



NATIONAL ASSOCIATION OF DEVELOPMENTAL DISABILITIES COUNCILS

ALERT

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Information Alert
DD Regulations

It has come to our attention that the Administration from time to time publishes compilations of regulations on federal programs. The enclosed compilation reflects DD Act regulations through **1989**.

We understand that a Notice Proposed Rulemaking (NPRM) will be published this spring to regulate on the **1990** amendments.

Hope you find the enclosed helpful.

Contact: Zierman



SUBCHAPTER H—[RESERVED]

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

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

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AUTHORITY: U UAC. 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) State Systems for Protection and Advocacy of Individual Rights of Persons with Developmental Disabilities;
- (b) State Basic Program for Planning Priority Area Activities for Persons 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]

§ 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:

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 Office of Human Development Services.

Commissioner means the Commissioner of the Administration on Developmental Disabilities, Office of Human Development Services, Department of Health and Human Services or his or her designee.

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

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.

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]

§ 1385.4 Rights of persons with developmental disabilities.

(a) Section 110 of the Act, *Rights of the Developmentally Disabled* (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(b)(6)(C) of the Act (42 U.S.C. 6022(b)(6)(C)), regarding the rights of developmentally disabled persons, the State must meet the requirements of § 1386.30(e)(3) of these regulations.

(c) Applications from university affiliated programs or for projects of na-

tional significance grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with section 110 (see section 153(b)(3) and section 162(b)).

[17 FR 44848, Nov. 20, 1987, as amended at 54 FR 47984, Nov. 20, 1989]

§ 1385.5 Recovery of Federal funds used for construction of facilities.

(a) The State Council or the appropriate university affiliated facility official must notify the Commissioner in advance in writing if a facility described in section 105 of the Act:

(1) Will be sold or transferred to a person, agency, or organization which is not a public or nonprofit private entity; or

(2) Will cease to be a public or other nonprofit facility for persons with developmental disabilities.

(b) The State Council or the appropriate OAP official must submit detailed documentation to the Commission of all transactions as specified in paragraph (a) of this section which occurred prior to this publication.

(c) Recovery of funds will include the charging of interest in accordance with HHS claims collection regulations in 45 CFR part 30 and the Departmental Debt Collection Procedures (45 FR 61799 September 17, 1980) available from the Administration on Developmental Disabilities, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

[52 FR 44846, Nov. 20, 1987, as amended at 54 FR 47984, Nov. 20, 1989]

§ 1385.6 Employment of handicapped individuals.

Each grantee who receives Federal funding under the Act must meet the requirements of W o n 109 of the Act (42 U.S.C. 6008) regarding affirmative action. Failure to comply with section 109 may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in subpart D of part 1386.

[52 FR 44846, Nov. 20, 1987]

§ 1385.7 Waivers.

Applications for a waiver of the provisions of sections 105 of the Act (42 U.S.C. 6004) with respect to alternative use of facilities constructed with funds under the Act may be granted by the Commissioner if the following criteria are met:

(a) The waiver request provides a basis for alternative use or sale of a facility constructed with funds appropriated under the Act.

(b) The clients served in the facility are or will be served in a facility of equal or higher quality.

(c) If the waiver request is for an alternate use, that use must serve some other public purpose.

[49 FR 11777, Mar. 17, 1984, as amended at 52 FR 44846, Nov. 20, 1987]

§ 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the purpose of the basic State program (see subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities) and the protection and advocacy system (see subpart B—State System for Protection and Advocacy of Individual Rights) 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)).

§ 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 special project grants under section 102 of the Act (42 U.S.C. 6082).

45 CFR Part 16—Procedures of the Departmental Grant & _____

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 A d under part 80 of this title.

45 CFR Part 84—Nondiscrimination on _____ Basis of Race in Programs and Activities Receiving or Benefiting

Financial Assistance.

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

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

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

(b) The Departmental Grant Appeals Board also has jurisdiction over appeals by grantees who have received grants under the University Affiliated program or for a Special Project.

The scope of the Board's jurisdiction concerning these appeals is described in 46 CFR part 16.

(c) The Departmental Grant Appeals also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula grant programs—the Basic State Grant program and the State Protection and Advocacy system. Appeals filed by States shall be decided in accordance with 48 CFR part 16.

(d) In making audits, examinations, excerpts and transcripts of records of

grantees and subgrantees, including the protection and advocacy system, provided for in 45 CFR part 74, the Department will keep information about individual clients confidential to the extent permitted by law and regulations.

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

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

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

Subpart A—Basic Requirements

§ 1386.1 General

All rules under this subpart are applicable to both the Protection and Advocacy System and State Basic Support Program.

