ducting an investigation, under the circumstances described in those subparagraphs, not later than 3 business days after the system makes a written request for the records involved; and
(ii) have immediate access, not later than 24 hours after the system makes such a request, to the records without consent from another party, in a situation in which services, supports, and other assistance are provided to an individual with a developmental disability—
(I) if the system determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy; or
(II) in any case of death of an individual with a developmental disability;

(K) hire and maintain sufficient numbers and types of staff (qualified by training and experience) to carry out such system's functions, except that the State involved shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the system, to the extent that such policies would impact the staff or functions of the system funded with Federal funds or would prevent the system from carrying out the functions of the system under this part;

(L) have the authority to educate policymakers; and

(M) provide assurances to the Secretary that funds allotted to the State under section 15042 of this title will be used to supplement, and not supplant, the non-Federal funds that would otherwise be made available for the purposes for which the allotted funds are provided;

(3) to the extent that information is available, the State shall provide to the system—
(A) a copy of each independent review, pursuant to section 1396a(a)(30)(C) of this title, of an Intermediate Care Facility (Mental Retardation) within the State, not later than 30 days after the availability of such a review; and

(B) information about the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are served through home and community-based waivers (authorized under section 1396n(c) of this title) receive; and

(4) the agency implementing the system shall not be redesignated unless—
(A) there is good cause for the redesignation;

(B) the State has given the agency notice of the intention to make such redesignation, including notice regarding the good cause for such redesignation, and given the agency an opportunity to respond to the assertion that good cause has been shown;

(C) the State has given timely notice and an opportunity for public comment in an accessible format to individuals with developmental disabilities or their representatives; and

(D) the system has an opportunity to appeal the redesignation to the Secretary, on the basis that the redesignation was not for good cause.

(b) American Indian consortium

Upon application to the Secretary, an American Indian consortium established to provide protection and advocacy services under this part, shall receive funding pursuant to section 15042(a)(6) of this title to provide the services. Such consortium shall be considered to be a system for purposes of this part and shall coordinate the services with other systems serving the same geographic area. The tribal council that designates the consortium shall carry out the responsibilities and exercise the authorities specified for a State in this part, with regard to the consortium.

(c) Record

In this section, the term "record" includes—
(1) a report prepared or received by any staff at any location at which services, supports, or other assistance is provided to individuals with developmental disabilities;

(2) a report prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury, or death occurring at such location, that describes such incidents and the steps taken to investigate such incidents; and

(3) a discharge planning record.


References in Text


The Older Americans Act of 1965, referred to in subsec. (a)(2)(D)(ii), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.


The Individuals with Disabilities Education Act, referred to in subsec. (a)(2)(D)(ii), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Amendments


§15044. Administration

(a) Governing board

In a State in which the system described in section 15043 of this title is organized as a pri-
vate nonprofit entity with a multimember gow-
erning board, or a public system with a multi-
member governing board, such governing board
shall be selected according to the policies and
procedures of the system, except that—
(1) the governing board shall be composed
of members who broadly represent or are
knowledgeable about the needs of the individ-
uals served by the system;
(B) a majority of the members of the board
shall be—
(i) individuals with disabilities, including
individuals with developmental disabilities,
who are eligible for services, or have re-
ceived or are receiving services through the
system; or
(ii) parents, family members, guardians,
advocates, or authorized representatives of
individuals referred to in clause (i); and
(C) the board may include a representative
of the State Council on Developmental Dis-
abilities, the Centers in the State, and the
self-advocacy organization described in sec-
section 15024(c)(4)(A)(ii)(I) of this title;
(2) not more than 1/3 of the members of
the governing board may be appointed by the
chief executive officer of the State involved, in the
case of any State in which such officer has the
authority to appoint members of the board;
(3) the membership of the governing board
shall be subject to term limits set by the sys-
tem to ensure rotating membership;
(4) any vacancy in the board shall be filled
not later than 60 days after the date on which
the vacancy occurs; and
(5) in a State in which the system is orga-
nized as a public system without a multi-
member governing or advisory board, the sys-
tem shall establish an advisory council—
(A) that shall advise the system on poli-
cies and priorities to be carried out in pro-
tecting and advocating the rights of individ-
uals with developmental disabilities; and
(B) on which a majority of the members
shall be—
(i) individuals with developmental dis-
abilities who are eligible for services, or
have received or are receiving services,
through the system; or
(ii) parents, family members, guardians,
advocates, or authorized representatives of
individuals referred to in clause (i).
(b) Legal action
(1) In general
Nothing in this subchapter shall preclude a
system from bringing a suit on behalf of indi-
viduals with developmental disabilities
against a State, or an agency or instrumental-
ity of a State.
(2) Use of amounts from judgment
An amount received pursuant to a suit de-
scribed in paragraph (1) through a court judg-
ment may only be used by the system to fur-
ther the purpose of this part and shall not be
used to augment payments to legal contrac-
tors or to award personal bonuses.
(3) Limitation
The system shall use assistance provided
under this part in a manner consistent with
section 14404 of this title.
(c) Disclosure of information
For purposes of any periodic audit, report, or
evaluation required under this part, the Sec-
retary shall not require an entity carrying out a
program to disclose the identity of, or any other
personally identifiable information related to,
any individual requesting assistance under such
program.
(d) Public notice of Federal onsite review
The Secretary shall provide advance public no-
tice of any Federal programmatic or administra-
tive onsite review of a system conducted under
this part and solicit public comment on the sys-
tem through such notice. The Secretary shall
prepare an onsite visit report containing the re-
results of such review, which shall be distributed
to the Governor of the State and to other inter-
ested public and private parties. The comments
received in response to the public comment so-
lcitation notice shall be included in the onsite
visit report.
(e) Reports
Beginning in fiscal year 2002, each system es-
ablished in a State pursuant to this part shall
annually prepare and transmit to the Secretary
a report that describes the activities, accom-
plishments, and expenditures of the system dur-
ing the preceding fiscal year, including a de-
scription of the system's goals, the extent to
which the goals were achieved, barriers to their
achievement, the process used to obtain public
input, the nature of such input, and how such
input was used.
§ 15045. Authorization of appropriations
For allotments under section 15042 of this
Title, there are authorized to be appropriated
$32,000,000 for fiscal year 2001 and such sums as
may be necessary for each of fiscal years 2002
through 2007.
§ 15061. Grant authority
(a) National network
From appropriations authorized under section
15066(a)(1) of this title, the Secretary shall make
5-year grants to entities in each State des-
ignated as University Centers for Excellence in
Developmental Disabilities Education, Research,
and Service to carry out activities des-
dcribed in section 15063(a) of this title.
(b) National training initiatives
From appropriations authorized under section
15066(a)(1) of this title and reserved under sec-
section 15063(b) of this title, the Secretary shall
make grants to Centers to carry out activities
described in section 15063(b) of this title.
(c) Technical assistance
From appropriations authorized under section
15066(a)(1) of this title and reserved under sec-