

UNITED STATES DEPARTMENT OF EDUCATION{PRIVATE }
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, DC 20202

INFORMATION MEMORANDUM
RSA-IM-99-11
DATE: February 5, 1999

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)
STATE REHABILITATION COUNCILS
CLIENT ASSISTANCE PROGRAMS
AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES
GRANTS
PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS
PROGRAMS
RSA SENIOR MANAGEMENT TEAM

SUBJECT: Revised Monitoring and Technical Assistance Guide for the Protection and
Advocacy of Individual Rights (PAIR) Program

CONTENT: Section 509 of the Rehabilitation Act of 1973, as amended, grants the RSA
Commissioner the authority to conduct reviews and on-site monitoring of
the Protection and Advocacy of Individual Rights (PAIR) program. The
attached Monitoring and Technical Assistance Guide contains the RSA
procedures for the conduct of PAIR on-site monitoring reviews.

INQUIRIES: RSA Regional Commissioners

Fredric K. Schroeder, Ph.D.
Commissioner

ATTACHMENT

PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS PROGRAM

MONITORING AND TECHNICAL ASSISTANCE GUIDE

UNITED STATES DEPARTMENT OF EDUCATION



**OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES**

REHABILITATION SERVICES ADMINISTRATION

Fredric K. Schroeder, Ph.D., Commissioner

February 1999

INTRODUCTION TO THE GUIDE

This Monitoring and Technical Assistance Guide is intended to provide guidance for RSA staff when conducting on-site monitoring reviews of the Protection and Advocacy of Individual Rights (PAIR) program and when providing technical assistance to the PAIR program. In carrying out the spirit and principles of the Government Performance Results Act (GPRA), RSA has developed a "customer-driven" monitoring system that focuses on results, as well as customer/client satisfaction. This review instrument emphasizes that "customer-driven" philosophy.

This Guide is composed of seven parts:

1. Basic Information about the PAIR program;
2. PAIR Assurances Review Guide;
3. Case Review Guide;
4. Fiscal/Program Review Guide;
5. Interview Guide for Clients;
6. Interview Guide for PAIR Director/casehandlers; and
7. Interview Guide for Programs that Work with PAIR.

Most of the review guide sections provide the following:

1. statutory and regulatory cites;
2. actual requirements for compliance;
3. suggested review questions to determine compliance;
4. summary determination on whether compliance was met; and
5. space to write notes and recommendations.

The last section of this Guide contain suggested questions to elicit information from (1) clients about their experience with PAIR, (2) PAIR advocates about their perspective of PAIR services, and (3) other programs that work with PAIR about their experiences in dealing with the PAIR program.

PURPOSE OF THE MONITORING REVIEW

The purpose of the on-site monitoring review of the PAIR program is two-fold:

1. to ascertain basic statutory and regulatory compliance with:
 - a. Section 509 of the Rehabilitation Act of 1973, as amended (Act); and
 - b. Federal PAIR regulations at 34 CFR 381; and
2. to obtain information about the services PAIR provides eligible individuals.

Information obtained during the on-site monitoring review will:

1. assist RSA in assessing the need for technical assistance and training for specific PAIR programs;
2. enable RSA to identify specific model PAIR practices;
3. determine technical assistance and policy development needed for PAIR in general; and
4. assist RSA in strengthening the effectiveness of the PAIR program.

GENERAL ADVICE

The reviewer is encouraged to use this Guide to ensure consistency among the various PAIR monitoring reviews conducted across the country and to ensure that all necessary compliance issues are reviewed. Furthermore, the reviewer is encouraged to become as familiar with the particular program to be reviewed prior to the on-site visit. This will make it easier for the reviewer to focus on particular compliance issues.

GENERAL INSTRUCTIONS FOR USING THIS GUIDE

In order to use this Guide effectively, the reviewer should:

1. set up appointments with a variety of individuals in the P&A to obtain the necessary information to conduct this review. Suggested individuals are:
 - a. P&A Director;
 - b. PAIR director and staff;
 - c. PAIR clients;
 - d. Members of the PAIR Advisory Council, if applicable;
 - e. Directors of various consumer groups (as appropriate); and
 - f. P&A's fiscal person.
2. review the PAIR's most recent annual report submitted;
3. compare the PAIR's most recent annual report submitted with the following to determine discrepancies meriting follow-up during the review:
 - a. national PAIR data in the RSA Annual Report to Congress; and
 - b. annual reports submitted by other PAIRs in the same region.

