

SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

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AUTHORITY: 42 U.S.C. 6000 et. seq.

SOURCE: 49 FR 11777, Mar. 27, 1984, unless otherwise noted.

§ 1385.1 General.

Except as specified in §1385.4, the requirements in this part are applicable to the following programs and projects:

- (a) Federal Assistance to State Developmental Disabilities Councils;
- (b) Protection and Advocacy of the Rights of Individuals with Developmental Disabilities;
- (c) Projects of National Significance; and
- (d) University Affiliated Programs (UAPs).

[52 FR 44845, Nov. 20, 1987, as amended at 54 FR 47984, Nov. 20, 1989; 61 FR 51153, Sept. 30, 1996]

§ 1385.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act as amended (42 U.S.C. 6000, et seq.).

§ 1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

ACF means the Administration for Children and Families within the Department of Health and Human Services.

Act means the Developmental Disabilities Assistance and Bill of Rights Act, as amended (42 U.S.C. 6000 et. seq.).

ADD means the Administration on Developmental Disabilities, within the Administration for Children and Families.

Commissioner means the Commissioner of the Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services or his or her designee.

Department means the U.S. Department of Health and Human Services (HHS).

Developmental disability shall have the same meaning in 45 CFR parts 1385, 1386, 1387, and 1388 as it does in the Developmental Disabilities Act, section 102(8), which reads "the term 'developmental disability' means a severe, chronic disability of an individual 5 years of age or older that—

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the individual attains age 22;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity—
 - (i) Self-care;
 - (ii) Receptive and expressive language;
 - (iii) Learning;
 - (iv) Mobility;
 - (v) Self-direction;
 - (vi) Capacity for independent living; and
 - (vii) Economic self-sufficiency.
- (5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated, except that such term, when applied to infants and young children means individual from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided." Such determination shall be made on a case-by-case basis and any State eligibility

definition of developmental disability or policy statement which is more restrictive than that of the Act does not apply as the Act takes precedence.

Fiscal year means the Federal fiscal year unless otherwise specified.

Governor means the chief executive officer of the State or Territory, or his or her designee who has been formally designated to act for the Governor in carrying out the requirements of the Act and these regulations.

OHDS means the Office of Human Developmental Services within the Department of Health and Human Services.

Protection and Advocacy Agency means the organization or agency designated in a State to administer and operate a protection and advocacy (P&A) system for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (A P&A System under part C is authorized to investigate incidents of abuse and neglect regarding persons with developmental disabilities; pursue administrative, legal and appropriate remedies or approaches to ensure protection of, and advocacy for, the rights of such individuals; and provide information on and referral to programs and services addressing the needs of such individuals (section 142(a)(2)(A).); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAIMI Act), as amended, (42 U.S.C. 10801 *et seq.*) the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794(e); and the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). The Protection and Advocacy agency also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy agency may provide advocacy services under other Federal programs.

Secretary means the Secretary of the Department of Health and Human Services.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44845, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989; 61 FR 51153, Sept. 30, 1996]

§ 1385.4 Rights of individuals with developmental disabilities.

(a) Section 110 of the Act, Rights of Individuals with Developmental Disabilities (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy System.

(b) In order to comply with section 122(c)(5)(G) of the Act (42 U.S.C. 6022(c)(5)(G)), regarding the rights of individuals with developmental disabilities, the State must meet the requirements of 45 CFR 1386.30(f)(2).

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of individuals assisted by these programs will be protected consistent with section 110 (see section 153(c)(3) and section 162(c)(3) of the Act).

[61 FR 51154, Sept. 30, 1996]

§ 1385.5 [Reserved]

§ 1385.6 Employment of individuals with disabilities.

Each grantee which receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The grantee must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: Advertising, recruitment, employment, rates of pay or other forms of compensation, selection for training, including apprenticeship, upgrading, demotion or transfer, and layoff or termination. This obligation is in addition to the requirements of 45 CFR part 84, subpart B, prohibiting discrimination in employment practices on the basis of disability in programs receiving assistance from the Department. Recipients of funds under the Act also may be bound by the provisions of the Americans with Disabilities Act (Pub. L. 101-336, 42 U.S.C. 12101 *et seq.*) with respect to employment of individuals with disabilities. Failure to comply with section 109 of the Act may result in loss of Federal funds under the Act. If a compliance action is taken, the State will