

§ 1385.7

be given reasonable notice and an opportunity for a hearing as provided in Subpart D of 45 CFR part 1386.

[61 FR 51154, Sept. 30, 1996]

§ 1385.7 [Reserved]

§ 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the State Developmental Disabilities Councils and the Protection and Advocacy Systems on the following basis:

(a) Two-thirds of the amount appropriated are allotted to each State according to the ratio the population of each State bears to the population of the United States. This ratio is weighted by the relative per capita income for each State. The data used to compute allotments are supplied by the U.S. Department of Commerce, for the three most recent consecutive years for which satisfactory data are available.

(b) One-third of the amount appropriated is allotted to each State on the basis of the relative need for services of persons with developmental disabilities. The relative need is determined by the number of persons receiving benefits under the Childhood Disabilities Beneficiary Program (section 202(d)(1)(B)(ii) of the Social Security Act), (42 U.S.C. 402(d)(1)(B)(ii)).

[49 FR 11777, Mar. 27, 1984, as amended at 61 FR 51154, Sept. 30, 1996]

§ 1385.9 Grants administration requirements.

(a) The following parts of title 45 CFR apply to grants funded under parts 1386 and 1388 of this chapter and to grants for Projects of National Significance under section 162 of the Act (42 U.S.C. 6082).

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR Part 46—Protection of Human Subjects.

45 CFR Part 74—Administration of Grants.

45 CFR Part 75—Informal Grant Appeals Procedures.

45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance Through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

45 CFR Part 81—Practice and Procedure for Hearings Act under part 80 of this title.

45 CFR Ch. XIII (10–1–06 Edition)

45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

45 CFR Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(b) The Departmental Appeals Board also has jurisdiction over appeals by grantees which have received grants under the University Affiliated program or for Projects of National Significance. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Appeals Board also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by the States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula programs—Part B of the Act—Federal Assistance to State Developmental Disabilities Councils and Part C of the Act—Protection and Advocacy of the Rights of Individuals with Developmental Disabilities. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits and examinations to any books, documents, papers, and transcripts of records of State Developmental Disabilities Councils, the University Affiliated Programs, and the Projects of National Significance grantees and subgrantees, as provided for in 45 CFR part 74 and part 92, the Department will keep information about individual clients confidential to the maximum extent permitted by law and regulations.

(e) (1) The Department or other authorized Federal officials may access client and case eligibility records or other records of the Protection and Advocacy system for audit purposes and for purposes of monitoring system compliance pursuant to section 104(b) of the Act. However, such information

will be limited pursuant to section 142(j) of the Act. No personal identifying information such as name, address, and social security number will be obtained. Only eligibility information will be obtained regarding type and level of disability of individuals being served by the P&A and the nature of the issue concerning which the System represented an individual.

(2) Notwithstanding paragraph (e)(1) of this section, if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the system has violated the Act or the regulations, the system will bear the burden of proving its compliance. The system's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989; 61 FR 51154, Sept. 30, 1996]

PART 1386—FORMULA GRANT PROGRAMS

Subpart A—Basic Requirements

- Sec.
 1386.1 General.
 1386.2 Obligation of funds.
 1386.3 Liquidation of obligations.
 1386.4 [Reserved]

Subpart B—State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities.

- 1386.19 Definitions.
 1386.20 Designated State Protection and Advocacy agency.
 1386.21 Requirements and authority of the Protection and Advocacy System.
 1386.22 Access to records, facilities and individuals with developmental disabilities.
 1386.23 Periodic reports: Protection and Advocacy System.
 1386.24 Non-allowable costs for the Protection and Advocacy System.
 1386.25 Allowable litigation costs.

Subpart C—Federal Assistance to State Developmental Disabilities Councils.

- 1386.30 State plan requirements.
 1386.31 State Plan submittal and approval.
 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils.
 1386.33 Protection of employees' interest.
 1386.34 Designated State Agency.
 1386.35 Allowable and non-allowable costs for Federal Assistance to State Developmental Disabilities Councils.
 1386.36 Final disapproval of the State plan or plan amendments.

Subpart D—Practice and Procedure for Hearing Pertaining to States' Conformity and Compliance with Developmental Disabilities State Plans, Reports and Federal Requirements

GENERAL

- 1386.80 Definitions.
 1386.81 Scope of rules.
 1386.82 Records to be public.
 1386.83 Use of gender and number.
 1386.84 Suspension of rules.
 1386.85 Filing and service of papers.

PRELIMINARY MATTERS—NOTICE AND PARTIES

- 1386.90 Notice of hearing or opportunity for hearing.
 1386.91 Time of hearing.
 1386.92 Place.
 1386.93 Issues at hearing.
 1386.94 Request to participate in hearing.

HEARING PROCEDURES

- 1386.100 Who presides.
 1386.101 Authority of presiding officer.
 1386.102 Rights of parties.
 1386.103 Discovery.
 1386.104 Evidentiary purpose.
 1386.105 Evidence.
 1386.106 Exclusion from hearing for misconduct.
 1386.107 Un-sponsored written material.
 1386.108 Official transcript.
 1386.109 Record for decision.

POSTHEARING PROCEDURES, DECISIONS

- 1386.110 Posthearing briefs.
 1386.111 Decisions following hearing.
 1386.112 Effective date of decision by the Assistant Secretary.

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

SOURCE: 49 FR 11779, Mar. 27, 1984, unless otherwise noted.