§ 1386.2 Obligation of funds

(a) Funds which the Federal Government allocates under this Part during a Federal fiscal year are available for obligation by States for a two year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

(b)(1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c)(1) Protection and Advocacy offices may elect to treat entry of an appearance in judicial and administrative

proceedings on behalf of a person with developmental disabilities as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, litigation costs mean expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented a developmentally disabled person (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy system. All funds made available to the State Basic Support Program and to the P&A System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within the same fiscal year in which the funds were originally obligated.

[49 FR 11779, Mar. 27, 1984, as amended at 54 FR 47985, Nov. 30, 1989]

§ 1386.3 Liquidation of obligations

(a) All obligations incurred pursuant to a grant made under the Act for a specific Federal fiscal year, must be liquidated within two years of the close of the Federal fiscal year in which the grant was awarded.

(b) The Commissioner may waive the requirements in paragraph (a) of this section when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute.

(c) Funds attributable to obligations which are not liquidated in accordance with the provisions of this section revert to the Federal Government.

§ 1386.4 Eligibility for services

(a) All persons who meet all of the criteria of the definition of developmental disability set forth in section 102 of the Act (42 U.S.C. 6001) are eligible for available and appropriate services.

(b) In addition, a person who met the definition of developmental dis-

ability is provided in Pub. L. 94-103 and who was actually receiving one or more services under the Act during the period October 1, 1968 through November 30, 1978, is eligible to continue to receive services, provided that person's Individual Habilitation Plan (IHP) indicates a continuing need for services.

(49 FR 11779, Mar. 27, 1984, as amended at 49 FR 18098, Apr. 27, 1984)

Subpart B—State System for Protection and Advocacy of Individual Rights

§ 1386.20 Designated State Protection and Advocacy Office.

(a) The Governor or other State official or entity empowered must designate the State official or public or private agency to be accountable for the proper use of funds and conduct of the State Protection and Advocacy system.

(b) An agency of the State or private agency providing direct services, including guardianship services may not be designated as a Protection and Advocacy agency.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the proper and appropriate expenditure of Federal funds.

(d) Prior to any redesignation of the agency which administers the 6Uk Protection and Advocacy system, the Governor or a State official empowered by the Governor or State legislature must give public notice of the intent to redesignate and provide an opportunity for public comment on the proposed redesignation. The public notice must include:

(1) The Federal requirements for the Protection and Advocacy program (section 142 of the Act);

(2) The goals and function of the State's Protection and Advocacy program;

(3) Name of current designated agency.

(4) A description of the current Protection and Advocacy agency and the system it administers;

(5) The reason(s) for proposing redesignation;

(6) Effective date of proposed redesignation;

(7) The name of the agency proposed to administer the State Protection and Advocacy program; and

(8) A description of the system which the new Protection and Advocacy agency would administer.

(e) Following receipt of comments from the public, the Governor or a State official empowered by the Governor or State legislature must submit the following information to the Commissioner:

(1) Documentation that the system was redesignated for good cause; Such documentation must clearly demonstrate that the existing Protection and Advocacy agency was not redesignated for any actions or activities undertaken which were consistent with section 142 of the Act, these regulations and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. 99-319.

(2) Assurance that the designated Protection and Advocacy system meets the requirements of the statute and the regulations.

(49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987)

§ 1386.21 Requirements of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the Basic Support Program (subject C), the Protection and Advocacy system must meet the requirements of section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) The client's record is the property of the Protection and Advocacy system which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy system must:

(1) Keep confidential all information contained in a client's records including information contained in an automated data bank; this requirement in

no way limits or restricts access by the Department or other authorized Federal officials to the client's records or other records of the protection and advocacy system for purposes of carrying out the responsibilities of their offices. It also does not limit access by parents or legal guardians of minors unless prohibited by State law, court order or the rules of attorney-client privilege.

(2) Have written policies governing access to duplication of, and release of information from the client's record; and

(3) Obtain written consent from the client, if competent, or his or her guardian, before it releases information to individuals not otherwise authorized to receive it.

[49 FR 11779, Mar. 27, 1984, as amended at 53 FR 44846, Not. 20, 1987]

§ 1386.22 [Reserved]

§ 1386.23 Periodic reports: Protection and Advocacy System.

The State Protection and Advocacy Agency must submit:

(a) Written assurance of compliance with section 142 of the Act will be required on a one time only basis. These assurances to the Commissioner must be signed by the Governor or a State official or entity empowered by the Governor or State legislature to provide such assurance. These assurances will remain in effect unless changes occur within the State which will affect the functioning of the Protection and Advocacy system in which case an amendment is required 30 days prior to the effective date of the change. All assurances and/or amendments may be provided in a format of the State's choice and will remain in effect as long as the State receives funds under the Act.

(b) An annual report to the Commissioner describing the activities and accomplishments carried out under the system during the previous year.

