

# **Equity in Quality Career Education Programs: The Combined Promise of the Civil Rights Laws and Perkins Act for High School Youth with Disabilities**

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## **What Does “Equity” Mean for Youth with Disabilities? – Historical Context and Current Realities**

For children and youth with disabilities, the quest for equitable participation in public education has always had two strands: getting in, and, once there, securing meaningful opportunities to learn what all other students are expected to know and be able to do. Indeed, the recognition that children with disabilities were routinely and systematically being denied both equal access to public education and quality education when permitted to enroll prompted the 1975 enactment of the seminal federal special education law originally known as the Education for All Handicapped Children Act, and now called the Individuals with Disabilities Education Act (“IDEA”). Statistics compiled for Congress at the time revealed that of eight million children with disabilities in the United States, nearly two million were excluded from public schools, and that more than four million were receiving an inappropriate education. Children of all ages and with a range of disabilities were affected.<sup>1</sup>

These two strands of discrimination – exclusion and inferior opportunities – characterized vocational education just as they did the broader public education system of which it was a part. Compliance reviews of vocational educational programs conducted by the Office for Civil Rights (“OCR”) of what was then the U.S. Department of Health, Education and Welfare from 1973 to 1978 unearthed a pervasive pattern of civil rights violations, prompting OCR to issue in 1979 *Guidelines for Eliminating Discrimination and Denial of Services on the*

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*Basis of Race, Color, National Origin, Sex and Handicap in Vocational Education Programs.* In regard to students with disabilities, OCR found that eligibility requirements often denied students vocational education opportunities on the basis of disability; students were often impermissibly assigned to separate programs; students were denied equal opportunities as a result of inaccessible facilities and poor evaluation procedures; and vocational education administrators often failed to protect students against discrimination by participating employers.<sup>2</sup>

Exclusion from public education because of disability has, of course, been recognized by the courts as unconstitutional for 30 years,<sup>3</sup> and what is now called IDEA has entitled all children with disabilities to a “free appropriate public education” for almost as long. Access to school, however, has not yet brought the quality of education that was as much the promise of the 1975 law as was entry to the school building. Today, students with disabilities experience high drop out rates, low graduation rates and low rates of postsecondary education and employment relative to their peers without disabilities.<sup>4</sup> In amending IDEA in 1997, Congress found that “implementation . . . has been impeded by low expectations, and an insufficient focus on applying . . . proven methods of teaching and learning for children with disabilities.”<sup>5</sup>

In the realm of secondary career and technical education, data collected in the 1990's indicate that students with disabilities are taking vocational education courses in large numbers. The National Assessment of Vocational Education (“NAVE”) reported in its 1994 *Final Report to Congress* that students with disabilities were over represented in vocational education,<sup>6</sup> and its 2002 *Interim Report to Congress* found a similar phenomenon. According to the 2002 report, in 1998 students with disabilities represented 2.8% of all high school graduates, but 4.2% of all occupational concentrators. In addition, students with disabilities were more likely to become concentrators than their non-disabled peers (37.5% versus 24.6%), and earned a higher share of their total credits in vocational education than did other students (23.5% versus 15.7%).<sup>7</sup>

As the sobering record on graduation rates, dropout rates and post-secondary outcomes demonstrates, however, issues of access cannot be divorced from issues regarding the quality of the programs to which access has been attained. While it would appear from the NAVE statistics that students with disabilities are being afforded opportunities to take vocational education courses, little hard data is available concerning the quality of those opportunities, including whether students with disabilities are being supported in the high quality career and technical education programs envisioned by reforms such as the Carl D. Perkins Vocational and Technical Education and School-to-Work Opportunities Acts: i.e., programs that prepare students for careers; are designed to meet the same high academic standards set by the state for all students; integrate occupational and academic learning, provide strong understanding and experience in all aspects of an industry, develop higher order skills and prepare students for postsecondary education; and that empower students to make career and life choices by giving them the flexibility and skills they will need to cope with labor market changes and technological change, and to develop new education and career goals over time.

