programs and $4.43(a) applies only to public programs; § 4.43(a) and (b) apply only to private programs; § 4.43(a) and (b) apply only to public programs.

Paragraph (b) requires certain alterations to be made promptly, so that the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the alteration must be made wide enough to accommodate to...
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The recipient can show that the needs of the student would, on balance, be served by providing services to the handicapped student.

Although under § 14.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that

The purpose of these paragraphs is to ensure that a child is placed in a regular classroom that the education of other students is significantly impaired, the handicapped child must not be placed in that environment. Therefore, regular placement would not be appropriate to the handicapped child's needs and would not be required by § 14.34.

Among the factors to be considered in placing a child is the need to place the child as close to home as possible. A new section has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under § 14.34 to challenge the placement of their child extends not only to placement in special classes or separate schools but also to placement in a distant school and, in particular, to residential placement. Any equally appropriate educational program may exist close to home. This issue may be raised by the parent or guardian under §§ 14.34 and 14.36.

New paragraph (b) specifies that handicapped persons who are provided with academic services in an integrated setting may be served by the procedures established in § 14.34.

Under this paragraph, a new paragraph (d) has been added to § 14.34. Recipients can also pay for psychological services and those medical services necessary for the education or evaluation of the student.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the recipient must also pay the student's room and board and medical care (including custodial and supervisory care). When residential care is not provided by the student's handicapped hand, but by factors such as the student's home condition, the recipient is not required to pay the costs of room and board.

Two new sentences have been added to paragraph (b) to make clear that a required educational service must not be met solely through its own funds. Recipients may rely on funds from any public or private sources including insurance and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1972," but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to § 14.34. Section 94.34(d) requires recipients to achieve full compliance with the free and appropriate public education requirements of § 14.34 as expeditiously as possible, but in no event later than September 1, 1972. The recipient also agrees that, as of the effective date, of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision has been made consistent with the order of providing services set forth in section 514 of the EHA, which places the order of priority of providing services to handicapped children who are not receiving an education.

At the regular educational setting. Section 94.34 prescribes standards for educational handicapped persons with nonhandicapped persons to the maximum extent appropriate to the handicapped person in question. A handicapped student may be removed from the regular educational setting only where

EDUCATION MATERIALS. This problem has been extensively documented in "Issues in the Classification of Exceptional Children," a publication that provides information on the classification of students with impairments that affect the placement process that result from misuse of, or undue influence reliance on, standard plans of classification.

Paragraph (b) has been shortened but not substantially changed. The requirement in former paragraph (b) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under title VI and is more appropriately covered under that statute. Subparagraphs (1) and (2) are, in general, intended to prevent misidentification and similar misuses of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires recipients to test a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former paragraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process and to avoid using any evaluation process that has been classified as invalid by the United States. Paragraph (d) requires that evaluation be performed as soon as possible. A new section has been added to paragraph (a) requiring the recipient to place a child in the most integrated setting appropriate to his or her age and aptitude.

The proposed regulations would have required a complete individual evaluation of the student's educational needs. The Department has determined that this requirement would place an undue burden on recipients and would not be required by § 14.34.

A recipient may be required to establish a system of due process procedures to be afforded to parents or guardians before the recipient makes a commitment to provide services. These regulations are intended to clarify the due process requirements of the EHA, incorporating by reference the proposed section 504 regulations. The due process requirements are not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to independent evaluation, a right to representation by counsel, and a review procedure. The EHA regulations require the recipient to provide for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to independent evaluation, a right to representation by counsel, and a review procedure. The EHA regulations require the recipient to provide for some recipients not subject to that Act, the section now specifies minimum necessary procedures: notice, a right to independent evaluation, a right to representation by counsel, and a review procedure.
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provisions of § 84.34, be provided in the most integrated setting appropriate to their individual needs. Paragraph (c) (2) does not permit separation or differentiation with respect to the provision of physical education and athletic activities. Enrollment of handicapped students is also allowed on a non-discriminatory, self-contained basis. The inclusion of handicapped students is a non-discriminatory, self-contained program. Therefore, it has been amended to place the burden on the Director of the Office of Civil Rights at the Department of Education, who is required to identify alternate tests.