(c) Financial Status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval which will be specified by OEDS. In no case will such reports be required more frequently than quarterly.

(Information collection requirements contained in paragraph (b) under control number 0980-0160 and paragraph (c) under control number 0348-0039 are approved by the Office of Management and Budget.)

[52 FR 44846, Nor. 20, 1987, as amended at 54 FR 47985, Nor. 20, 1989]

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

Federal financial participation is not allowable for:

(a) Costs incurred for activities on behalf of persons with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace; and

(b) Costs not allowed under other applicable statutes. Departmental regulations and issuances of the Office of Management and Budget.

[52 FR 44847, Nov. 20, 1987]

Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities

§ 1386.30 State plan requirements.

(a) In order to receive Federal financial assistance under this subpart, Councils and States must prepare, submit and have in effect a State plan which meets the requirements or sections 121 and 124(A) of the Act (42 U.S.C. 6022 and 6024(a)(b)) and these regulations.

(b) Failure to comply with State plan requirements may result in loss of Federal funds as described in section 127 of the Act (42 U.S.C. 6027).

(c) The State plan may be submitted in any format the State selects as long as the items contained in the Act are addressed. The plan must:

(1) Identify the program unit(s) responsible for administration of the plan within the designated State agency or agencies;

(2) Identify the priority areas selected by the Council and by the State in which 65% of Federal allotment will be expended.

(d) The State plan must be reviewed at least once every three years.

(e) The State plan must contain assurances that:

(1) The State will comply with all applicable Federal statutes and regulations in effect during the time that the State is receiving formula grant funding.

(2) The State meets the requirements regarding individual habilitation plans as set forth in section 123 of the Act (42 U.S.C. 6023) and

(3) The human rights of developmentally disabled persons will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

(4) Each Planning Council may, at its option, hire staff and obtain the services of other technical, professional, and clerical staff, that the council determines is necessary to carry out its functions. The designated State Agency shall disburse funds for such personnel consistent with State Law.

(Information collection requirements contained in paragraph (c) under control number 0980-0162 and paragraph (e) under control number 0980-0139 are approved by the Office of Management and Budget)

(49 FR 11779, Mar. 27, 1984; as amended at 62 FR 44847, Nov. 20, 1997; 64 FR 47985, Nov. 20, 1999)

§ 1386.31 Plan submittal and approval

(a) The State plan must be submitted to the appropriate Regional Office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State plan and amendments or related documents must be approved by the Governor or the Governor's designee. It may be required by any applicable Federal issuances.

(b) Failure to submit an approvable State plan or amendment prior to the Federal fiscal year for which it is applicable may result in the loss of Federal financial participation. Costs resulting from obligations incurred during the period of the fiscal year for which an approved plan is not in effect are not eligible for Federal financial participation.

(c) The Commissioner must approve any State plan or plan amendment provided it meets the requirements of the Act and these regulations.

(d) Amendments to the State plan are required when substantive changes are contemplated in plan content.

§ 1386.32 Periodic reports: Basic State grants

(a) The Governor or the appropriate State financial Officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by OEDS. In no case will such reports be required more frequently than quarterly.

(b) By January 1 of each year an annual report shall be submitted pursuant to section 107(a) of the Act. The report may be in a format of the State's choice.

(Information collection requirements contained in paragraph (a) under control number 0348-0039 and paragraph (b) under control number 0980-0172 are approved by the Office of Management and Budget.)

(62 FR 44847, Nov. 20, 1997; as amended at 64 FR 47985, Xw. 20, 1999)

§ 1386.33 Protection of employee's interests

(a) Based on section 122(b)(7)(B) of the Act (42 U.S.C. 6022(b)(7)(B)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

(b) To the maximum extent practicable, fair and equitable arrangements must include provisions for:

(1) The preservation of rights and benefits

(2) Guaranteeing employment to employees affected by action under the plan to provide alternative community living arrangements; and

(3) Employee training and retraining programs.

(Approved by the Office of Management and Budget under control number 0980-0163)

[49 FR 11779, Mar. 27, 1984, as amended at 53 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989]

§ 1386.34 [Reserved]

§ 1386.35 Allowable and non-allowable costs for basic State grants.

(a) Under this subpart, Federal financial participation is available in costs resulting from obligations incurred under the approved State plan for the necessary expenses of the approved State plan for the necessary expenses of the State Council, the administration and operation of the State plan, and training of personnel, and operation of the State plan, and training of personnel.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Cost incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to persons with developmental disabilities in section 110 of the Act (42 U.S.C. 6039).

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes, Departmental regulations or issuances of the Office of Management and Budget.

