

been so changed that it no longer conforms with the requirements of this part or 34 CFR part 363; or

(2) In the administration of the State plan, there has been a failure to comply substantially with any provision of that plan or a program improvement plan established in accordance with section 106(b)(2) of the Act.

(b) *Informal resolution.* Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) *Withholding hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this Program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 101(b), 107(c), and 107(d) of the Act; 29 U.S.C. 721(b), 727(c)(1) and (2), and 727(d))

ADMINISTRATION

§ 361.12 Methods of administration.

The State plan must assure that the State agency, and the designated State

unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Approved by the Office of Management and Budget under control number 1820-0500)

(Authority: Sections 101(a)(6) and (a)(10)(A) of the Act; 29 U.S.C. 721(a)(6) and (a)(10)(A))

[66 FR 4382, Jan. 17, 2001, as amended at 66 FR 7253, Jan. 22, 2001]

§ 361.13 State agency for administration.

(a) *Designation of State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) *General.* Except as provided in paragraphs (a)(2) and (3) of this section, the State plan must provide that the designated State agency is one of the following types of agencies:

- (i) A State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities; or
- (ii) A State agency that includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(2) *American Samoa.* In the case of American Samoa, the State plan must designate the Governor.

(3) *Designated State agency for individuals who are blind.* If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the State plan may designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise

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its administration in a political subdivision of the State by a sole local agency.

(b) *Designation of State unit.*

(1) If the designated State agency is not of the type specified in paragraph (a)(1)(i) of this section or if the designated State agency specified in paragraph (a)(3) of this section is not primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the State plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the State plan;

(ii) Has a full-time director;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit; and

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) *Responsibility for administration.*

(1) At a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:

(i) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available serv-

ices, and the provision of these services.

(ii) The determination to close the record of services of an individual who has achieved an employment outcome in accordance with § 361.56.

(iii) Policy formulation and implementation.

(iv) The allocation and expenditure of vocational rehabilitation funds.

(v) Participation as a partner in the One-Stop service delivery system under Title I of the Workforce Investment Act of 1998, in accordance with 20 CFR part 662.

(2) The responsibility for the functions described in paragraph (c)(1) of this section may not be delegated to any other agency or individual.

(Approved by the Office of Management and Budget under control number 1820-0500)

(Authority: Section 101(a)(2) of the Act; 29 U.S.C. 721(a)(2))

[66 FR 4382, Jan. 17, 2001, as amended at 66 FR 7253, Jan. 22, 2001]

§ 361.14 Substitute State agency.

(a) *General provisions.*

(1) If the Secretary has withheld all funding from a State under § 361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State's program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency must submit a State plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) *Substitute agency matching share.* The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to contribute if the State agency were