

**§ 18.438**

handicapped students an equal opportunity for participation in these services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

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

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

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

**38 CFR Ch. I (7-1-03 Edition)**

**§ 18.438 Adult education programs.**

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

**§ 18.439 Private education programs.**

(a) A recipient that operates a private elementary or secondary education program may not on the basis of handicap, exclude a qualified handicapped person from that program if the person can, with minor adjustments, be provided an appropriate education, as defined in §18.433(b)(1), within the recipient's program.

(b) A recipient may not charge more for providing an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate those programs in accordance with §§18.435 and 18.436. Each recipient to which this section applies is subject to §§18.434, 18.437, and 18.438.

POSTSECONDARY EDUCATION

**§ 18.441 Application.**

Sections 18.441 through 18.447 apply to postsecondary 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.

**§ 18.442 Admissions and recruitment.**

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient.

(b) *Admission.* In administering its admission policies, a recipient;