(c) Expenditure of funds which supplant State and local funds will be disallowed. Supplanting occurs when State or local funds previously used to fund activities in the developmental disabilities State Plan are replaced by Federal funds which are then used for the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State Plan if the State or local funds are then used for other activities or purposes in the approved State Plan.

[49 FR 11779, Mar. 27, 1984, as amended at 53 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989]

§ 1386.36 Final disapproval of the State plan amendments or plan amendments.

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to the appropriate HHS Regional Office, and the Regional Office and State have been unable to resolve their differences.

(b) The Regional Office has prepared a detailed written analysis of its reasons for recommending disapproval and has transmitted its analyses and all other relevant material to the Commissioner, and has provided the State Council and State agency with copies of the material.

(c) The Commissioner, after review of the records and the recommendation of the Regional Office, has determined whether the State plan, in whole or in part, is not approvable. Notice of this determination has been sent to the State and contains appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with 45 CFR part 1386, subpart D.

(d) The Commissioner's decision has been forwarded to the State Council and agency by certified mail with a return receipt requested.

(e) A State has filed its request for a hearing with the Assistant Secretary for Human Development Services (ASHDS) within 31 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the ASHDS. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date or receipt shall be considered the date of filing.

§ 1386.80

Subpart D—Practice and Procedure for Hearings Pertaining to Stator' Conformity and Compliance With Developmental Disabilities Plans, Reports, and Federal Requirements

GENERAL

§ 1386.80 Definitions.

For purposes of this subpart:

Assistant Secretary means the Assistant Secretary for Human Development Services (HDS) or a presiding officer.

ADD means Administration on Developmental Disabilities, Office of Human Development Services.

Presiding officer means anyone by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

§ 1386.81 Scope or —

◀ The rules of procedures in this subpart govern the practice for hearings afforded by the Department to States pursuant to sections 122, 127 and 142 of the Act. (42 U.S.C. 6022, 6027 and 6042).

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Negotiations, and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as otherwise provided in this subpart.

(49 FR 11770, Mar. 27, 1984, U amended U 52 FR 44847, Nov. 20, 1987)

§ 1386.82 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

§ 1386.83 Use of gender and number.

As used in this subpart, words importing the singular number, may extend and be applied to several per-

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sons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

§ 1386.84 Suspension of rules.

Upon notice to all parties, the Assistant Secretary may modify or waive my rule in this subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the HDS Hearing Clerk in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party's designated representative is deemed service upon the party.

PRELIMINARY MATTERS—NOTICE AND PARTIES

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State council and the designated State agency, or to the State protection and advocacy office or official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the FEDERAL REGISTER.

§ 1386.91 Time of hearing.

The hearing must be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is mailed to the State.

§ 1386.92 ¶

The hearing must be held at a date, time, and place determined by the Assistant Secretary with due regard for the convenience and necessity of the parties or their representatives.

§ 1386.93 Issues at hearing.

(a) Prior to hearing, the Assistant Secretary may notify the State in

writing of additional issues which will be considered at the hearing. That notice must be published in the **FEDERAL REGISTER**. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20 days after the notice was mailed, or such later date as may be agreed to by the Assistant Secretary.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Assistant Secretary finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Assistant Secretary must terminate the hearing.

(2)(i) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements of State plan or report on the description of the protection and advocacy system with Federal requirements, the Assistant Secretary must provide all parties other than the Department and the State (see § 1386.94(b)) with the Statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or report on the description of the protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or my information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program with the State plan or system description, or with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with re-

spect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

(e) The issues considered at the hearing must be limited to those issues of which the State is notified as provided in § 1386.90 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and may not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 1386.94 Request to participate in hearing.

(a) The Department, the State council, the designated State agency, and the State protection and advocacy office, as appropriate, are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party must file a petition with the HHS Hearing Clerk within 15 days after notice of the hearing has been published in the **FEDERAL REGISTER**, and must serve a copy on each party of record at that time in accordance with § 1386.85(b). The petition must concisely state: (i) Petitioner's interest in the proceeding.

(ii) Who will appear for petitioner,

(iii) The issues petitioner wishes to address and

(iv) Whether petitioner intends to present witnesses.

(3) Any party may file comments within 5 days of receipt of such petition.

(4) The presiding officer must promptly determine whether each petitioner had the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the presiding officer may request all of the petitioners to designate a single representative, or he or she may recognize one or more of

the petitioners to represent all of them. The presiding officer must give each petitioner written notice of the decision on its petition. If any petition is denied, the presiding officer must briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the HDS Hearing Clerk before the commencement of the hearing. The petition must concisely state: (i) The petitioner's interest in the hearing,

(ii) Who will represent the petitioner, and

(iii) The issues on which petitioner intends to present argument. The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(2) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It may also submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

HEARING PROCEDURES

§ 1386.100 Who presides.