FYI: Some discrepancies that might merit follow-up during the on-site review:

1. PAIR served significantly fewer or more individuals/cases, on a proportional basis, than other PAIRs;
2. PAIR served significantly fewer, proportionately, minority individuals; and
3. PAIR report reflects a lack of systemic activities.

Following are hints and suggested questions to use when conducting the review to determine compliance with Federal law and regulations.

PART I
BASIC INFORMATION

Reviewer _____ **Date of review** _____

State _____

PAIR Federal funding level for current fiscal year _____

ORGANIZATION OF THE PAIR:

Name/address/telephone number of the P&A housing the PAIR program (to make sure we have up-to-date information):

Contact person (including phone number) for the PAIR program:

Please provide 800 numbers and TTY numbers for the PAIR, if applicable.

PAIR'S ACCESSIBILITY:

1. Is the PAIR program located in an apparently accessible building?
yes _____ no _____ (If no, this is a potential problem.)
2. If no, please explain the situation and what steps are planned to remedy it.
3. Describe the set up for the TTY, if there is one. For example, is it answered promptly or is it set to only take messages? How are the messages checked? Also describe how frequently the PAIR uses the local Relay Service.
4. If you note any accessibility issues, describe steps that are planned to remedy the situation.

PART II
ASSURANCES

PART II ASSURANCES

GENERAL STATUTORY/REGULATORY AUTHORITY:

Section 509(f)

34 CFR 381.10 sets forth the minimum requirements for the information needed for the PAIR application. These minimum requirements constitute the Assurances to which the eligible protection and advocacy (P&A) system must agree.

The Assurances document contains 10 Assurances to which the eligible P&A system must agree in order to operate a PAIR program and receive payment from its allotment under the Act. This Guide will look at each Assurance separately.

ASSURANCE 1:

The eligible system has in effect a system to protect and advocate for the rights of eligible individuals with disabilities.

COMPLIANCE REQUIREMENTS/CITES:

Section 509(f)(1):

- (f) In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will --
 - (1) have in effect a system to protect and advocate the rights of individuals with disabilities;....

34 CFR 381.10 (a)(1):

- (a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will --
 - (1) Have in effect a system to protect, and advocate for, the rights of eligible individuals with disabilities;....

REVIEW QUESTIONS:

- 1. Does the State have a PAIR program?
yes _____ no _____ (If no, this is a compliance issue.)

COMPLIANCE:

- 1. Does the evidence support that the P&A has complied with Assurance 1?
yes _____ no _____ need more information _____
- 2. If more information is needed, what is missing to make this determination?
- 3. If no, what actions does the P&A plan to assure that compliance is achieved?

NOTES/RECOMMENDATIONS:

ASSURANCE 2:

The eligible system has the same general authorities, including access to records and program income, as set forth in part C of the Developmental Disabilities Assistance and Bill of Rights Act.

COMPLIANCE REQUIREMENTS/CITES:

Section 509(f)(2):

- (f) In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will --
 - (2) have the same general authorities, including access to records and program income, as are set forth in part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.);...

34 CFR 381.10(a)(2):

- (a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will --
 - (2) Have the same general authorities, including access to records and program income, as in part C of the DDA;...

See also: 42 USC 6041-6043 (sections 141-143 of the Developmental Disabilities Assistance and Bill of Rights Act) and 45 CFR 1386.19 through 1386.25, with special attention on 1386.21 and 1386.22. These provisions set forth the requirements for the Protection and Advocacy for the Developmental Disabilities (PADD) program and the protection and advocacy system in general.

REVIEW QUESTIONS:

NOTE: Basically, all of the other assurances are included in this catch-all assurance. Only questions related to issues that are not covered in other assurances will be asked here.

1. Does the PAIR program have the authority to investigate incidents of abuse and neglect of individuals with disabilities?

yes _____ no _____ (If no, this is a compliance issue because this is one of the general authorities listed in Part C of the DD Act.)