The NAVE 2002 Interim Report does note that students with disabilities are over-represented in what the report terms “some of the more traditional vocational program areas – agriculture, construction, mechanics and repair, and materials production.” While “traditional program areas” does not necessarily equal traditional curricula and pedagogy, this finding does fuel concerns, rooted in the experiences of students, educators, parents and advocates, that vocational course takers with disabilities are not necessarily participating in the innovative, high-quality career and technical education programs that the Perkins and School-to-Work Acts were intended to spur, and are in danger of being left behind in programs of lesser quality.

## **Legal Responses to Disability-Based Inequities: Critical Provisions**

The legal response to the inequities experienced by children and youth with disabilities in public education in general, and career and technical vocation in particular, has taken two main tacks. First, beginning in the early 1970s, Congress enacted and subsequently refined civil rights laws explicitly prohibiting disability discrimination in education programs (Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990) and requiring that public school systems not only enroll, but meet the unique needs of, all children with disabilities in the least restrictive educational environment appropriate in light of those needs (IDEA). Second, Congress has incorporated into its education reform legislation (including Title I of the Elementary and Secondary Education Act, the Perkins Act and the now-sunset School-to-Work Opportunities Act) provisions designed to ensure the equitable participation in, and treatment of, students with disabilities.

Among these laws, Section 504, the ADA, IDEA and the Perkins Act have the greatest potential for vindicating the right of students with disabilities to equitable participation in high quality career and technical education programs created for all students. The critical provisions of each are set out below, followed by a discussion of the strategies for equity that arise from their legal requirements.

### *1. Section 504 of the Rehabilitation Act of 1973*

Section 504 states,

"[n]o otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving federal financial assistance..."<sup>8</sup>

As virtually all state educational agencies, local school districts, public schools and vocational schools receive federal funds, virtually all are required to comply with §504. So, too, are virtually all of the postsecondary institutions with which career and technical education

programs for high school students may be linked.

U.S. Department of Education regulations implementing §504 provide further detail about what constitutes unlawful disability-based discrimination. The regulations include an extensive list of prohibited discriminatory practices, designed to ensure that youth with disabilities have an equal opportunity to gain the same benefits, obtain the same results and reach the same level of achievement as their nondisabled peers. For example, career and technical education programs may not: deny a qualified youth with a disability the opportunity to participate in and benefit from programs, or provide qualified youth with disabilities opportunities to participate and benefit that are unequal to those offered their peers; benefits or services that are not as effective as those provided to their peers; or lower quality programs than those provided their peers, or provide different or separate programs to youth with disabilities, unless the latter is necessary in order to deliver services that are as effective as what other youth receive. The §504 regulations also set out affirmative steps education agencies and programs must take to ensure that youth with disabilities receive full educational opportunity, requiring schools to evaluate the educational needs of youth with disabilities, and to provide special education supports, related aids and services and reasonable accommodations to those who need them.<sup>9</sup> The OCR *Guidelines for Eliminating Discrimination in Vocational Education* elaborate on these obligations.

## 2. *Americans with Disabilities Act*

The Americans with Disabilities Act ("ADA") is divided into five "Titles." Most relevant to public career and technical education programs is Title II, which prohibits discrimination by a "public entity" regardless of whether it receives federal funds. Title II thus covers state education agencies; school districts; public elementary and secondary schools; public technical schools, community colleges, 4-year colleges and universities; and any other government agency or unit involved in career and technical education programs.

Title II of the ADA protects only "qualified" individuals from discrimination, stating that

"no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."<sup>10</sup>

A "qualified" individual with a disability under Title II of the ADA is someone who,

*"with or without* reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the *essential* eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity."<sup>11</sup>

Public entities thus must make "reasonable modifications," remove "barriers," and provide "auxiliary aids and services" as needed to enable an individual to meet "essential eligibility requirements," and so become a "qualified" individual with a disability.

