

Off. of Spec. Educ. and Rehab. Services, Education

§ 364.13

meeting the requirements in subpart C of this part.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 796c(a)(1))

§ 364.11 When must the State plan be submitted for approval?

The designated State unit (DSU) shall submit to the Secretary for approval the three-year State plan no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

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(Authority: 29 U.S.C. 796c(a)(4))

§ 364.12 How does the Secretary approve State plans?

(a) *General.* The Secretary approves a State plan that the Secretary determines meets the requirements of section 704 of the Act and subparts B through D of this part and disapproves a plan that does not meet these requirements.

(b) *Informal resolution.* If the Secretary intends to disapprove the State plan, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice of formal hearing.* If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU and the SILC of the intention to disapprove the State plan and of the opportunity for a hearing.

(d) *Hearing.* (1) If the DSU requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the Department's administration of the programs authorized by title VII of the Act, to conduct a hearing.

(2) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(e) *Judicial review.* A State may appeal the Secretary's decision to disapprove its State plan by filing a peti-

tion for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

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(Authority: 29 U.S.C. 711(c) and 796d-1(a))

§ 364.13 Under what circumstances may funds be withheld, reduced, limited, or terminated?

(a) *When withheld, reduced, limited, or terminated.* Payments to a State under chapter 1 of title VII of the Act may be withheld, reduced, limited, or terminated as provided by section 107(c) of the Act if the Secretary finds that—

(1) The State plan has been so changed that it no longer conforms with the requirements of section 704 of the Act; or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of the plan.

(b) *Informal resolution.* If the Secretary intends to withhold, reduce, limit, or terminate payment of funds to a State under title VII of the Act as provided by section 107(c) of the Act, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice of formal hearing.* If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU and SILC of the intention to withhold, reduce, limit, or terminate payment of funds under title VII of the Act and of the opportunity for a hearing.

(d) *Hearing.* If the DSU requests a hearing, the Secretary designates an administrative law judge (ALJ) in the Office of Administrative Law Judges to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The ALJ issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The DSU may seek the Secretary's review of an ALJ's initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews an ALJ's initial decision in accordance with 34 CFR 81.43.