(a) The presiding officer at a hearing must be the Assistant Secretary or someone designated by the Assistant Secretary.

(b) The designation of a presiding officer must be in writing. A copy of the designation must be served on all parties and amici curiae.

§ 1386.101 Authority of presiding officer.

(a) The presiding officer has the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer has all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the par-

ty. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their positions with respect to the issues in the proceeding;

(4) Administer oaths and affirmations;

(5) Rule on motions and other procedural items on matters pending before him or her, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix for the time for filing motions, petitions, briefs, or other items in matters pending before him or her;

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is a person designated by the Assistant Secretary, examiner, certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

(12) Take any action authorized by the rules in the subpart or 5 U.S.C. 551-559; and

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a person designated by the Assistant Secretary, examiner, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether Federal financial participation should be withheld with respect to the entire State plan or the report of the system description, or whether Federal financial participation should be withheld only with respect to those parts of the program affected by such noncompliance.

§ 1386.102 Rights of parties.

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing —

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing;

(h) Submit written briefs proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 1386.103 Discovery.

The Department and my party named in the Notice issued pursuant to § 1386.90 has the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There is no fixed rule on priority of discovery. Upon written motion, the presiding officer must promptly rule upon ~~any~~ objection to discovery action. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1386.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it must be presented in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what it in-

tends to prove, may be made at hearings.

§ 1386.105 Evidence.

(a) *Testimony.* Testimony by witnesses at the hearing is given orally under oath or affirmation. Witnesses must be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, must be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination are applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record is open to examination by the parties and opportunity must be given to refute facts and arguments advanced on either side of the issues.

§ 1386.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contemptuous language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 1386.107 Un-sponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters at issue in a hearing is placed in the correspondence section of the docket of the proceeding. This material is not deemed

part of the evidence or record in the hearing.

§ 1386.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcript of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed with them is filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts must be taken by stenotype machine and not be voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

§ 1386.109 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and my recommended or initial decision, constitute the exclusive record for decision.

POSTHEARING PROCEDURES, DECISIONS

§ 1386.110 Posthearing briefs.

The presiding officer must fix the time for filing posthearing briefs. This time may not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed findings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the posthearing briefs.

§ 1386.111 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, he or she must issue a decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is a person designated by the Assistant Secretary, he or she must, within 30 days after the time for submission of posthearing briefs has expired, certify the entire record to the Assistant Sec-

retary including recommended findings and proposed decision. The Assistant Secretary must serve a copy of the recommended findings and proposed decision upon all parties and amici.

(2) Any party may, within 20 days, file exceptions to the recommended findings and proposed decision and supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary must review the recommended decision and, within 60 days of its issuance, issue his or her own decision.

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing under sections 122, 127 and 142 of the Act that a State plan or report on the State's protection and advocacy system does not comply with Federal requirements, he or she shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the allotment will be limited to parts of the State plan or the report not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 135 of the Act that the State is not complying with requirements of the State plan or the report on the description of the State's protection and advocacy system, he or she must also specify whether Federal financial participation will not be made available to the State or whether, in the exercise of his or her discretion, Federal financial participation will be limited to categories under the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of section 138 of the Act. The Assistant Secretary's decision must be promptly served on all parties and amici.

(49 FR 11770, Mar. 27, 1984, as amended at 53 FR 44847, Nov. 20, 1987)

§ 1384.113 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to section 135 of the Act, the Assistant Secretary concludes that a State plan or the report on the description of the State's protection and advocacy system does not comply with Federal requirements, and the decision provides that the allotment will be authorized but limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance, the decision must specify the effective date for the authorization of the allotment.

(b) In the case of a hearing pursuant to sections 113, 133 if the Assistant Secretary concludes that the State is not complying with requirements of the State plan or report on the description of the State's protection and advocacy system, the decision that further payments will not be made to the State, or that payments will be limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected, must specify the effective date for the withholding of Federal funds.

(c) The effective date may not be earlier than the date of the decision of the Assistant Secretary and may not be later than the first day of the next calendar quarter.

(d) The provision of this section may not be waived pursuant to § 1388.84.

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

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

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to the developmentally disabled to comply with section 102 of the Act.

(b) Based on section 102(c), proposed priorities for grants and contracts will be published in the **FEDERAL REGISTER** and a 60 day period for public comments will be allowed.

(c) The requirements concerning format and content of the application,

submittal procedures, eligible applicants and final priority areas will be published in program announcements in the **FEDERAL REGISTER**.

(d) Projects of national significance must be exemplary models and have potential for replication or otherwise meet the goals of part E of the Act.

(54 FR 47985, Nov. 20, 1989)

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

Sec.

1388.1 Definitions.

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1388.9 Peer review.

