§ 18.439 Private education.

(a) A recipient that provides private elementary or secondary education may not on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in § 18.433(b)(1), within that recipient's program or activity.

(b) A recipient may not charge more for providing an appropriate education to handicapped persons than to non-handicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with §§ 18.435 and 18.436. Each recipient to which this section applies is subject to §§ 18.434, 18.437, and 18.438.

[45 FR 63268, Sept. 24, 1980, as amended at 68 FR 51370, Aug. 26, 2003]

POSTSECONDARY EDUCATION

§ 18.441 Application.

Sections 18.441 through 18.447 apply to postsecondary education programs or activities that receive Federal financial assistance from the Department of Veterans Affairs and to recipients that operate or receive or benefit from Federal financial assistance for the operation of such programs or activities.

[45 FR 63268, Sept. 24, 1980, as amended at 68 FR 51370, Aug. 26, 2003]

§ 18.442 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient.

(b) *Admission.* In administering its admission policies, a recipient;

(1) May not apply limitations on the number or proportion of handicapped persons who may be admitted;

(2) May not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless:

(i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question; and

(ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available;

(3) Shall assure itself that:

(i) Admissions tests are selected and administered to best ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflect the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) Admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) Admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiries as to whether an applicant for admission is a handicapped person. After admission, the recipient may inquire on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination under § 18.406(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity under § 18.406(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped.

(1) The recipient shall state clearly on any written questionnaire used for this purpose or make clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient shall state clearly that the information is being requested