Second, a new paragraph (d) concerning validity studies, has been added. Under the new paragraph, any program in an education program, not just first-year grades, was the criterion against which admissions decisions are made. This paragraph has been changed to reflect the comment of professional testing services that use of first-year grades would be disruptive of progress and do not reflect the validity of studies overall success in the education program would be sufficient to show the reduction in first-year grades.

Section 84.22 (b) (3) also requires a recipient to ensure that testing is conducted in a manner that is uniform and consistent with the selection and administration of any admissions test that is used.

Section 84.22 (b) (3) (i) (ii) has been amended to require that admissions tests be administered in a manner that is uniform and consistent with the selection and administration of any admissions test that is used.

Revised § 84.22 (b) (4) generally prohibits the use of any test to determine whether an applicant has a handicap. The provisions that led to this revision are similar to those underlying the comparable revision of § 84.16. The new requirement does, however, allow inquiries to be made after admission but not before enrollment, as to handicap, and requires the same adjustments in the manner in which the program is normally offered.

Subpart 2—Postsecondary Education

Subpart 2 prescribes requirements for non-discrimination in recruitment, admission, and treatment of students in postsecondary education programs and activities, including vocational education.

Paragraph (b) generally prohibits the use of any test to determine whether an applicant has a handicap. This provision does not address recruiting, selection, or placement criteria.

Section 84.22 (b) provides that postsecondary educational institutions may not use any test for selection, or for another purpose, if the test results are used to determine whether an applicant has a handicap.

Proposed § 84.22 (c), which would have allowed different admissions criteria in certain cases for handicapped persons, was deleted.

Section 84.34 contains general provisions prohibiting the use of any test to determine whether an applicant has a handicap.

Under § 84.44, paragraph (c), a recipient must ensure that an handicapped student is subject to, and able to benefit from, the general education programs and activities that are not operated by the recipient. The recipient must take steps to ensure that the education program or activity is a whole, in nondiscrimination. For example, a college that provides a program for students with disabilities does not operate in conformance with this rule.

The Department emphasizes that recipients should offer appropriate accommodations to existing students in using existing resources for auxiliary aids such as state vocational re-
habilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aid will be provided by these agencies, not by colleges or universities. In those circumstances where the recipient institution itself is providing the training, the institution has flexibility in choosing the methods by which the aid will be supplied. In some cases, it may be feasible to utilize students to work with the institution's handicapped students. Other institutions have used existing private agencies that tape students. A major problem is that of size in order to reduce the number of readers needed for visually impaired students.

Section 48.4(a) requires postsecondary institutions to provide housing to handicapped students at the same cost as they provide to other students and in a compatible manner. Students, particularly blind persons, pointed out that some handicapped persons were not able to walk to the end of the transition period. In such cases, the Department concurs with this position and will interpret this section accordingly.

Section 48.4(a) and "universities reacted negatively to paragraph (b) of this section. It provides that, if a recipient assistance in off-campus housing available to students, it should develop and implement procedures to assure itself that off-campus housing is available to recipients and that the institution is contributing to the accommodation. In addition, the regulation imposes an obligation on the basis of cost of living for the accommodation. Subpart C of the section, which regulates the accommodation for students, is similar with §48.4(b). It should be emphasized that not every off-campus housing accommodation need be made accessible to handicapped persons.

Section 48.4(c) of the proposed regulation provides that recipients must provide financial assistance to institutions of higher education to the extent that such agencies receive financial assistance under Title I of the Rehabilitation Act of 1973, to the extent that they are covered by Subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from receiving only handicapped persons. Indeed, §48.4(c) permits recipients to provide needed services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons.

Section 48.4(d) of the proposed regulation has been omitted as duplicative of revised §48.3(b) and (c) in Subpart C. As discussed above, these sections permit health care providers to arrange to meet patients in accessible facilities and to make referrals in carefully considered circumstances.
tion as unnecessary. They are clearly comprehended by the more general sections banning discrimination.

Section 84.42(c) is a new section requiring recipient hospitals to establish procedures for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it would be appropriate for a hospital to furl its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of ensuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Section 84.52(4), also a new provision, requires recipient hospitals with more than ten employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Director may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or services. Thus, although a small nonprofit neighborhood clinic might not be obliged to have available an interpreter for deaf persons, the Director may require provision of such aids as may be reasonably available to ensure that qualified handicapped persons are not denied appropriate benefits or services because of their handicap.