AUTHORITY: 42 U.S.C. 6043 et. seq.

SOURCE: 52 FR 44847, Nov. 20, 1987 unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part see 54 FR 47985, Nov. 20, 1989.

§ 1388.1 Definitions.

For purposes of this part:

Program criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Programs program operation. The program criteria will be used for qualitative evaluation, and also include measurements of program outcome.

Qualitative criteria means desired component and attributes which are UAP program requirements for prescribed areas.

Measurements of program outcome means a specific number of outcomes in a prescribed area. Measurements of program outcome can be aggregated and reported across all UAPs or used as management and evaluation tools in individual programs.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Programs (UAP) program. Compliance with the program criteria

is a prerequisite for the minimum funding level of a UAP. However, compliance with the program criteria, does not, by itself, constitute an assurance of funding.

§ 1388.3 Program criteria—administration.

(a) *Governance.* A UAP must be an integral component of a university but maintain the autonomy required to carry out the UAP mission and provide for the mandated activities as set forth in section 102(13) and section 151 of the Act (exemplary services, interdisciplinary training, technical assistance and information dissemination). The UAP must use management practices that provide direction to professionals, and parents of persons with developmental disabilities, paraprofessionals and volunteers for the UAP. The UAP must also promote the visibility of the UAP, and the integration of the program components. Management practices must facilitate cooperative relationships both within and outside the university community that further the UAP mission, aid persons with developmental disabilities and improve the field of developmental disabilities.

(b) *University relationship.* (1) The UAP must have a written agreement or charter with the university that specifies the UAP designation as an official university component, the relationships between the UAP and other university components, the university commitment to the UAP, and the UAP commitment to the university. The written agreement or charter will be required on a one-time only basis and would remain in effect unless changes occur which affect the relationship of the UAP and the university.

(2) The UAP must be responsible to and report directly to a university administrator who will represent the interests of the UAP within the university. The administrator must support and represent the UAP in operation and planning and in the training of university student, professionals, parents and the community.

(3) The UAP must show evidence that it contributes to the university's mission in the form of public relations, university instruction, continuing edu-

cation, and joint development of new programs and grants.

(c) *Administration.* (1) The UAP must be managed by a person who has adequate background in a discipline relevant to the goals of the UAP, evidence of commitment to the field of developmental disabilities, and functional competence to carry out the mission of the UAP.

(2) Directors, administrators, and middle managers of the UAP must work with a variety of professionals and non-professionals within the university and across levels of the service system to carry out the UAP mission.

(3) A UAP must maintain a mechanism to identify and successfully compete for funding opportunities other than those under the Act.

(d) *Organization.* (1) A UAP must be represented and fully participate in all meetings and activities of the State Planning Council that are prescribed by the Act.

(2) A UAP's mission must reflect legislative requirements, special needs of persons of various ages with developmental disabilities and the needs of those who work in the field and who are concerned about persons with developmental disabilities.

(3) A UAP must develop a plan which includes the goals, objectives and timelines for UAP services, special projects, training, technical assistance, information dissemination and research activities that includes a continuous, ongoing assessment of its program and activities.

(e) *Funding.* A UAP must maintain an annual operational budget and use accepted accounting procedures to administer funds.

(f) *Cooperative relationships.* (1) A UAP must maintain cooperative relationships with the State Developmental Disability Council and the Protection and Advocacy system.

(2) A UAP must maintain cooperative relationships with the UAP network and individuals, organizations, and universities to enhance quality of life for persons with developmental disabilities and to improve the field of developmental disabilities.

(g) *Personnel policies.* (1) In order to promote the interdisciplinary nature of the UAP mission, a UAP must have

on staff, or have available, adjunct professors, consultants, or experts in a broad range of disciplines, including education, health, psychology and social work.

(2) A UAP must inform staff of and implement university policies.

(3) A UAP must supplement university policies that enhance professional growth and support research.

(4) A UAP must take affirmative action to employ and advance in employment qualified individuals with developmental disabilities.

(h) *Physical facility.* (1) A UAP must be fully accessible to the handicapped in accordance with section 504 of the Rehabilitation Act.

(2) A UAP must have adequate space to carry out the mandated activities.

(3) Space that was constructed with Federal funds must be used for its intended UAP purpose pursuant to 45 CFR 1385.5 and 1385.7.

(i) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of UAP staff that operate the center identified by name, discipline, percentage of time working on UAP grant, and percentage of time working on other activities within the university.

(2) Amount of university financial and other resources that supplement the UAP.

(3) Total amount of UAP funds which include the amount of the ADD grant and funds from all other sources.

§ 1385.4 Program criteria—services.

