

**29 USC 794e: Protection and advocacy of individual rights**

Text contains those laws in effect on February 14, 2017

**From Title 29-LABOR**

CHAPTER 16-VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES  
SUBCHAPTER V-RIGHTS AND ADVOCACY

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## §794e. Protection and advocacy of individual rights

### (a) Purpose and construction

#### (1) Purpose

The purpose of this section is to support a system in each State to protect the legal and human rights of individuals with disabilities who-

(A) need services that are beyond the scope of services authorized to be provided by the client assistance program under section 732 of this title; and

(B)(i) are ineligible for protection and advocacy programs under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.] because the individuals do not have a developmental disability, as defined in section 102 of such Act [42 U.S.C. 15002]; and

(ii) are ineligible for services under the Protection and Advocacy for Mentally Ill Individuals Act of 1986<sup>1</sup> (42 U.S.C. 10801 et seq.) because the individuals are not individuals with mental illness, as defined in section 102 of such Act (42 U.S.C. 10802).

#### (2) Construction

This section shall not be construed to require the provision of protection and advocacy services that can be provided under the Assistive Technology Act of 1998 [29 U.S.C. 3001 et seq.].

### (b) Appropriations less than \$5,500,000

For any fiscal year in which the amount appropriated to carry out this section is less than \$5,500,000, the Commissioner may make grants from such amount to eligible systems within States to plan for, develop outreach strategies for, and carry out protection and advocacy programs authorized under this section for individuals with disabilities who meet the requirements of subparagraphs (A) and (B) of subsection (a)(1).

### (c) Appropriations of \$5,500,000 or more

#### (1) Reservations

##### (A) Technical assistance

For any fiscal year in which the amount appropriated to carry out this section equals or exceeds \$5,500,000, the Commissioner shall set aside not less than 1.8 percent and not more than 2.2 percent of the amount to provide a grant, contract, or cooperative agreement for training and technical assistance to the systems established under this section.

##### (B) Grant for the eligible system serving the American Indian consortium

For any fiscal year in which the amount appropriated to carry out this section equals or exceeds \$10,500,000, the Commissioner shall reserve a portion, and use the portion to make a grant for the eligible system serving the American Indian consortium. The Commission shall make the grant in an amount of not less than \$50,000 for the fiscal year.

#### (2) Allotments

For any such fiscal year, after the reservations required by paragraph (1) have been made, the Commissioner shall make allotments from the remainder of such amount in accordance with paragraph (3) to eligible systems within States to enable such systems to carry out protection and advocacy programs authorized under this section for individuals referred to in subsection (b).

#### (3) Systems within States

##### (A) Population basis

Except as provided in subparagraph (B), from such remainder for each such fiscal year, the Commissioner shall make an allotment to the eligible system within a State of an amount bearing the same ratio to such remainder as the population of the State bears to the population of all States.

**(B) Minimums**

Subject to the availability of appropriations to carry out this section, and except as provided in paragraph (4), the allotment to any system under subparagraph (A) shall be not less than \$100,000 or 1/3 of 1 percent of the remainder for the fiscal year for which the allotment is made, whichever is greater, and the allotment to any system under this section for any fiscal year that is less than \$100,000 or 1/3 of 1 percent of such remainder shall be increased to the greater of the two amounts.

**(4) Systems within other jurisdictions**

**(A) In general**

For the purposes of paragraph (3)(B), Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall not be considered to be States.

**(B) Allotment**

The eligible system within a jurisdiction described in subparagraph (A) shall be allotted under paragraph (3)(A) not less than \$50,000 for the fiscal year for which the allotment is made.

**(5) Adjustment for inflation**

For any fiscal year, beginning in fiscal year 1999, in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section for the preceding fiscal year, the Commissioner shall increase each of the minimum grants or allotments under paragraphs (1)(B), (3)(B), and (4)(B) by a percentage that shall not exceed the percentage increase in the total amount appropriated to carry out this section between the preceding fiscal year and the fiscal year involved.

