

of this section and any party who disagrees with the findings and decision under paragraph (g)(3)(iii) of this section have a right to bring a civil action with respect to the matter in dispute. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(2) In any action brought under paragraph (i) of this section, the court—

(i) Receives the records related to the impartial due process hearing and the records related to the administrative review process, if applicable;

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(j) *State fair hearing board.* A fair hearing board as defined in § 361.5(c)(21) is authorized to carry out the responsibilities of the impartial hearing officer under paragraph (e) of this section in accordance with the following criteria:

(1) The fair hearing board may conduct due process hearings either collectively or by assigning responsibility for conducting the hearing to one or more members of the fair hearing board.

(2) The final decision issued by the fair hearing board following a hearing under paragraph (j)(1) of this section must be made collectively by, or by a majority vote of, the fair hearing board.

(3) The provisions of paragraphs (b)(1), (2), and (3) of this section that relate to due process hearings and of paragraphs (e), (f), (g), and (h) of this section do not apply to fair hearing boards under this paragraph (j).

(k) *Data collection.* (1) The director of the designated State unit must collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(i) A copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this section.

(ii) The number of mediations held, including the number of mediation agreements reached.

(iii) The number of hearings and reviews sought from impartial hearing officers and State reviewing officials, including the type of complaints and the issues involved.

(iv) The number of hearing officer decisions that were not reviewed by administrative reviewing officials.

(v) The number of hearing decisions that were reviewed by State reviewing officials and, based on these reviews, the number of hearing decisions that were—

(A) Sustained in favor of an applicant or recipient;

(B) Sustained in favor of the designated State unit;

(C) Reversed in whole or in part in favor of the applicant or recipient; and

(D) Reversed in whole or in part in favor of the State unit.

(2) The State unit director also must collect and submit to the Secretary copies of all final decisions issued by impartial hearing officers under paragraph (e) of this section and by State review officials under paragraph (g) of this section.

(3) The confidentiality of records of applicants and recipients maintained by the State unit may not preclude the access of the Secretary to those records for the purposes described in this section.

(Authority: Sections 12(c) and 102(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c))

### Subpart C—Financing of State Vocational Rehabilitation Programs

#### § 361.60 Matching requirements.

(a) *Federal share*—(1) *General.* Except as provided in paragraph (a)(2) of this section, the Federal share for expenditures made by the State under the vocational rehabilitation services portion of the Unified or Combined State Plan, including expenditures for the provision of vocational rehabilitation services and the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(b) *Non-Federal share*—(1) *General.* Except as provided in paragraph (b)(2) and (b)(3) of this section, expenditures made under the vocational rehabilitation services portion of the Unified or Combined State Plan to meet the non-Federal share under this section must be consistent with the provisions of 2 CFR 200.306(b).

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 2 CFR 200.306(b) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from those cash contributions provided by private organizations, agencies, or individuals and that are deposited in the State agency's account or, if applicable, sole local agency's account, in accordance with State law prior to their expenditure and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for—

(i) Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(ii) Particular geographic areas within the State for any purpose under the vocational rehabilitation services portion of the Unified or Combined State Plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:

(A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.

(B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under § 361.26.

(C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with § 361.25, unless a waiver of statewideness is obtained under § 361.26; and

(iii) Any other purpose under the vocational rehabilitation services portion of the Unified or Combined State Plan, provided the expenditures do not benefit in any way the donor, employee, officer, or agent, any member of his or her immediate family, his or her partner, an individual with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial or other interest. The Secretary does not consider a donor's receipt from the State unit of a subaward or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the subaward or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(14), 12(c), 101(a)(3), 101(a)(4), and 104 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(14), 709(c), 721(a)(3), 721(a)(4), and 724))

*Example for paragraph (b)(3):* Contributions may be earmarked in accordance with § 361.60(b)(3)(iii) for providing particular services (*e.g.*, rehabilitation technology services); serving individuals with certain types of disabilities (*e.g.*, individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (*e.g.*, students with disabilities who are receiving special education services), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the vocational rehabilitation services portion of the Unified or Combined State Plan in accordance with the requirements in § 361.60(b)(3)(ii).

#### **§ 361.61 Limitation on use of funds for construction expenditures.**

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the