

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

(d) *Compliance with the Architectural Barriers Act of 1968.* Nothing in this section of §15b.18 relieves recipients, whose facilities are covered by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) from their responsibility of complying with the requirements of that Act and any implementing regulations.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52138, 52139, Dec. 19, 1990]

### Subpart D—Preschool, Elementary, Secondary, Adult, and Extension Education

#### § 15b.20 Applicability.

Except as otherwise noted, this subpart applies to public and private schools, elementary, secondary, adult, and extension education programs or activities that receive Federal financial assistance provided by the Department of Agriculture after the effective date of this part and to recipients that operate, or that receive Federal finan-

cial assistance for the operation of, such programs or activities.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51343, Aug. 26, 2003]

#### § 15b.21 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

#### § 15b.22 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §15b.23, §15b.24, and §15b.25.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart

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are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General*. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to handicapped persons or their parents or guardians, except for those fees that are imposed on non-handicapped persons or their parents or guardians. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation*. If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement*. If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of their handicap, the placement, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents*. If a recipient has made available in conformance with the requirements of this section and §15b.23, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school.

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Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of §15b.25.

(d) *Compliance*. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this regulation. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time but in no event later than September 1, 1982.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

### § 15b.23 Educational setting.

(a) *Academic setting*. A recipient to which this subpart applies shall educate, or shall provide for the education of each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic setting*. In providing or arranging for the provision of non-academic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §15b.26(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities*. If a recipient, in compliance with paragraph (a) of