37. Treatment of Drug Addicts and Alcoholics. Section 84.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. This section is included pursuant to section 407, Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 425) as amended, and section 321, Public Law 91-616, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4821) as amended, and section 321, Public Law 99-282. Section 504 itself also prohibits such discriminatory treatment and, in addition, prohibits similar discriminatory treatment by other types of health providers. Section 84.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that section 407 pertains only to hospitals, because of the broader application of section 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. Education of Institutionalized Persons. The regulation retains § 84.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

APPENDIX C—PROCEDURES

In § 84.61, the Secretary has adopted the Title VI complaints and enforcement procedures for use in implementing section 504 until such time as they are superseded by the issuance of a consolidated procedural regulation applicable to all of the civil rights statutes and executive orders administered by the Department.

APPENDIX D—ENFORCEMENT PROCEDURES

Sections 80.6-80.10 and Part 81 of Title 45 of the Code of Federal Regulations are reprinted here without changes for the convenience of the reader.

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§ 303.6 Compliance information.

(a) Cooperation and assistance. The responsible Department official shall use all available resources in the pursuit of compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall prepare and submit to the responsible Department official or his designee a complete and accurate compliance report at such times, and in such form and containing such information as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient, as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) Access to sources of information. Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, as the responsible Department official or his designee may determine to be necessary to determine whether the recipient is complying with this part.

§ 303.7 Conduct of investigations.

(a) Periodic compliance reviews. The responsible Department official or his designee shall from time to time review the progress of recipients in determining whether they are complying with this part.

(b) Complaints. Any person who believes himself or any specific class of individuals to be subjected to discrimination on the basis of race, color, or national origin shall have the right to file a complaint with the responsible Department official or his designee. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) Investigations. The responsible Department official or his designee shall make a prompt investigation whenever a complaint is filed, and thereafter proceed as provided in this part.

(d) Resolution of matters. (1) If an investigation pursuant to paragraph (c) of this section fails to result in a finding that the recipient is not complying with this part, the responsible Department official or his designee may advise the recipient and the matter is resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 308.1.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible Department official or his designee will issue a final written report to the recipient and the complainant, if any, in writing:

(a) Injunctive or retaliatory acts: prohibited. Any person who, as a result of any investigation, hearing, or a finding that a recipient or any other person shall violate this part, shall be liable for any injury, death, or other loss to any person or property caused by such violation, or any person who, as a result of any investigation, hearing, or a finding that a recipient or any other person shall violate this part, shall be liable for any injury, death, or other loss to any person or property caused by such violation.

(b) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken unless (1) the responsible De-

§ 303.8 Procedure for effecting compliance.

(a) General. If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a referral to the Department of Justice with a recommendation that appropriate procedures be brought to enjoin any activities of the United States under any law of the United States, including titles of the Federal Assistance Act, to the extent the same would be pending under or applicable to the activities of the United States, under any law of the United States, including titles of the Federal Assistance Act, to the extent the same would be pending under or applicable to the activities of the United States.
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Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by hearing examiner, the applicant or respondent, or the counsel for the Department may, within the period provided for remanding such initial decision or of procedure issued by the responsible Department official, file with the reviewing authority exceptions to the initial decision, with his reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof, including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (c) of this section.

(b) Decisions on record or review by the reviewing authority. Where a record is certified to the reviewing authority for decision or is reviewed the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or respondent shall be given reasonable opportunity to file with the reviewing authority or other written statements of its contentions, and a copy of the final decision of the reviewing authority in writing to the applicant or respondent and to the complainant, if any.

(c) Findings required. Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part or which it is found that the applicant or respondent has failed to comply.

Review in certain cases by the Secretary. If the Secretary has not personally made the final decision referred to in paragraphs (a), (b), or (c) of this section, the Secretary may request counsel for the Department may request the Secretary to review a decision of the reviewing authority in accordance with rules of procedure issued by the responsible Department official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. He may also review such a decision upon his own motion in accordance with rules of procedure issued by the responsible Department official. In the absence of a review under such section the final decision referred to in paragraphs (a), (b), or (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under section 602 of the Act. Notice of application to file an exception with the Reviewing Authority as to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.
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PART 81—PRACTICE AND PROCEDURE FOR HEARINGS UNDER PART 80 OF THIS TITLE

Subpart A—General Information

Sec. 81.0 Scope of rules.
81.1 Application of rules.
81.2 Use of gender and number.
81.3 Suspension of rules.