**(d) Proportional reduction**

To provide minimum allotments to systems within States (as increased under subsection (c)(5)) under subsection (c)(3)(B), or to provide minimum allotments to systems within States (as increased under subsection (c)(5)) under subsection (c)(4)(B), the Commissioner shall proportionately reduce the allotments of the remaining systems within States under subsection (c)(3), with such adjustments as may be necessary to prevent the allotment of any such remaining system within a State from being reduced to less than the minimum allotment for a system within a State (as increased under subsection (c)(5)) under subsection (c)(3)(B), or the minimum allotment for a State (as increased under subsection (c)(5)) under subsection (c)(4)(B), as appropriate.

**(e) Reallotment**

Whenever the Commissioner determines that any amount of an allotment to a system within a State for any fiscal year described in subsection (c)(1) will not be expended by such system in carrying out the provisions of this section, the Commissioner shall make such amount available for carrying out the provisions of this section to one or more of the systems that the Commissioner determines will be able to use additional amounts during such year for carrying out such provisions. Any amount made available to a system for any fiscal year pursuant to the preceding sentence shall, for the purposes of this section, be regarded as an increase in the allotment of the system (as determined under the preceding provisions of this section) for such year.

**(f) Application**

In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will-

(1) have in effect a system to protect and advocate the rights of individuals with disabilities;

(2) have the same general authorities, including the authority to access records and program income, as are set forth in subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.];

(3) have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State or the American Indian consortium who are individuals described in subsection (a)(1);

(4) provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State or the American Indian consortium;

(5) develop a statement of objectives and priorities on an annual basis, and provide to the public, including individuals with disabilities and, as appropriate, the individuals' representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the system including-

(A) the objectives and priorities for the activities of the system for each year and the rationale for the establishment of such objectives and priorities; and

(B) the coordination of programs provided through the system under this section with the advocacy programs of the client assistance program under section 732 of this title, the State long-term care ombudsman program

established under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), the Developmental Disabilities

Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15001 et seq.], and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 <sup>2</sup>(42 U.S.C. 10801 et seq.);

(6) establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with disabilities are afforded equal opportunity to access the services of the system; and

(7) provide assurances to the Commissioner that funds made available under this section will be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided.

**(g) Carryover and direct payment**

**(1) Direct payment**

Notwithstanding any other provision of law, the Commissioner shall pay directly to any system that complies with the provisions of this section, the amount of the allotment of the State or the grant for the eligible system that serves the American Indian consortium involved under this section, unless the State or American Indian consortium provides otherwise.

**(2) Carryover**

Any amount paid to an eligible system that serves a State or American Indian consortium for a fiscal year that remains unobligated at the end of such year shall remain available to such system that serves the State or American Indian consortium for obligation during the next fiscal year for the purposes for which such amount was paid.

**(h) Limitation on disclosure requirements**

For purposes of any audit, report, or evaluation of the performance of the program established under this section, the Commissioner shall not require such a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

**(i) Administrative cost**

In any State in which an eligible system is located within a State agency, a State may use a portion of any allotment under subsection (c) for the cost of the administration of the system required by this section. Such portion may not exceed 5 percent of the allotment.

**(j) Delegation**

The Commissioner may delegate the administration of this program to the Commissioner of the Administration on Developmental Disabilities within the Department of Health and Human Services.

**(k) Report**

The Commissioner shall annually prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the types of services and activities being undertaken by programs funded under this section, the total number of individuals served under this section, the types of disabilities represented by such individuals, and the types of issues being addressed on behalf of such individuals.

**(l) Authorization of appropriations**

There are authorized to be appropriated to carry out this section \$17,650,000 for fiscal year 2015, \$19,013,000 for fiscal year 2016, \$19,408,000 for fiscal year 2017, \$19,838,000 for fiscal year 2018, \$20,305,000 for fiscal year 2019, and \$20,735,000 for fiscal year 2020.

**(m) Definitions**

As used in this section:

**(1) Eligible system**

The term "eligible system" means a protection and advocacy system that is established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.] and that meets the requirements of subsection (f).

**(2) American Indian consortium**

The term "American Indian consortium" means a consortium established as described in section 142 <sup>2</sup>of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042).

