

Subpart F—What Compliance Procedures May the Secretary Use?

§ 345.60 Who is subject to a corrective action plan?

(a) Any State that fails to comply with the requirements of this part is subject to a corrective action plan.

(b) A State may appeal a finding that it is subject to corrective action within 30 days of being notified in writing by the Secretary of the finding.

(Authority: 29 U.S.C. 2215(b)(1); section 105(b)(1) of the Act)

§ 345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?

A State that fails to comply with the requirements of this part may be subject to corrective actions such as—

- (a) Partial or complete termination of funds;
- (b) Ineligibility to participate in the grant program in the following year;
- (c) Reduction in funding for the following year; or
- (d) Required redesignation of the lead agency.

(Authority: 29 U.S.C. 2215(b)(2); section 105(b)(2) of the Act)

§ 345.62 How does a State redesignate the lead agency when it is subject to corrective action?

(a) Once a State becomes subject to a corrective action plan under § 345.60, the Governor of the State, subject to approval by the Secretary, shall appoint, within 30 days after the submission of the plan to the Secretary, a monitoring panel consisting of the following representatives:

- (1) The head of the lead agency designated by the Governor;
- (2) Two representatives from different public or private nonprofit organizations that represent the interests of individuals with disabilities;
- (3) Two consumers who are users of assistive technology devices and assistive technology services and who are not—

(i) Members of the advisory council, if any, of the consumer-responsive comprehensive statewide program of technology-related assistance; or

(ii) Employees of the State lead agency; and

(4) Two service providers with knowledge and expertise in assistive technology devices and assistive technology services.

(b) The monitoring panel must be ethnically diverse. The panel shall select a chairperson from among the members of the panel.

(c) The panel shall receive periodic reports from the State regarding progress in implementing the corrective action plan and shall have the authority to request additional information necessary to determine compliance.

(d) The meetings of the panel to determine compliance shall be open to the public (subject to confidentiality concerns) and held at locations that are accessible to individuals with disabilities.

(e) The panel shall carry out the duties of the panel for the entire period of the corrective action plan, as determined by the Secretary.

(f) A failure by a Governor of a State to comply with the requirements of paragraphs (a) through (e) of this section results in the termination of funding for the State under this part.

(g) Based on its findings, a monitoring panel may determine that a lead agency designated by a Governor has not accomplished the purposes described in § 345.2(a) and that there is good cause for redesignation of the agency and the temporary loss of funds by the State under this part.

(h) For the purposes of this section, “good cause” includes the following:

- (1) Lack of progress with employment of qualified staff;
- (2) Lack of consumer-responsive activities;
- (3) Lack of resource allocation to systems change and advocacy activities;
- (4) Lack of progress with meeting the assurances in § 345.30(b); or
- (5) Inadequate fiscal management.

(i) If a monitoring panel determines that the lead agency should be redesignated, the panel shall recommend to the Secretary that further remedial action be taken or that the Secretary order the Governor to redesignate the lead agency within 90 days or lose funds under this part. The Secretary,

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based on the findings and recommendations of the monitoring panel, and after providing to the public notice and opportunity for comment, shall make a final determination regarding whether to order the Governor to redesignate the lead agency. The Governor shall make any redesignation in accordance with the requirements that apply to designations under § 345.6.

(Authority: 29 U.S.C. 2215(c); section 105(c) of the Act)

§ 345.63 How does a State change the entity responsible for providing protection and advocacy services?

(a) The Governor of a State, based on input from individuals with disabilities and their family members, guardians, advocates, or authorized representatives, may determine that the entity providing protection and advocacy services has not met the protection and advocacy service needs of the individuals with disabilities and their family members, guardians, advocates, or authorized representatives, for securing funding for and access to assistive technology devices and assistive technology services, and that there is good cause to provide the protection and advocacy services for the State through a contract with a second entity.

(b) On making the determination in paragraph (a) of this section, the Governor may not enter into a contract with a second entity to provide the protection and advocacy services unless good cause exists and unless—

(1) The Governor has given the first entity 30 days notice of the intention to enter into the contract, including specification of good cause, and an opportunity to respond to the assertion that good cause has been shown;

(2) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives, have timely notice of the determination and opportunity for public comment; and

(3) The first entity has the opportunity to appeal the determination to the Secretary within 30 days of the determination on the basis that there is not good cause to enter into the contract.

(c)(1) When the Governor of a State determines that there is good cause to

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enter into a contract with a second entity to provide the protection and advocacy services, the Governor shall hold an open competition within the State and issue a request for proposals by entities desiring to provide the services.

(2) The Governor shall not issue a request for proposals by entities desiring to provide protection and advocacy services until the first entity has been given notice and an opportunity to respond. If the first entity appeals the determination to the Secretary, the Governor shall issue such request only if the Secretary decides not to overturn the determination of the Governor. The Governor shall issue such request within 30 days after the end of the period during which the first entity has the opportunity to respond, or after the decision of the Secretary, as appropriate.

(3) The competition shall be open to entities with the same expertise and ability to provide legal services as a system in § 345.30(b)(12). The competition shall ensure public involvement, including a public hearing and adequate opportunity for public comment.

(Authority: 29 U.S.C. 2215(d); section 105(d) of the Act)

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