Subpart B—Appearance and Practice

81.4 Administrator.
81.5 Complainant and respondent.

Subpart C—Filing of Documents

81.6 Service of documents.
81.7 Notice of hearing.
81.8 Notice to parties.
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Subpart D—Responsibility of the Presiding Officer

81.10 Powers of the presiding officer.
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Subpart O—Practice under Part 85 of this Title.

Subpart P—Practice under Part 85 of this Title.

Subpart Q—Practice under Part 85 of this Title.

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Subpart T—Practice under Part 85 of this Title.

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Subpart W—Practice under Part 85 of this Title.

Subpart X—Practice under Part 85 of this Title.

Subpart Y—Practice under Part 85 of this Title.

Subpart Z—Practice under Part 85 of this Title.

Subpart AA—Practice under Part 85 of this Title.

Subpart BB—Practice under Part 85 of this Title.

Subpart CC—Practice under Part 85 of this Title.

Subpart DD—Practice under Part 85 of this Title.

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Subpart GG—Practice under Part 85 of this Title.

Subpart HH—Practice under Part 85 of this Title.

Subpart II—Practice under Part 85 of this Title.

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Subpart QQ—Practice under Part 85 of this Title.

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Subpart SS—Practice under Part 85 of this Title.

Subpart TT—Practice under Part 85 of this Title.

Subpart UU—Practice under Part 85 of this Title.

SubpartVV—Practice under Part 85 of this Title.

Subpart WW—Practice under Part 85 of this Title.

Subpart XX—Practice under Part 85 of this Title.

Subpart YY—Practice under Part 85 of this Title.

Subpart ZZ—Practice under Part 85 of this Title.

Subpart AAA—Practice under Part 85 of this Title.

Subpart BBB—Practice under Part 85 of this Title.

Subpart CCCC—Practice under Part 85 of this Title.

Subpart DDDD—Practice under Part 85 of this Title.

Subpart EEGG—Practice under Part 85 of this Title.

Subpart FFFF—Practice under Part 85 of this Title.

Subpart GGGG—Practice under Part 85 of this Title.

Subpart HHHH—Practice under Part 85 of this Title.

Subpart II—Practice under Part 85 of this Title.

Subpart JJ—Practice under Part 85 of this Title.

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Subpart YY—Practice under Part 85 of this Title.

Subpart ZZ—Practice under Part 85 of this Title.

Subpart AAAA—Practice under Part 85 of this Title.

Subpart BBBB—Practice under Part 85 of this Title.

Subpart CCCC—Practice under Part 85 of this Title.

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Subpart NN—Practice under Part 85 of this Title.

Subpart OO—Practice under Part 85 of this Title.

Subpart PP—Practice under Part 85 of this Title.

Subpart QQ—Practice under Part 85 of this Title.

Subpart RR—Practice under Part 85 of this Title.

Subpart SS—Practice under Part 85 of this Title.

Subpart TT—Practice under Part 85 of this Title.

Subpart UU—Practice under Part 85 of this Title.

Subpart VV—Practice under Part 85 of this Title.

Subpart WW—Practice under Part 85 of this Title.

Subpart XX—Practice under Part 85 of this Title.
RULES AND REGULATIONS

§ 81.33 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of intemperate language by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 81.21 Parties—General Counsel deemed a party.

(a) The term party shall include an applicant or recipient or other person to whom a notice of hearing or opportunity for hearing has been mailed naming him as respondent.

(b) The General Counsel of the Department of Health, Education, and Welfare shall be deemed a party to all proceedings.

§ 81.22 Amici curiae.

(a) Any interested person or group of persons may appear as amici curiae in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he is satisfied that the petitioner has a legitimate interest in the proceedings.

(b) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party.

§ 81.31 Form of Executions, Service, and Filing of Documents,

Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8 1/2 inches wide and 12 inches long.

§ 81.32 Signature of documents.