(Pub. L. 93-112, title V, §509, as added Pub. L. 102-569, title V, §510(a), Oct. 29, 1992, 106 Stat. 4430 ; amended Pub. L. 103-73, title I, §112(c), Aug. 11, 1993, 107 Stat. 727 ; Pub. L. 105-12, §9(n), Apr. 30, 1997, 111 Stat. 28 ; Pub. L. 105-220, title IV, §408(c), Aug. 7, 1998, 112 Stat. 1206 ; Pub. L. 105-394, title IV, §402(c), Nov. 13, 1998, 112 Stat. 3662 ; Pub. L. 106-402, title IV, §401(b)(3)(C), (D), Oct. 30, 2000, 114 Stat. 1738 ; Pub. L. 113-128, title IV, §457, July 22, 2014, 128 Stat. 1676 .)

**REFERENCES IN TEXT**

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsecs. (a)(1)(B)(i), (f)(2), (5)(B), and (m)(1), is Pub. L. 106–402, [Oct. 30, 2000](#), 114 Stat. 1677 , which is classified principally to chapter 144 (§15001 et seq.) of Title 42, The Public Health and Welfare. Subtitle C of title I of the Act is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of Title 42 and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsecs. (a)(1)(B)(ii) and (f)(5)(B), was Pub. L. 99–319, [May 23, 1986](#), 100 Stat. 478 , as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, [div. B, title XXXII, §3206\(a\), Oct. 17, 2000](#), 114 Stat. 1193 , and is classified generally to chapter 114 (§10801 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of Title 42 and Tables.

The Assistive Technology Act of 1998, referred to in subsec. (a)(2), is Pub. L. 105–394, [Nov. 13, 1998](#), 112 Stat. 3627 , which is classified principally to chapter 31 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Older Americans Act of 1965, referred to in subsec. (f)(5)(B), is Pub. L. 89–73, [July 14, 1965](#), 79 Stat. 218 , as amended, which is classified generally to chapter 35 (§3001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042), referred to in subsec. (m)(2), was repealed by Pub. L. 106–402, [title IV, §401\(a\), Oct. 30, 2000](#), 114 Stat. 1737 .

## AMENDMENTS

**2014**-Subsec. (c)(1)(A). Pub. L. 113–128, §457(1), inserted "a grant, contract, or cooperative agreement for" before "training".

Subsec. (f)(2). Pub. L. 113–128, §457(2), substituted "general authorities, including the authority to access records" for "general authorities, including access to records" and inserted "of title I" after "subtitle C".

Subsec. (l). Pub. L. 113–128, §457(3), substituted "\$17,650,000 for fiscal year 2015, \$19,013,000 for fiscal year 2016, \$19,408,000 for fiscal year 2017, \$19,838,000 for fiscal year 2018, \$20,305,000 for fiscal year 2019, and \$20,735,000 for fiscal year 2020." for "such sums as may be necessary for each of the fiscal years 1999 through 2003."

**2000**-Subsecs. (a)(1)(B)(i), (f)(2). Pub. L. 106–402, §401(b)(3)(C), substituted "subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000" for "part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.)".

Subsec. (f)(5)(B). Pub. L. 106–402, §401(b)(3)(D), substituted "Developmental Disabilities Assistance and Bill of Rights Act of 2000" for "Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.)".

Subsec. (m)(1). Pub. L. 106–402, §401(b)(3)(C), substituted "subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000" for "part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.)".

**1998**-Pub. L. 105–220 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (n) relating to protection and advocacy of individual rights.

Subsec. (a)(2). Pub. L. 105–394 substituted "the Assistive Technology Act of 1998" for "the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (42 U.S.C. 2201 et seq.)".

**1997**-Subsec. (f)(8). Pub. L. 105–12 added par. (8).

**1993**-Subsec. (a)(1). Pub. L. 103–73, §112(c)(1), added par. (1) and struck out former par. (1) which read as follows: "are ineligible for client assistance programs under section 732 of this title; and".