As is the case with §504, the ADA is implemented by regulations that provide further detail about what constitutes unlawful discrimination. The Title II ADA regulations were modeled on the §504 regulations, and prohibit all of the discriminatory practices made illegal under §504.<sup>12</sup> In addition, they make explicit some obligations that are implicit in the older §504 regulations. For example, the ADA regulations state that public entities must make reasonable changes in their policies, practices and procedures when necessary to avoid disability discrimination (unless the changes would "fundamentally alter" the nature of the program in question), and may not use eligibility criteria that screen out or tend to screen out an individual with a disability, or individuals with a particular kind of disability, from full and equal participation in programs, unless the criteria are necessary to the program.<sup>13</sup>

### 3. *Individuals with Disabilities Education Act ("IDEA")*

IDEA provides for federal aid to assist state and local education agencies in meeting the needs of children and youth with disabilities. In return, states and local school systems must comply with the detailed substantive and procedural requirements set forth in the statute and the regulations implementing it. These include providing to all IDEA-eligible students a "free

appropriate public education" ("FAPE") consisting of an appropriate elementary or secondary education that meets state standards, along with necessary special education and related services.<sup>14</sup> For purposes of IDEA, "special education" means "specially designed instruction...to meet the unique needs of a child with a disability," and includes instruction conducted in the classroom and in other settings.<sup>15</sup> "Specially designed instruction" means adapting the content, methodology or delivery instruction to (1) address the child's unique disability-related needs, and (2) enable the child to meet the standards imbedded in the regular education curriculum adopted for all students.

Under these definitions, "special education" is package of instructional techniques and services. It is not a place. Once instruction for a student has been tailored as required to address his or her needs it may, again depending upon the child's needs, be provided in a variety of settings -- including a "regular" classroom. IDEA contains a presumption that students will fully participate in the "general," meaning regular, curriculum and be educated in regular classes alongside peers without disabilities, supported by appropriate services.<sup>16</sup> Schools must provide the supplementary aids and services students need for successful learning in integrated classes; exclusion is allowed only if a child cannot learn in the regular class even with these services.<sup>17</sup>

To facilitate the provision of FAPE, IDEA includes very specific requirements regarding education evaluations and individualized planning, including planning for the transition from high school to postsecondary life. These requirements are noted below as they contribute to specific strategies for achieving equity for individual students in career and technical education programs.

#### 4. *Carl D. Perkins Vocational and Technical Education Act*

The Perkins Act was rewritten in 1990 to reform the traditional approach to vocational education, which focused on preparing youth for a specific, narrowly defined job slot. The 1990

Perkins Act emphasized two related approaches: (1) integrating vocational and academic education so that students gain strong basic and advanced academic skills in a vocational setting, and (2) providing students with strong experience in and understanding of all aspects of the industry they are preparing to enter. The 1998 Perkins Act retained this emphasis, and made explicit the requirement that students in vocational education programs be taught the same challenging academic proficiencies that all other students are taught.<sup>18</sup>

Perkins addresses the rights of students with disabilities through its provisions concerning “special populations.”<sup>19</sup> Under these provisions, school systems receiving Perkins funds must provide students with disabilities with equal access to Perkins-assisted activities, and may not discriminate on the basis of disability.<sup>20</sup> In addition, Perkins recipients have explicit obligations to develop program strategies for students with disabilities; to provide programs that prepare them for further learning and high skill, high wage careers, and are designed to enable them to meet the same levels of performance set for all students; and to identify barriers that result in lowering rates of access to or lowering success in vocational programs for students with disabilities, and adopt strategies for overcoming them.<sup>21</sup>

### **Strategies for Equity**

The legal responses sketched above have profound ramifications for the design and implementation of career and technical education programs on the state, school and individual student levels. Taken together to mean what they say, these laws should be giving rise to systems in which youth with disabilities participate in high quality, academically rigorous career and technical education programs alongside their peers who do not have disabilities, with the educational supports and accommodations they need to succeed and to master the bodies of knowledge and skills all students are expected to master. Paramount towards this end are the

implications of these laws for program design and development, admission practices, and individualized assistance to students.

1. *Equity in Program Design and Development*

Planning for disability equity is an integral part of program design, evaluation, review and improvement under the Perkins Act. And the depth and breadth of the anti-discrimination requirements of section 504 and the ADA make effective compliance impossible unless the needs and rights of youth with disabilities are built into the design of the programs planned for all youth.