The signature of a party, authorized officer, employee or attorney constitutes a certificate that he has read the document, that he is in his knowledge, information, and belief there is good ground to support it, and that it is not intended for delay or to defeat the purpose of this section, it may be stamped as true and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

§ 81.33 Filing and service.

All notices by a Department official, and all written motions, requests, petitions, counterpetitions, exceptions, briefs, decisions, and correspondence to a Department official from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall file the original and two copies of documents submitted for filing. Filing shall be made with the Civil Rights hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours.

§ 81.34 Service—how made.

Service shall be made by personal delivery, or by mailing a copy of each copy to each party by first-class mail, properly addressed with postage prepaid. When a party or his attorney has appeared by attorney or other representative, service shall be upon such attorney or representative, or if he has not appeared, upon the party or its amicus. Documents served by mail preferably should be mailed in sufficient time to assure receipt by the date on which the original is due to be filed, and should be air mailed if the addresses are more than 300 miles distant.

§ 81.35 Date of service.

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of the initial notice, or of its attempted delivery if refused.

§ 81.42 Certificate of service.

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

Subpart E—Time

§ 81.41 Computation.

In computing any period of time under the rules in this part or in an order issued pursuant thereto, the time begins with the day following the last, event, or default, and includes the last day, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next business day. In determining the period of time prescribed or allowed, less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

§ 81.42 Extension of time or postponement.

Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of his decision such requests should be addressed to him. Answers to such requests are permitted if made promptly.

§ 81.43 Reduction of time to file documents.

For good cause, the reviewing authority or the presiding officer, with respect to matters pending before them, may reduce any time limit prescribed by the rules in this part, except as provided by law or in Part 60 of this title.

Subpart F—Proceedings Prior to Hearing

§ 81.51 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to § 80.6 of this title.

§ 81.52 Answer to notice.

The respondent, applicant or recipient may file an answer to the notice within 30 days after service thereof. Answers shall set forth in detail each allegation of the notice, unless the respondent, applicant or recipient has knowledge, in which case his answer should so state, and the statement will be deemed a denial. Allegations of facts in the notice not denied or controverted by answer shall be deemed admitted.
RULES AND REGULATIONS.

§ 8158. Disposition of motions and petitions.

The reviewing authority or the presiding officer may sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may still deny such motion or petition without awaiting response: Provided, however, That prehearing conferences, hearings, decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held on written motions or petitions unless the presiding officer in his discretion expressly orders.

§ 8159. Responsibilities and Duties of Presiding Officer

§ 8161. Who presides.

A hearing examiner assigned under 5 U.S.C. 3103 or 3104 (formerly sec. 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules of procedure apply.

§ 8162. Designation of hearing examiner.

The designation of the hearing examiner as presiding officer shall be in writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record including his recommended findings and proposed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of each order shall be served on all parties. After service of an order designating a hearing examiner to preside, and until such time as his designation, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

§ 8163. Authority of presiding officer.

The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including: (b) the power to: (a) fix the time and place of hearings; (c) determine the order of presentation; (d) administer oaths and affirmations; (e) rule on motions and other procedural items on matters pending before him; and (f) regulate the course of the hearing and conduct of counsel therein.

§ 8167. Responses to motions and petitions.

Within 5 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

(b) Receive, rule on, exclude or limit evidence.

(1) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(2) Issue initial or recommended decisions.

(3) Take any action authorized by the rules in this part or in conformity with the provisions of 5 U.S.C. 551-559 (the Administrative Procedure Act).

Subpart H—Hearing Procedures

§ 8171. Statement of position and trial briefs.

The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing. The presiding officer may also require the parties to submit trial briefs.

§ 8172. Evidentiary purposes.

(a) The hearing is directed to receiving and evaluating evidence and expert opinions and testimony related to the issues in the proceeding. Argument will not be received in the hearing. Whether or not the evidence or expert opinions and testimony shall be heard by the reviewing authority is determined by the presiding officer. Briefs and statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of Part II of this title. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing that from his failure to answer or his failure to file or to reply to the citation or petition, the reviewing authority or the presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 8110. Thereafter the proceedings shall go to conclusion in accordance with Subpart G of this part. The presiding officer may allow an appeal from such order in accordance with § 8168.