Subsec. (b). Pub. L. 103–73, §112(c)(2), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows:

"(1) **ALLOTMENTS.**-For any fiscal year in which the amount appropriated to carry out this section is less than \$5,500,000, the Commissioner may make grants from such amount to eligible systems within States to plan for, develop outreach strategies for, and carry out protection and advocacy programs authorized under this section for individuals with disabilities who meet the requirements of paragraphs (1) and (2) of subsection (a).

"(2) **OTHER JURISDICTIONS.**-For the purposes of this subsection, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau shall not be considered to be States."

Subsec. (c)(4)(A). Pub. L. 103–73, §112(c)(3)(A)(i), substituted "paragraph (3)(B)" for "this subsection".

Subsec. (c)(4)(B). Pub. L. 103–73, §112(c)(3)(A)(ii), substituted "allotted under paragraph (3)(A)" for "allotted".

Subsec. (c)(5). Pub. L. 103–73, §112(c)(3)(B), added par. (5) and struck out heading and text of former par. (5). Text read as follows:

"(A) STATES.-For purposes of determining the minimum amount of an allotment under paragraph (3)(B), the amount \$100,000 shall, in the case of such allotments for fiscal year 1994 and subsequent fiscal years, be increased to the extent necessary to offset the effects of inflation occurring since October 1992, as measured by the percentage increase in the Consumer Price Index For All Urban Consumers (U.S. city average) during the period ending on April 1 of the fiscal year preceding the fiscal year for which the allotment is to be made.

"(B) CERTAIN TERRITORIES.-For purposes of determining the minimum amount of an allotment under paragraph (4)(B), the amount \$50,000 shall, in the case of such allotments for fiscal year 1994 and subsequent fiscal years, be increased to the extent necessary to offset the effects of inflation occurring since October 1992, as measured by the percentage increase in the Consumer Price Index For All Urban Consumers (U.S. city average) during the period ending on April 1 of the fiscal year preceding the fiscal year for which the allotment is to be made."

Subsec. (d). Pub. L. 103-73, §112(c)(4), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "Amounts necessary to provide allotments to systems within States in accordance with subsection (c)(3)(B) as increased under subsection (c)(5), or to provide allotments in accordance with subsection (c)(4)(B) as increased in accordance with subsection (c)(5), shall be derived by proportionately reducing the allotments of the remaining systems within States under subsection (c)(3), but with such adjustments as may be necessary to prevent the allotment of any such remaining systems within States from being thereby reduced to less than the greater of \$100,000 or one-third of one percent of the sums made available for purposes of this section for the fiscal year for which the allotment is made, as increased in accordance with subsection (c)(5)."

Subsec. (i). Pub. L. 103-73, §112(c)(6), which directed the amendment of this section "in subsection (i), to read as follows:", was executed by adding subsec. (i). Former subsec. (i) redesignated (n).

Subsec. (j). Pub. L. 103-73, §112(c)(7), added subsec. (j) and struck out heading and text of former subsec. (j). Text read as follows: "An eligible system may not use more than 5 percent of any allotment under subsection (c) for the cost of administration of the system required by this section."

Subsec. (n). Pub. L. 103-73, §112(c)(5), redesignated subsec. (i) as (n).

#### **CHANGE OF NAME**

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

#### **EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-12 effective Apr. 30, 1997, applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, and also applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105-12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.

<sup>1</sup> See References in Text note below.

<sup>2</sup> See References in Text note below.

Part 381 is revised to read as follows:

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

Subpart A—General

Sec.

381.1 What is the Protection and Advocacy of Individual Rights program?

381.2 Who is eligible for an award?

381.3 What activities may the Secretary fund?

381.4 What regulations apply?

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Subpart B—How Does One Apply for an Award?

381.10 What are the application requirements?

Subpart C—How Does the Secretary Make an Award?

381.20 How does the Secretary evaluate an application?

381.22 How does the Secretary allocate funds under this program?

Subpart D—What Conditions Must Be Met After an Award?

381.30 How are services to be administered?

381.31 What are the requirements pertaining to the protection, use, and release of personal information?

381.32 What are the reporting requirements under this part?

381.33 What are the requirements related to the use of funds provided under this part?

AUTHORITY: Section 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e, unless otherwise noted.