Under Perkins, for example, local plans – those submitted by local educational agencies, area vocational and technical education schools and certain other entities seeking Perkins funds – must describe how the recipient will review vocational and technical education programs and identify and adopt strategies to overcome barriers that result in lowering rates of access or success for students with disabilities; how it will provide programs that are designed to enable them to meet state levels of performance set for all students; and how individuals who are members of special populations will not be discriminated against.<sup>22</sup> Local recipients also must arrange for independent evaluation of their programs, continuously improve them, and develop and implement program evaluations that assess how the needs of students with disabilities are being met.<sup>23</sup> The state has similar equity-related program design responsibilities, including planning for how it will provide individuals with disabilities programs designed to prepare them for further learning and for high skill, high wage careers and for how they will be afforded equal access to all Perkins-funded activities, free from discrimination.<sup>24</sup>

Virtually all of the specific requirements of the §504 and ADA regulations and the OCR Guidelines have implications for program design, beginning with the definition of which youth with disabilities are protected by these laws. Under §504, a youth is "qualified" (for purposes of

secondary educational services) if a nondisabled youth of his or her age may take part in such programs, or if state law or the federal Individuals with Disabilities Education Act entitles youth with disabilities of that age to public education.<sup>25</sup> "Qualified" youth under §504 must be provided with needed special education and related services.<sup>26</sup> Under Title II of the ADA, a "qualified" youth is anyone who meets the "essential eligibility requirements" of the program in question, "*with or without* reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services."<sup>27</sup> Taking §504 and the ADA together, then, any youth who could participate in a career and technical education program with or without specialized instruction (special education), related services, other instructional supports, barrier removal, auxiliary aids and services and reasonable accommodations is "qualified" to participate in that program free of discrimination. Therefore, the number of youth who are *not* "qualified" to participate in the programs created for all students is very limited. Provisions for delivering specialized instruction, related services, other instructional supports, etc. to the vast majority who are "qualified" must necessarily be built into system and program design from the start.

The OCR Guidelines underscore this obligation, stressing that students may not be excluded from programs or courses because buildings or equipment are physically inaccessible to them, or because they need related aids and services or auxiliary aids. If necessary, the Guidelines explain, programs must modify instructional equipment, modify or adapt the manner in which instruction is provided, house the program in accessible facilities, and provide related aids and services that assure an appropriate education.<sup>28</sup> Furthermore, state education agencies, school systems, schools and other recipients of federal money involved in career and technical education programs may not use a formula or other method of allocating funds that has the effect of discriminating on the basis of disability.<sup>29</sup> Budgets thus must be designed to allow sufficient money for the specialized instruction, related services and other supports and

accommodations necessary for equitable participation by youth with disabilities.

Perhaps the most profound implications for program design flowing from §504 and the ADA relate to the requirement that youth with disabilities be provided benefits and services comparable to those afforded nondisabled students. Career and technical education programs may not provide youth with disabilities opportunities to participate and benefit that are unequal to those offered their peers, or provide them with programs, benefits or services that are not as effective as those provided to others.<sup>30</sup> To the contrary, youth with disabilities must be provided with services that give them an equal opportunity to gain *the same benefits, obtain the same results and reach the same level of achievement* that other youth participating in a particular attain.<sup>31</sup> This cannot happen unless youth with disabilities are treated as part of the core constituency during program development. Further, the §504 regulations and the ADA regulations both prohibit the use of administrative policies and techniques that, *intentionally or not*, result in discrimination. This ban includes methods that in effect defeat or undermine the education program's purpose for students with disabilities.<sup>32</sup> Avoiding these practices requires careful attention to the potential consequences of all planning and program design decisions.

The obligation to infuse equity into program development cannot be met by simply creating separate programs for students with disabilities, as both the §504 and the ADA regulations forbid different or separate programs unless "necessary" in order to deliver services that are as effective as those other youth receive, and it is unlawful to force a youth with a disability into a different or separate program if he or she could participate in the "regular" program.<sup>33</sup> If the wide array of legally required supports described above are made available, different or separate programs should rarely be necessary. In addition, the OCR Guidelines require that students with disabilities be placed in the regular vocational educational program to the maximum extent appropriate to individual student needs; a student may not be excluded unless the program demonstrates that he or she cannot learn satisfactorily there, even with

special education supports, including supplementary aids and services.<sup>34</sup>