2. Does PAIR have access to residents of facilities that provide services, support, and other assistance to individuals with disabilities?

yes _____ no _____ (If no, this is a compliance issue because this is one of the general authorities listed in Part C of the DD Act.)

3. Does PAIR have adequate access to necessary records when representing individuals with disabilities?

yes _____ no _____ (If no, this is a compliance issue because this is one of the general authorities listed in Part C of the DD Act.)

4. Does PAIR have the authority to educate policymakers?

yes _____ no _____ (If no, this is a compliance issue because this is one of the general authorities listed in Part C of the DD Act.)

5. Does PAIR have the authority to hire and maintain sufficient qualified staff to carry out its functions?

yes _____ no _____ (If no, this is a compliance issue because this is one of the general authorities listed in Part C of the DD Act.)

6. Does the State impose hiring freezes, reductions in force, prohibitions on staff travel, or other policies to the extent that these policies impact PAIR's ability to carry out its functions?

yes _____ no _____ (If yes, this is a compliance issue because this is one of the general authorities listed in Part C of the DD Act.)

COMPLIANCE:

1. Does the evidence support that the P&A has complied with Assurance 2?
yes _____ no _____ need more information _____
2. If more information is needed, what is missing to make this determination?
3. If no, what actions are planned to assure that compliance is achieved?

NOTES/RECOMMENDATIONS:

ASSURANCE 3:

The eligible system has the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State.

COMPLIANCE REQUIREMENTS/CITES:

Section 509(f)(3):

- (f) In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will --
 - (3) have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are ineligible for protection and advocacy programs under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.) or client assistance programs under section 112;....

34 CFR 381.10(a)(3):

- (a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will --
 - (3) Have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State;....

REVIEW QUESTIONS:

1. Does the PAIR program have the authority to pursue legal, administrative and other appropriate remedies?

yes _____ no _____ (If no, this is a potential compliance issue.)

REVIEW QUESTIONS (CONTINUED):

2. Has the PAIR program ever provided legal services to an individual?

yes _____ no _____

*** NOTE: If no, review this issue more closely. Describe why PAIR has not provided any legal, formal administrative or other remedies.

3. Are there any restrictions on PAIR when pursuing legal remedies?

yes _____ no _____ (If yes, this is a potential compliance issue. Describe restrictions. It could be that the restrictions found here are applicable to the answer to #2 above.)

COMPLIANCE:

1. Does the evidence support that the P&A has complied with Assurance 3?

yes _____ no _____ need more information _____

2. If more information is needed, what is missing to make this determination?

3. If no, what actions does the P&A plan to assure that compliance is achieved?

NOTES/RECOMMENDATIONS:

ASSURANCE 4:

The eligible system provides information on and makes referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs.

COMPLIANCE REQUIREMENTS/CITES:

Section 509(f)(4):

- (f) In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will --
 - (4) provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State;....

34 CFR 381.10(a)(4):

- (a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will --
 - (4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs;....

REVIEW QUESTIONS:

- 1. Does PAIR provide information, upon request, about programs and services for individuals with disabilities?

yes _____ no _____ (If no, this is a compliance issue.)

- 2. If yes, in what way?

- a. brochures _____

- b. letters _____

- c. fact sheets _____

- d. other (specify) _____

3. Does PAIR make referrals to other programs serving individuals with disabilities?

yes _____ no _____ (If no, this is a compliance issue.)

COMPLIANCE:

1. Does the evidence support that the P&A has complied with Assurance 4?

yes _____ no _____ need more information _____

2. If more information is needed, what is missing to make this determination?

3. If no, what actions does the P&A plan to assure that compliance is achieved?

NOTES/RECOMMENDATIONS:

ASSURANCE 5:

The eligible system develops a statement of objectives and priorities on an annual basis, and a plan for achieving these objectives and priorities.

COMPLIANCE REQUIREMENTS/CITES:

Section 509(f)(5):

- (f) In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will --
 - (5) develop a statement of objectives and priorities on an annual basis, and provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the system including --
 - (A) the objectives and priorities for the activities of the system for each year and the rationale for the establishment of such objectives and priorities; and
 - (B) the coordination of programs provided through the system under this section with the advocacy programs of the client assistance program under section 112, the State long-term care ombudsman program established under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.), and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);....