§ 8173. Testimony.

(a) Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer in his discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing or filed as part of the record thereof. Parties authorized by the presiding officer, witnesses shall not be permitted to read prepared testimony into the record. Except as provided in 11 U.S.C. 581 and 516, witnesses shall be available at the hearing for cross-examination.
§ 81.74 Exhibits.
Proposed exhibits shall be exchanged at a prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to the hearing shall be deemed admitted; union written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

§ 81.75 Affidavits.
An affidavit is not inadmissible as such. Unless the presiding officer denies other time prior to the hearing that the party that files and serves written objections to any affidavit on the ground that he believes it to be incompetent, hears a motion to the effect that the affidavit be stricken from the record. The objections are stricken from the record. No oral argument will be heard, unless the reviewing authority directs otherwise. At any time prior to submission of the proceeding to it for decision, the reviewing authority may direct the presiding officer to certify any question of the entire record to it for decision. Where the entire record is so certified, the presiding officer shall consider a decision.

§ 81.76 Depositions.
Upon such terms as may be just, for the convenience of the parties or of the Department, the presiding officer may require or direct the taking of depositions, sworn or otherwise.

§ 81.77 Admissions as facts and documents.
Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the presiding officer may order, any party may serve upon another party a written notice that a particular matter, fact or document is to be admitted by the party to whom the request is directed serves upon the requesting party a sworn statement identifying the matter, fact or document of which an admission is requested or that no admission has been made, unless within 5 days after service thereof, or within such further time as the presiding officer may order, any party may serve upon another party a written notice that a particular matter, fact or document is to be admitted by the party to whom the request is directed serves upon the requesting party a sworn statement identifying the matter, fact or document of which an admission is requested or that no admission has been made. A copy of any document, including any transcript, to which an objection has been directed shall be served with the request for admission and any objections thereto shall be served with the request. Any admissions made by a party to a request shall be noted in the transcript and a copy of such admissions shall be marked for identification and shall accompany the record as the offer of proof.

§ 81.78 Evidence.
Irrelevant, immaterial, unreliable, and unduly repetitious evidence shall be excluded.

§ 81.79 Cross-examination.
A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination.

§ 81.80 Unsworn written material.
Letters expressing views or urging action and other unsworn written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 81.82 Exceptions to rulings of presiding officer.

§ 81.83 Official notices.
Where official notices are taken or to be taken at a hearing or in connection with the taking of evidence, any party, on timely request, shall be afforded an opportunity to show the contrary.

§ 81.84 Public documents.

§ 81.85 Offer of proof.
An offer of proof made in connection with an objection taken to any ruling of the presiding officer, relating to admission or exclusion of evidence, a partial testimony shall consist of a statement of the substance of the evidence which counsel contends would be admissible by such testimony; and, if the excluded evidence consists of evidence in documentary, or written form, or of reference to a document or record, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 81.86 Appeals from ruling of presiding officer.
Rulings of the presiding officer may not be appealed to the reviewing authority prior to his consideration of the entire proceeding except with the consent of the presiding officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the reviewing authority within such period as the reviewing authority directs. No oral argument will be heard, unless the reviewing authority directs otherwise. At any time prior to submission of the proceeding to it for decision, the reviewing authority may direct the presiding officer to certify any question of the entire record to it for decision. Where the entire record is so certified, the presiding officer shall consider a decision.
§ 81.103 Exceptions to initial or recommended decisions.

Within 20 days after the mailing of an initial decision, any party may file exceptions to the decision stating reasons therefor, with the reviewing authority. Any other party may file a response thereto within 30 days after the mailing of the decision. Upon the filing of such exceptions, the reviewing authority shall review the decision and issue its own decision thereon.

§ 81.104 Final decisions.

(a) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the prescribed period specified in § 81.103, such decision shall become the final decision of the Department and shall constitute a “final agency action” within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 81.106. (b) Where the hearing is conducted by an administrative law judge, the decision of the administrative law judge shall become the final decision of the Department and shall constitute a “final agency action” within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 81.106.

(c) All final decisions shall be served upon all parties, and amicus, if any.

§ 81.105 Oral argument to the reviewing authority.