## 2. *Equity in Admission Practices*

The equity provisions of Perkins, §504 and the ADA mean that school systems must provide equal access to the full range of career and technical education programs and activities made available to other students, including allowing students with disabilities to enroll in each and every program within the school. Section 504 and the ADA address entrance criteria in a straightforward way. The OCR Guidelines ban the use of entrance criteria that discriminate on the basis of disability. The ban includes most criteria that disproportionately exclude students with a particular kind of disability, for example, emotional disturbance or a hearing impairment. An entrance standard that has this kind of discriminatory effect may only be used if (1) it has been *validated as essential* to participation in the program, *and* (2) there is no alternative that does *not* disproportionately exclude.<sup>35</sup> The ADA regulations take a similar approach, prohibiting eligibility criteria that “screen out or tend to screen out an individual with a disability, or individuals with a particular kind of disability, from full and equal participation in programs, unless the criteria are *necessary* to the program.”<sup>36</sup> These principles apply to *all* entrance criteria, including past academic performance, scores on standardized tests, and past conduct and discipline records.<sup>37</sup> In addition, both the § 504 and the ADA regulations prohibit the use of “criteria or methods of administration” that, intentionally or not, result in discrimination, or defeat or undermine the education program's purpose for students with disabilities.<sup>38</sup> An unnecessary entrance standard that excludes students with disabilities from the high quality educational opportunities designed for all students is just such an unlawful “criteria or method of administration.”

The §504 and ADA requirements described above apply to work-based as well as school-based learning. When programs include off-campus work opportunities, they must ensure that the outside employer or other learning host abides by these rules when selecting

students. The §504 and ADA regulations prohibit education programs from doing through contracts or other arrangements with third parties what the regulations prohibit education programs from doing themselves, directly.<sup>39</sup> Thus if an outside learning host discriminates, the program must convince its partner to comply with the law, or end the relationship. The OCR Guidelines are even more explicit on this subject: each program must insure that "(a) it does not discriminate against its students on the basis of...handicap in making available opportunities in cooperative education, work study and job placement programs; and (b) students...are not discriminated against *by employers or prospective employers* on the basis of...handicap in recruitment, hiring, placement, assignment to work tasks, hours of employment, levels of responsibility, and in pay."<sup>40</sup>

Equity in admission practices extends beyond the creation of general criteria meeting the standards discussed above. Generally valid criteria may, as a legal matter, need to be modified for individual students on a case-by-case basis, in light of the student's particular needs and interests and the nature of the program in which he or she seeks to enroll. Under the ADA, programs must make reasonable changes in their policies, practices and procedures when necessary to avoid disability discrimination, unless the changes would "fundamentally alter" the nature of the program in question.<sup>41</sup> This includes admission policies, practices and procedures. As discussed above, programs also have independent obligations under §504 and the ADA to provide the specialized instruction, support services, auxiliary aids, modifications and reasonable accommodations necessary to assist youth with disabilities in meeting the essential requirements for admission and participation.

### 3. *Individual Support*

If Perkins, Section 504 and the ADA require equitable participation in high quality career and technical education programs created for all students, IDEA provides practical tools for achieving this for individual students. For example:

- ▶ The individualized educational evaluations and periodic reevaluations IDEA requires should be aligned with the skills and competencies to be taught, and the instructional methods to be used, in a student's choice of career and technical education program. Under IDEA, these evaluations must be designed to provide information about how the student's disability affects learning; the services and supports he or she will need to meet the expectations set for all students; and the supports staff will need to assist him or her in doing so.
- ▶ Individualized Education Programs ("IEPs") should be designed in light of the program's content and desired outcomes. IEP goals and objectives should be keyed to mastering and attaining them, and the specific educational services to be provided should include all those necessary to meet the goals and objectives and attain the high standards set for all students in the regular and career/technical education curriculum.
- ▶ Through IEP meetings, students, parents and school staff can consider and provide for the full range of supports that may be called for, e.g., specialized instruction in the career and technical education program content, modification of the content of the curriculum or the manner in which it is delivered, supports for regular academic and occupational educators, equipment modification or the provision of assistive technology.
- ▶ The individualized transition planning that IDEA requires beginning at age 14 (or earlier when appropriate) can be used to identify, and provide, any specialized assistance a student will need in order to meet essential admission criteria in the career and technical education program of his or her choice.