(a) *Exemplary Services.* A UAP must integrate exemplary services and projects into community settings. Exemplary services are based on emerging or continuing needs and new, innovative concepts or practices. These services may be provided in a service delivery site or training setting within the community, including the university. Exemplary service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Exemplary services must be extended, as appropriate, to include adult and elderly persons with developmental disabilities and also to

support the independence, productivity, community integration and human rights of developmentally disabled individuals.

(b) *Community-integrated services.* The following are criteria for evaluating community-integrated services:

(1) Services and projects are scheduled at times and in places that are consistent with routine activities within the local community.

(2) Services or project, interact with and involve community members, agencies, and organizations.

(c) *Bases for services or project development.* The bases for the services or project development must be:

(1) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(2) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(d) *State-of-the-art and innovative practices.* (1) Service and project concept, and practices must facilitate and demonstrate independence for the individual community integration, productivity and human rights.

(2) Practices that are economical, accepted by various disciplines, and highly beneficial to persons who are developmentally disabled, must be integrated within services and projects.

(3) The design of innovative cost-effective concepts and practices must be evaluated according to accepted practices of scientific evaluation.

(4) Research methods must be used to test hypotheses, validate procedures, and field test product.

(5) Exemplary service and project practices and model, must be evaluated, packaged for replication and disseminated through the information dissemination component.

(e) *Demonstration and training.* (1) UAPs must disseminate information (brochures and professional articles) to State Developmental Disabilities Councils, the State Administering Agencies, the State Protection and Advocacy Agencies, other public and private agencies serving persons with developmental disabilities and private citizens. This information must describe exemplary services and projects

and be made available for demonstration and training.

(2) A variety of individuals must be trained within exemplary services and projects. They include long-term and intermediate interdisciplinary trainees and inservice trainees. The latter group could include service provider* families, and administrators.

(f) *Measurements of program outcome.* Measures of program outcome include:

(1) The total number of clients served by category of service; and

(2) The amount of related research evaluation and dissemination conducted.

§ 1388.5 Program criteria—training.

(a) *Organization.* (1) To ensure quality comprehensive interdisciplinary training, professional staff representing the major disciplines of education, health, psychology and social work, and holding appropriate university appointments, must direct the interdisciplinary training program.

(2) The focus of training must be interdisciplinary service and treatment of persons of various ages with developmental disabilities and their families.

(3) Training must be integrated with exemplary services provided by or affiliated with the UAP.

(b) *Outcome of interdisciplinary training.* (1) Training must develop competencies related to developmental characteristics and assessment of persons with developmental disabilities of various ages.

(2) Training must develop an understanding of various disciplines' roles, diagnostic and evaluation practices, and treatment procedures.

(3) Training must promote understanding and use of the valued knowledge, methods, and skills of the major professions of education, health, psychology and social work and other appropriate disciplines.

(4) Training must include training and practicum in the interdisciplinary team process.

(5) Training must address services and treatment for various groups.

(6) Optional training must address program evaluation and research

methods applicable to developmental disability programs.

(7) Optional training must address leadership development issues such as policy analysis and management.

(c) *Long-term interdisciplinary training.* (1) To develop leaders in serving individuals with developmental disabilities, a UAP must recruit students of high achievement from major disciplines into a program that provides long-term training (300 or more hours) in a one-year reporting period.

(2) Each long-term trainee must have planned didactic instruction and clinical practical experiences to be undertaken in a one-year reporting period, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: prevention and detection, individual program planning and case management, developmental services, and individual and family support services.

(4) Training activities must cover at least two of the following settings: natural home, supervised living arrangements, residential treatment centers, nonresidential treatment settings, educational and employment settings.

(5) Training activities must cover a range of disabilities and impairments.

(6) Trainees must receive credit, if appropriate, for training completed at the UAP that is performed as part of a program of course work administered by the university or any of its divisions.

(7) Training activities must include:

(i) Instruction in the interdisciplinary team process,

(ii) Experiences as a team member, and

(iii) Experiences as a team leader.

(d) *Intermediate interdisciplinary training.* (1) Students who receive intermediate interdisciplinary training (160 to 299 hours) must be recruited from various disciplines to provide services to persons with developmental disabilities as a part of generic or special services.

(2) Each trainee must have planned instruction and practical experiences, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: Prevention and detection, individual program planning and case management, developmental services, and individual and family support services.

(4) Trainees must receive credit, as appropriate, for training completed if the UAP performed as part of a program of course work administered by university or any of its divisions.

(e) *Short-term special purpose interdisciplinary training.* A variety of training experiences designed to improve or expand services to persons with developmental disabilities and their families, including workshops, courses, lectures, and other didactic experiences, must be provided to a variety of individuals who may or do serve individuals of various ages with developmental disabilities.

(f) *Training provided by the UAP & relevant in community*

(1) A UAP must determine and set priorities for training based on the needs of the community.