(a) If any party desires to argue orally on exceptions or replies to exceptions to an initial or recommended decision, he shall make such request in writing. The reviewing authority may grant or deny such requests in its discretion. If granted, it will serve notice of oral argument on all parties. The request will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue shall be filed with the Department hearing clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the briefs or reading the entire record is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties facing the same side will permit the parties interests to be presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written materials may be presented as an oral argument only if such materials are limited to facts already in the record and are served on all parties and filed with the Secretary at least 7 days before the argument.

§ 81.106 Review by the Secretary.

Within 20 days after an initial decision becomes the final decision of the Department, the Secretary may grant or deny such request, in whole or in part, or serve notice of his intent to review the decision in whole or in part upon his own motion. If the Secretary grants the requested review, or if he serves notice of intent to review upon his own motion, each party to the decision shall be served by the Secretary with a notice of a hearing on the reviewing authority's request for review. Such a hearing shall not be conducted in accordance with the procedures set forth in this part under § 81.107. The Secretary shall not be bound by the record of the hearing, but he shall consider such matters as may appear to him to be necessary for a full and fair review of the decision.

§ 81.107 Service on amicus curiae.

All briefs, exceptions, memoranda, requests, and documents referred to in this paragraph shall be served upon amici curiae at the same time and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 81.71 shall be served on amici curiae.

Subpart K—Judicial Standards of Practice

§ 81.111 Conduct.

Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unbecoming wrangling, or improper communications between the parties. A representative of any party whether or not a lawyer shall observe the same standard of conduct as lawyers of the court and use his best efforts to restrain his client from conduct inconsistent with connection with a proceeding.

§ 81.112 Improper conduct.

With respect to any proceeding it is improper for any interested person to attempt to sway the judgment of the reviewing authority by undertaking to bring pressure or influence to bear upon any other having a responsibility for a decision in the proceeding. It is improper that such influence is used by any member of the Department's staff or the president of the Department's staff to give statements to communication media, by paid advertisement or otherwise, designed to influence the judgment of any other having a responsibility for a decision in the proceeding, or the decision of the Department's staff.

§ 81.113 Ex parte communications.

Only persons employed by or assigned to work with the reviewing authority who perform no investigatory or supervisory duty or function in connection with a proceeding shall communicate ex parte with the reviewing authority or the presiding officer, or any employee or person involved in the decisional process in which such proceeding is involved with any persons employed by or assigned to work with them and who perform no investigatory or supervisory duty or function in connection with the proceeding.

§ 81.114 Expedited treatment.

Requests for expedited treatment of matters pending before the Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

§ 81.115 History not prohibited.

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication, such requests should be directed to the Civil Rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications under § 81.112. Where feasible, however, such communications should be by letter with copies to all parties. Protests and complaints between a respondent and the Department official or the Secretary with respect to actions taken by such respondent's voluntary compliance with any requirement of Part 20 of this title are not prohibited.

§ 81.116 Filing of ex parte communications.

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer shall be marked public by placing it in the correspondence file of the docket in the case and will not be considered as a part of the record for decision. If the prohibited communication is received orally, it is memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum setting forth communications for inclusion in the docket if he considers the memorandum to be incorrect.
Subpart I—Posttermination Proceedings

§ 31.121 Posttermination proceedings.
(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this subtitle may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that since entry of the order, it has brought its application or activity into compliance with the requirements of the Act, and with the Regulation thereunder, and shall set forth specifically and in detail the steps which it has taken to achieve such compliance. If the responsible Department official denies such request the applicant or recipient shall be given an expedited hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to subparagraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

Subpart M—Definitions

§ 31.131 Definition.

The definitions contained in § 31.123 of this subtitle apply to this part, unless the context otherwise requires, and the term "reviewing authority" as used herein includes: the Secretary of Health, Education, and Welfare, with respect to action by that official under § 31.106.

Transition provisions: (a) The amendments herein shall become effective upon publication in the Federal Register.

(b) These rules shall apply to any proceeding or part thereof to which Part 38 of this title as amended effective October 19, 1967 (published in the Federal Register for Oct. 19, 1967), and as the same may be hereafter amended, applies. In the case of any proceeding or part thereof governed by the provisions of Part 38 as thus part existed prior to such amendment, the rules in this Part M shall apply as if these amendments were not in effect.

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