

Department of Veterans Affairs

§ 18.433

facilities that are accessible to and usable by handicapped persons.

(The information collection requirements contained in paragraph (e) have been approved by the Office of Management and Budget under control number 2900-0414)

[45 FR 63268, Sept. 24, 1980, as amended at 49 FR 32574, Aug. 15, 1984]

§ 18.423 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed so that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part 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 so that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being ac-

complished without removing or altering a load-bearing structural member.

[45 FR 63268, Sept. 24, 1980, as amended at 55 FR 52138, 52141, Dec. 19, 1990]

ELEMENTARY, SECONDARY, AND ADULT EDUCATION

§ 18.431 Application.

Sections 18.431 through 18.439 apply to elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance from the Department of Veterans Affairs and to recipients that operate or receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 18.432 Location and notification.

A recipient that operates a public elementary or secondary educational program shall annually:

(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 their parents or guardians of the recipients's duty under §§ 18.431 through 18.439.

§ 18.433 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) 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 individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met; and

(ii) Are based upon adherence to procedures that satisfy the requirements of §§ 18.434, 18.435, and 18.436.

(2) Implementation of an individualized education program developed in accordance with the Education of the

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Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a qualified handicapped person in or refer that person to a program other than the one that it operates as its means of carrying out the requirements of §§18.431 through 18.439. The recipients remain responsible for ensuring that the requirements of §§18.431 through 18.439 are met with respect to any qualified handicapped person so placed or referred.

(c) *Free education.* (1) The provision of a free education is the provision of educational and related services without cost to the handicapped person, parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers that person to a program not operated by the recipient as its means of carrying out the requirements of §§18.431 through 18.439, 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. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) If a recipient places a handicapped person in or refers that person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person, parents or guardian if the person were placed in the program operated by the recipient.

(3) If placement in a public or private residential program is necessary to provide free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person, parents or guardian.

(4) If a recipient has made available, in conformance with this section and §18.434, a free appropriate public edu-

cation to a handicapped person and the person's parents or guardian chooses to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or regarding the question of financial responsibility are subject to the due process procedures of §18.436.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this part, in full compliance with the requirements of paragraphs (a) through (c) of this section shall meet those requirements at the earliest practicable time, but not later than October 1, 1981.

[45 FR 63268, Sept. 24, 1980, as amended at 51 FR 10385, Mar. 26, 1986; 51 FR 12702, Apr. 15, 1986]

§ 18.434 Education setting.

(a) *Academic setting.* A recipient shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are 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 person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. In deciding whether to place a person in a setting other than the regular educational environment, a recipient shall consider the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of non-academic and extracurricular services and activities, a recipient shall ensure that handicapped persons participate with nonhandicapped persons in those activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient in compliance with paragraph (a) of