34 CFR 381.10(a)(5):

- (a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will --
 - (5) Develop a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities;....

REVIEW QUESTIONS:

1. Did PAIR develop a statement of objectives and priorities for the current fiscal year?

yes _____ no _____ (If no, this is a compliance issue.)

2. If yes, is PAIR's statement of objectives and priorities separate from those developed for the PADD and PAIMI programs?

yes _____ no _____

3. Has PAIR developed a plan for achieving these objectives and priorities?

yes _____ no _____ (If no, this is a compliance issue.)

**** Get a copy of the PAIR statement of objectives and priorities for the current fiscal year, as well as the PAIR's plan for achieving those objectives and priorities.

COMPLIANCE:

1. Does the evidence support that the P&A has complied with Assurance 5?

yes _____ no _____ need more information _____

2. If more information is needed, what is missing to make this determination?

3. If no, what actions does the P&A plan to assure compliance is achieved?

NOTES/RECOMMENDATIONS:

ASSURANCE 6:

The eligible system provides to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including:

- (A) the objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of such objectives and priorities; and
- (B) the coordination of programs provided through the eligible system with the advocacy programs of the Client Assistance Program under Section 112 of the Rehabilitation Act of 1973, as amended, the State Long-Term Care Ombudsman program established under the Older Americans Act of 1965 (42 USC 3001-3030), Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 USC 6041-6043), and the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended (42 USC 10801-10851).

COMPLIANCE REQUIREMENTS/CITES:

Section 509(f)(5) -- See Assurance 5 for reprint of the cite.

34 CFR 381.10(a)(6):

- (a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will --
 - (6) Provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including --
 - (i) The objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of those objectives and priorities; and
 - (ii) The coordination of programs provided through eligible systems with the advocacy programs of the CAP under section 112, the State long-term care ombudsman program established under the older Americans Act of 1965, part C of the DDA, and the PAIMI;....

REVIEW QUESTIONS:

1. Did the public, including individuals with disabilities and their representatives, have the opportunity to comment on PAIR's proposed statement of objectives and priorities?
yes _____ no _____ (If no, this is a compliance issue.)
2. If yes, how was the public informed about the proposed statement of objectives and priorities?
3. Did PAIR receive any public comments?
yes _____ no _____ (If yes, get copies if possible.)
4. Did PAIR modify its statement of objectives and priorities based on the public comments?
yes _____ no _____ (If no, why?)
5. Does the PAIR's statement of objectives and priorities seem to reflect the needs of individuals with disabilities in the State?
yes _____ no _____
6. Does PAIR's statement of objectives and priorities demonstrate how PAIR coordinates its activities with the CAP, PADD, PAIMI and Older Americans Project?
yes _____ no _____ (If no, this is a compliance issue.)

COMPLIANCE:

1. Does the evidence support that the P&A has complied with Assurance 6?
yes _____ no _____ need more information _____
2. If more information is needed, what is missing to make this determination?
3. If no, what actions does the P&A plan to assure compliance is achieved?

NOTES/RECOMMENDATIONS:

ASSURANCE 7:

The eligible system establishes a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system.

COMPLIANCE REQUIREMENTS/CITES:

Section 509(f)(6):

- (f) In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will --
 - (6) establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with disabilities are afforded equal opportunity to access the services of the system;....

34 CFR 381.10(a)(7):

- (a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will --
 - (7) Establish a grievance procedure for clients of prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system;....

REVIEW QUESTIONS:

1. Does PAIR have a grievance procedure?
yes _____ no _____ (If no, this is a compliance issue.)

*** If yes, get a copy of the grievance procedure.

REVIEW QUESTIONS (CONTINUED):

2. When are applicants/clients informed of the grievance procedure?

*** Best practice would be that the applicant/client is informed, at a minimum, when the case is opened or closed or when advocacy services are denied.

3. Who is the ultimate decision-maker in the grievance procedure?

*** Best practice would be that someone other than the P&A director would be the ultimate decision-maker. For example, the P&A's Board of Directors or the Advisory Council could appoint someone or a group of members to be the ultimate decision-maker.