Subpart A—General

§381.1 What is the Protection and Advocacy of Individual Rights program?

This program is designed to support a system in each State to protect the legal and human rights of eligible individuals with disabilities.

(Authority: Section 509(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e(a))

### §381.2 Who is eligible for an award?

(a)(1) A protection and advocacy system that is established under part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), 42 U.S.C. 15041 et seq., and that meets the requirements of §381.10 is eligible to apply for a grant award under this part.

(2)(i) For any fiscal year in which the appropriation to carry out the activities of this part equals or exceeds \$10,500,000, the eligible system serving the American Indian Consortium is eligible to apply for a grant award under this part.

(ii) For purposes of this part, an eligible system is defined at §381.5(c).

(iii) For purposes of this part, the American Indian Consortium means a consortium established as described in section 102 of the DD Act (42 U.S.C. 15002).

(b) In any fiscal year in which the amount appropriated to carry out this part is less than \$5,500,000, a protection and advocacy system from any State or from Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, may apply for a grant under the Protection and Advocacy of Individual Rights (PAIR) program to plan for, develop outreach strategies for, and carry out a protection and advocacy program authorized under this part.

(c) In any fiscal year in which the amount appropriated to carry out this part is equal to or greater than \$5,500,000, an eligible system from any State and from any of the jurisdictions named in paragraph (b) of this section may apply to receive the amount allotted pursuant to section 509(c)-(e) of the Act.

(Authority: Section 509(b), (c), and (m) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e(b), (c), and (m))

### §381.3 What activities may the Secretary fund?

(a) Funds made available under this part must be used for the following activities:

(1) Establishing a system to protect, and advocate for, the rights of individuals with disabilities.

(2) Pursuing legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State or the American Indian Consortium.

(3) Providing information on and making referrals to programs and services addressing the needs of individuals with disabilities in the State or American Indian Consortium, including individuals with disabilities who are exiting from school programs.

(4) Coordinating the protection and advocacy program provided through an eligible system with the advocacy programs under—

(i) Section 112 of the Act (the Client Assistance Program (CAP));



(ii) The Older Americans Act of 1965 (the State long-term care ombudsman program) (42 U.S.C. 3001 et seq.);

(iii) Part C of the DD Act; and

(iv) The Protection and Advocacy for Individuals with Mental Illness Act of 2000 (PAIMI) (42 U.S.C. 10801-10807).

(5) Developing a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities.

(6) Providing to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities described in §381.10(a)(6).

(7) Establishing a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system.

(b) Funds made available under this part also may be used to carry out any other activities consistent with the purpose of this part and the activities listed in paragraph (a) of this section.

(Authority: Sections 12(c) and 509(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(f)).

#### §381.4 What regulations apply?

The following regulations apply to the PAIR program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs) for purposes of an award made under §§381.20 or 381.22(a)(1).

(2) 34 CFR part 76 (State-Administered Programs), if the appropriation for the PAIR program is equal to or greater than \$5,500,000 and the eligible system is a State or local government agency, except for—

(i) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.704;

(v) Section 76.734; and

(vi) Section 76.740.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(b) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(c) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(d) The regulations in this part 381.

(Authority: Sections 12(c) and 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e)

§381.5 What definitions apply?

(a) Definitions in EDGAR at 34 CFR part 77.

(b) Definitions in 2 CFR part 200 subpart A.

(c) Other definitions. The following definitions also apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual.

Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether tribal, State, local, or Federal).

Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether tribal, State, local, or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities or organizations, or government agencies (whether tribal, State, local, or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is individual advocacy;

(2) More than one individual or a group or class of individuals, in which case it is systems (or systemic) advocacy; or

(3) Oneself, in which case it is self advocacy.

Eligible individual with a disability means an individual who—

(1) Needs protection and advocacy services that are beyond the scope of services authorized to be provided by the CAP under section 112 of the Act ; and

(2) Is ineligible for—

- (i) Protection and advocacy programs under part C of the DD Act; and
- (ii) Protection and advocacy programs under the PAIMI.

