

**§ 381.5**

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.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), if the eligible system is a State or local government agency.

(7) 34 CFR part 81 (General Education Provisions Act— Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 381.

(c) The regulations in 34 CFR 369.43, 369.46 and 369.48 relating to certain conditions that must be met by grantees.

(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e)

**§ 381.5 What definitions apply?**

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

- Award
- EDGAR
- Fiscal year
- Nonprofit
- Private
- Public
- Secretary

(b) *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 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 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 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 DDA; 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 DDA, 42 U.S.C. 6041-6043, and that meets the requirements of § 381.10 of this part.

*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, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association takes effect), except for purposes of the section 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, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e)

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

**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 access to records and program income, as in part C of the DDA;
- (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;
- (4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public 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 programs 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 DDA; 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 State law, regulation, or policy.

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

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f))

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