4. Have any grievances been filed against the PAIR during the past and/or current fiscal year?

yes _____ no _____

5. If yes, how many? Describe the actions taken.

COMPLIANCE:

1. Does the evidence support that the P&A has complied with Assurance 7?

yes _____ no _____ need more information _____

2. If more information is needed, what is missing to make this determination?

3. If no, what actions does the P&A plan to assure that compliance is achieved?

NOTES/RECOMMENDATIONS:

ASSURANCE 8:

The eligible system uses funds made available to the PAIR program to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided.

COMPLIANCE REQUIREMENTS/CITES:

Section 509(f)(7):

- (f) In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will --
 - (7) provide assurances to the Commissioner that funds made available under this section will be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purposes for which Federal funds are provided.

34 CFR 381.10(a)(8):

- (a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will --
 - (8) Use funds made available under this part to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided;....

REVIEW QUESTIONS:

1. Does the PAIR receive non-Federal funds for its program operations?
yes _____ no _____
2. If yes, from what sources are those funds received?
3. If #1 is yes, what kinds of services does PAIR provide that it otherwise could not provide but for those other funds?

COMPLIANCE:

1. Does the evidence support that the P&A has complied with Assurance 8?
yes _____ no _____ need more information _____
2. If more information is needed, what is missing to make this determination?
3. If no, what actions does the P&A plan to assure that compliance is achieved?

NOTES/RECOMMENDATIONS:

ASSURANCE 9:

The eligible system implements procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

COMPLIANCE REQUIREMENTS/CITES:

34 CFR 381.10(a)(9):

- (a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will --
 - (9) Implement procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

REVIEW QUESTIONS:

1. Does the PAIR program engage in mediation activities before pursuing an administrative or legal remedy?

yes _____ no _____ (If no, this is a compliance issue.)

*** Get a copy of PAIR's mediation/ADR policy.

2. Did mediation (or ADR) precede every case that rose to the administrative or legal remedy level during the prior fiscal year (according to the annual report)?

yes _____ no _____ (If yes, skip #3 below.)

*** NOTE: If there is a discrepancy between the number of individuals who were served by PAIR at the administrative or legal level versus those provided mediation (or ADR) services, look at this issue more closely to determine whether PAIR satisfied its regulatory mandate to engage in mediation to the maximum extent possible prior to initiating a formal administrative or legal action.

3. If #2 is no (there were some cases in which mediation/ADR was not used prior to initiating the formal hearing or legal action), were the reasons documented in writing in the casefile?

yes _____ no _____ (If no, this is problematic. Case files should document why mediation/ADR is not used in a particular case.)

4. If #3 is yes, describe the reasons given.

COMPLIANCE:

1. Does the evidence support that the P&A has complied with Assurance 9?

yes _____ no _____ need more information _____

2. If more information is needed, what is missing to make this determination?

3. If no, what actions does the P&A plan to assure that compliance is achieved?

NOTES/RECOMMENDATIONS:

ASSURANCE 10:

The eligible system assures that direct payment of funds under the PAIR program is not prohibited by nor inconsistent with State law, regulation or policy.

COMPLIANCE REQUIREMENTS/CITES:

34 CFR 381.10(b):

- (b) To receive direct payment of funds under this part, an eligible system must provide to the Secretary, as part of its application for assistance, an assurance that direct payment is not prohibited by or inconsistent with State law, regulation, or policy.

REVIEW QUESTIONS:

1. Is there any provision of State law that would prohibit PAIR from receiving federal funds to carry out PAIR's mandate?

yes _____ no _____ (If yes, this is a compliance issue.)
2. If yes, what is the prohibition? Describe.

COMPLIANCE:

1. Does the evidence support that the P&A has complied with Assurance 10?

yes _____ no _____ need more information _____
2. If more information is needed, what is missing to make this determination?
3. If no, what actions does the P&A plan to assure that compliance is achieved?