## **Conclusion**

The Perkins Act mandates career and technical education programs of high quality, designed, implemented and refined to promote participation and success by youth with disabilities. Section §504 and the ADA establish a right to equitable participation in those high-quality programs created for all students, with needed individualized supports and accommodations. IDEA affords processes and procedures for identifying and designing those individualized supports and accommodations. A legal framework for a high-quality, just and equitable career and technical education system exists. The tasks of building on that framework and vindicating the rights it recognizes remains.

## NOTES

1. S. Rep. No. 168, 94th Cong., 1st Sess. at 8 (1975).
2. See 44 Fed. Reg. 17163 (March 21, 1979).
3. *Mills v. Bd. of Ed. of District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972).
4. See, e.g., J. Blackorby & M. Wagner, Longitudinal Postschool Outcomes of Youth with Disabilities: Findings from the National Longitudinal Transition Study, *Exceptional Children*, 62(5), 399-413 (1996).
5. 20 U.S.C. §1400(c)(4).
6. D. Boesel and L. McFarland, *National Assessment of Vocational Education Final Report to Congress*, v. 1 (1994).
7. M. Silverberg, E. Warner, D. Goodwin, M. Fong, National Assessment of Vocational Education, Interim Report to Congress at 50 (2002).
8. 29 U.S.C. §794(a).
9. See 34 C.F.R. §§104.33-104.35.
10. 42 U.S.C. §12132.
11. 42 U.S.C. §12131(2) (emphasis added).
12. See 28 C.F.R. §35.130(b).
13. 28 C.F.R. §35.130(b)(7), (8).
14. 20 U.S.C. §§1401(a)(8), 1412(a)(1), 1414(d)(1)(A)(vii).
15. 20 U.S.C. §1401(25).
16. 20 U.S.C. §§1412(a)(5), (17), 1414(b)(2), (c)(1)(B)(iv), (d)(1)(A)(i)-(iv), (d)(1)(B)(ii), (iv), (d)(4).
17. 20 U.S.C. §1412(a)(5); 34 C.F.R. §104.34(a).
18. 20 U.S.C. §2354(b)(3)(C).
19. 20 U.S.C. §2302(23).
20. 20 U.S.C. §§2342(c)(8)(A), (B), 2354(b)(8).
21. 20 U.S.C. §§2342(c)(7), (8) and §2354(b)(7).
22. 20 U.S.C. §2354(b)(7)..

23. 20 U.S.C. §2355(b)(5).
24. 20 U.S.C. §2342(c).
25. 34 C.F.R. §104.3(k)(2).
26. 34 C.F.R. §104.33(b).
27. 42 U.S.C. §12131(2).
28. 34 C.F.R. part 100, App. B, ¶IV-N.
29. 34 C.F.R. part 100, App. B, ¶III-B.
30. 34 C.F.R. §104.4(b)(1)(ii), (iii); 28 C.F.R. §35.130(b)(1)(ii), (iii).
31. 34 C.F.R. §104.4(b)(2); 28 C.F.R. §35.130(b)(1)(iii).
32. 34 C.F.R. §104.4(b)(4); 28 C.F.R. §35.130(b)(3).
33. 34 C.F.R. §104.4(b)(1)(iv), (4); 28 C.F.R. §35.130(b)(1)(iv), (3).
34. 34 C.F.R. part 100, App. B, ¶VI-A. *See also* 34 C.F.R. §104.34(a); 28 C.F.R. §35.130(d).
35. 34 C.F.R. part 100, App. B, ¶IV-K.
36. 28 C.F.R. §35.130(b)(8) (emphasis added).
37. 34 C.F.R. part 100, App. B, ¶IV-K.
38. 34 C.F.R. §104.4(b)(4).
39. *See* 34 C.F.R. §104.4(b)(1), (4); 28 C.F.R. §35.130(b)(1), (3).
40. 34 C.F.R. part 100, App. B, ¶VII-A (emphasis added).
41. 28 C.F.R. §35.130(b)(7).