(2) Training priorities must be established in cooperation with State Developmental Disabilities councils, State manpower councils, the State Mental Retardation/Developmental Disability Agency and other relevant local, State and Federal agencies.

(3) Training priorities must consider national manpower needs with particular attention to the following areas:

- (i) Early intervention programs;
- (ii) Programs for elderly persons with developmental disabilities; and
- (iii) Community based programs.

(g) *The interdisciplinary training program must be evaluated to improve it.* (1) Student achievement of program goals must be evaluated.

(2) The degree to which the program is achieving its stated goals must be evaluated.

(3) Evaluation must be conducted to develop and assess effective interdisciplinary strategies and procedures.

(4) The extent to which training is satisfactorily addressing the needs of the community must be systematically evaluated.

(h) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of long-term interdisciplinary trainees; number of intermediate interdisciplinary trainees; and number of special trainees completing training.

(2) Number of workshops or training sessions provided; and

(3) Number and type of disciplines of participants involved in each category of training.

[53 FR 44847, Nov. 20, 1987, as amended at 54 FR 47985, Nov. 20, 1989]

§ 1388.6 Program criteria—technical assistance.

(a) *Technical assistance.* A UAP must provide technical assistance to individuals and organizations responsible for the independence, productivity, community integration, and human rights of individuals with developmental disabilities. Technical assistance must be based on state-of-the-art practices and new, innovative practices and models found within exemplary services. Technical assistance must also be based on special needs or emerging problems that are identified by the UAP, organizations or individuals concerned with persons with developmental disabilities.

(b) *Established and planned technical assistance.* (1) Technical assistance must be an integral part of a UAP.

(2) Adequate resources and personnel must be assigned.

(3) Personnel assigned must be specified and be either UAP staff who solely develop technical assistance products and provide technical assistance; or a roster of experts that could be used through consultation.

(4) The UAP must identify potential target audiences and needs.

(5) The UAP must have a system (electronic mail, mailing list) to inform target audiences about technical assistance availability.

(6) The UAP must evaluate and improve technical assistance on an ongoing basis.

(c) *Technical assistance training.* (1) Technical assistance activities must be used as a training opportunity for UAP trainees.

(2) The experience, observations, and testing of the technical assistance provision must be used to refine UAP training.

(d) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of government agencies, service providers and professional organizations to whom the UAP provides technical assistance.

(2) Total hours of technical assistance provided by type (e.g., workshops, consultation, inservice training) and topic.

(3) Number of trainee hours involved in technical assistance activities.

§ 1388.7 Program criteria—Information dissemination.

(a) *Information and dissemination.* A UAP must disseminate information products that enhance the quality of life of persons with developmental disabilities. The UAP must disseminate information that is based on exemplary services and projects, interdisciplinary training, UAF products and current developments related to the field of developmental disabilities. Information shall be disseminated to target audiences within the field of developmental disabilities, to persons with developmental disabilities and their families, and to other concerned persons within the general public.

(b) *Information and Dissemination Plan.* (1) An information component or activities must be an integral part of a UAP.

(2) Adequate resources and personnel must be assigned to information dissemination objectives.

(c) *Target audiences for information dissemination.* (1) Specific target audiences must be identified for information dissemination. Target audiences may include persons with developmental disabilities and their families, service providers, administrators, policymakers, peers, researchers, and the general public.

(2) UAPs must have a system (mailing lists, electronic mail, etc.) to disseminate information to target audiences.

(3) A UAP must use existing systems (the UAP network, professional jour-

nals, publishers) to disseminate information.

(d) *Information products.* (1) Information products must be developed and packaged (articles, procedures manuals newsletters) for specific target audiences.

(2) Information products must be based on innovative ideas and practices identified or developed within exemplary services, interdisciplinary training, research, evaluation and technical assistance activities.

(3) Information products must be based on current developments in the field of developmental disabilities and must facilitate independence, productivity and integration into the community for persons of various ages with developmental disabilities.

(e) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of individuals or organizations receiving information about the UAP's exemplary services, demonstrations, training, technical assistance, product and information availability;

(2) Number of individuals or organizations receiving information on current research and new, innovative practices by other individuals and organizations;

(3) Number of researchers and government agencies to whom information was presented about current service, training, and research needs;

(4) Number of individuals and agencies receiving information related to the UAP mission; and

(5) Number of individuals (professionals, consumers, administrators, policymakers, the general public) presented information as part of symposia or special purpose presentations.

§ 1388.8 Use of program criteria for Satellite Centers.

A Satellite Center must specify which activities, as defined in section 102(12) of the Act, it chooses to perform. The satellite center must comply with the program criteria in § 1388.3 of this part and will be subject to the program criteria which correspond to the activities it has selected under section 102(12) of the Act.