Eligible system means a protection and advocacy system that is established under part C of the DD Act and that meets the requirements of §381.10.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator must not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, except for purposes of sections 509(c)(3)(B) and (c)(4) of the Act, in which case State does not mean or include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: Sections 7(34), 12(c), and 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34), 709(c) and 794e)

Subpart B—How Does One Apply for an Award?

§381.10 What are the application requirements?

(a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will—

- (1) Have in effect a system to protect, and advocate for, the rights of eligible individuals with disabilities;
- (2) Have the same general authorities, including the authority to access records and program income, as in part C of title I of the DD Act;
- (3) Have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State and the American Indian Consortium;
- (4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State and the American Indian Consortium, including individuals with disabilities who are exiting from school programs;

(5) Develop a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities;

(6) Provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including—

(i) The objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of those objectives and priorities; and

(ii) The coordination of the PAIR program provided through eligible systems with the advocacy programs under—

(A) Section 112 of the Act (CAP);

(B) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(C) Part C of the DD Act; and

(D) The PAIMI;

(7) Establish a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system;

(8) Use funds made available under this part to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided; and

(9) Implement procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

(b) To receive direct payment of funds under this part, an eligible system must provide to the Secretary, as part of its application for assistance, an assurance that direct payment is not prohibited by or inconsistent with tribal or State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Sections 12(c) and 509(f) and (g)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(f) and (g)(1))

Subpart C—How Does the Secretary Make an Award?

§381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than \$5,500,000, the Secretary evaluates applications under the procedures in 34 CFR part 75.

(Authority: Sections 12(c) and 509(b) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(b) and (f))

§381.22 How does the Secretary allocate funds under this program?

(a) In any fiscal year in which the amount appropriated for this program is equal to or greater than \$5,500,000—

(1) The Secretary sets aside not less than 1.8 percent but not more than 2.2 percent of the amount appropriated to provide a grant, contract, or cooperative agreement for training and technical assistance to eligible systems carrying out activities under this part.

(2) After the reservation required by paragraph (a)(1) of this section, the Secretary makes allotments from the remainder of the amount appropriated in accordance with section 509(c)(2)-(d) of the Act.

(b) Notwithstanding any other provision of law, in any fiscal year in which the amount appropriated for this program is equal to or greater than \$5,500,000, the Secretary pays directly to an eligible system that submits an application that meets the requirements of §381.10 the amount of the allotment to the State pursuant to section 509 of the Act, unless the State provides otherwise.

(c) For any fiscal year in which the amount appropriated to carry out this program equals or exceeds \$10,500,000, the Secretary shall reserve a portion, and use the portion to make a grant for the eligible system serving the American Indian Consortium. The Secretary shall make the grant in an amount of not less than \$50,000 for the fiscal year.

(d) Reallotment. (1) For any fiscal year in which the amount appropriated to carry out this program equals or exceeds \$5,500,000 and if the Secretary determines that any amount of an allotment to an eligible system within a State will not be expended by such system in carrying out the provisions of this part, the Secretary shall make such amount available to one or more of the eligible systems that the Secretary determines will be able to use additional amounts during such year for carrying out this part.

(2) Any reallotment amount made available to an eligible system for any fiscal year shall, for the purposes of this section, be regarded as an increase in the eligible system's allotment under this part for that fiscal year.

(Authority: Sections 12(c) and 509(c)-(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(c)-(e))

Subpart D—What Conditions Must Be Met After an Award?

§381.30 How are services to be administered?

(a) Each eligible system shall carry out the protection and advocacy program authorized under this part.

(b) An eligible system may not award a grant or make a subaward to another entity to carry out, in whole or in part, the protection and advocacy program authorized under this part.

(c) An eligible system may contract with another agency, entity, or individual to carry out the PAIR program in whole or in part, but only if the agency, entity, or individual with whom the eligible system has contracted—

(1) Does not provide services under the Act or does not provide treatment, services, or habilitation to persons with disabilities; and

(2) Is independent of, and not connected financially or through a board of directors to, an entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities.

(d) For purposes of paragraph (c) of this section, “services under the Act” and “treatment, services, or habilitation” does not include client assistance services under CAP, protection and advocacy services authorized under the protection and advocacy programs under part C of the DD Act and the PAIMI, or any other protection and advocacy services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§381.31 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any eligible system under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The eligible system's use of information and records concerning individuals must be limited only to purposes directly connected with the protection and advocacy program, including program evaluation activities. Except as provided in paragraph (c) of this section, an eligible system may not disclose personal information about an individual, directly or indirectly, other than in the administration of the protection and advocacy program, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other authorized representative or advocate (including the individual's advocate from the eligible system), has been obtained in writing. An eligible system may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraph (d) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements must be given complete access to all—

(1) Records of the eligible system receiving funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d)(1) The privilege of a person or eligible system not to produce documents or provide information pursuant to paragraph (c) of this section is governed by the principles of common law as interpreted by the courts of the United States, except that, for purposes of any periodic audit, report, or evaluation of the performance of the eligible system established or assisted under this part, the Secretary does not

require the eligible system to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the PAIR program.

(2) However, notwithstanding paragraph (d)(1) of this section, if an audit, monitoring review, State plan assurance review, evaluation, or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the eligible system has violated its legislative mandate or misused Federal funds, the eligible system shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the PAIR program, in accordance with the principles of common law as interpreted by the courts of the United States.

(Authority: Sections 12(c) and 509(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(h))

§381.32 What are the reporting requirements under this part?

Each eligible system shall provide to the Secretary, no later than 90 days after the end of each fiscal year, an annual report that includes information on the following:

(a) The types of services and activities undertaken by the eligible system and how these services and activities addressed the objectives and priorities developed pursuant to §381.10(a)(6).

(b) The total number of individuals, by race, color, national origin, gender, age, and disabling condition, who requested services from the eligible system and the total number of individuals, by race, color, national origin, gender, age, and disabling condition, who were served by the eligible system.

(c) The types of disabilities represented by individuals served by the eligible system.

(d) The types of issues being addressed on behalf of individuals served by the eligible system.

(e) Any other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Sections 12(c), 13, and 509(k) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 710, and 794e(k))

§381.33 What are the requirements related to the use of funds provided under this part?

(a) Funds made available under this part must be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided under this part.

(b) In any State in which an eligible system is located within a State agency, that State or State agency may not use more than five percent of any allotment for the costs of administration of the eligible system supported under this part. For purposes of this paragraph, "costs of administration" include, but

are not limited to, administrative salaries (including salaries for clerical and support staff), supplies, depreciation, the cost of operating and maintaining facilities, equipment, and grounds (e.g., rental of office space or equipment, telephone, postage, maintenance agreements), and other similar types of costs that may be incurred by the State or State agency to administer the eligible system.

(c) Funds paid to an eligible system within a State for a fiscal year, including reallocation funds, to carry out this program that are not expended or obligated prior to the end of that fiscal year remain available to the eligible system within a State for obligation during the succeeding fiscal year in accordance with sections 19 and 509(g) of the Act.

(d) For determining when an eligible system makes an obligation for various kinds of property or services, 34 CFR 75.707 and 76.707, as appropriate, apply to this program. If the appropriation for the PAIR program is less than \$5,500,000, §75.707 applies. If the appropriation for the PAIR program is equal to or greater than \$5,500,000, §76.707 applies. An eligible system is considered a State for purposes of §76.707.

(e) Program income. (1) Consistent with 2 CFR 200.80 and for purposes of this part, program income means gross income earned by the designated agency that is directly generated by an activity supported under this part.

(2) (i) The designated agency must use program income to supplement Federal funds that support program activities that are subject to this part. See, for example 2 CFR 200.307(e)(2).

(ii) Notwithstanding 2 CFR 200.305(a) and consistent with 2 CFR 200.305(b)(5), and to the extent that program income funds are available, all designated agencies, regardless of whether they are a State agency, must disburse those funds (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional funds from the Department.

(3) Any program income received during a fiscal year that is not obligated or expended prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the grantee during that succeeding fiscal year.

(Authority: Sections 12(c), 19, and 509(f)(7), (g), and (i) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 716, and 794e(f)(7), (g), and (i); and 20 U.S.C. 3474)