NOTES/RECOMMENDATIONS:

PART III
CASE REVIEW GUIDE

PART III CASE REVIEW GUIDE

LEGAL REQUIREMENTS/CITES:

ELIGIBILITY:

1. Section 509(a). See also 42 USC 6041 et seq. and 42 USC 10801 et seq.
2. 34 CFR 381.5(b)

AUTHORIZED SERVICES TO BE PROVIDED:

1. Section 509(f)(1), (3)-(4)
2. 34 CFR 381.10(a)(1), (3)-(4)

OTHER CASE WORK REQUIREMENTS/PROHIBITIONS:

1. Mediation -- 34 CFR 381.10(a)(9)
2. Confidentiality -- 34 CFR 381.31

SELECTION OF CASES TO BE REVIEWED:

Randomly select a sample of cases closed in the fiscal year being reviewed. The number of cases to be reviewed is dependent upon the size of the program being reviewed.

KEY ELEMENTS TO REVIEW IN THE CASE FILE:

1. Eligibility for PAIR services.
2. Minority representation.
3. Alternative formats/accessible communication.
4. Issues raised fall within the purpose of the PAIR program.
5. PAIR pursued all appropriate/authorized remedies for the individual.
6. Resolution of the issue and PAIR's involvement in that resolution.
7. Timing in terms of intake, initial contact with the client, resolution of the issues, and case closure.
8. Client confidentiality protected; release in file.
9. PAIR services provided.
10. Attempts to resolve case at lowest possible level.
11. Was mediation or ADR used?
12. Case closure/grievance procedure.

CASE FILE REVIEW GUIDE

Reviewer _____ Date of review _____

State _____ Client/File # _____

THE CASE FILE:

1. At the time of the review, was the case file open?
yes _____ no _____
2. Intake date _____
3. Case opening date (if different from intake date) _____
4. Case closure date (if closed) _____

*** Note any unusual time delays/lapses in the provision of PAIR services.

ACCESSIBILITY:

1. Does the case file indicate that PAIR met the individual's needs in terms of providing written information in alternate formats or oral communication in an accessible manner when needed?
yes _____ no _____ (If no, this is a problem.)
2. If no, please explain the situation and what steps are planned to remedy the situation.

ELIGIBILITY:

1. Is the individual eligible for the CAP program?

yes _____ no _____ (If yes, pay close attention to #2 below.)

2. If yes, does the individual's concern fall within the scope of CAP services?

yes _____ no _____ (If yes, this is a compliance issue. The individual is not eligible for PAIR services.)

*** NOTE: An individual CAN be eligible for both the CAP and PAIR programs. However, if the individual's concern falls within CAP's scope of services, as set forth in section 112 of the Act, then PAIR cannot represent the individual on those issues. PAIR could, on the other hand, represent the individual on OTHER issues regardless of whether the individual is being represented by CAP on different issues at the same time. The key to PAIR eligibility depends on whether the individual's issues fall within CAP's scope of services. This is different than with the PADD and PAIMI programs, as will be shown below.

3. Is the individual eligible for services from the Protection and Advocacy for Developmental Disabilities (PADD) program?

yes _____ no _____ (If yes, this is a compliance issue. The individual is not eligible for PAIR services.)

*** NOTE: This is true even if the individual's concern does not fall within the priorities set by the PADD program. Eligibility for the PAIR program is based on the fact that the individual is INELIGIBLE for the PADD program because the individual does not have a developmental disability as defined in the DD Act. Eligibility for PAIR does NOT hinge on whether the individual's issue falls within the PADD priorities.

4. Is the individual eligible for services from the Protection and Advocacy for Individuals with Mental Illness (PAIMI) program?

yes _____ no _____ (If yes, this is a compliance issue. The individual is not eligible for PAIR services.)

*** NOTE: This is true even if the individual's concern does not fall within the priorities set by the PAIMI program. Eligibility for the PAIR program is based on the fact that the individual is INELIGIBLE for the PAIMI program because the individual is not an "individual with mental illness" as defined in the PAIMI Act. Eligibility for PAIR does NOT hinge on whether the individual's issue falls within the PAIMI priorities.

ISSUES/SCOPE OF PAIR SERVICES:

1. With whom/what entity is the individual having problems?

2. What are the problem areas/issues raised by the individual?
 - a. Abuse _____
 - b. Admission/Commitment to Institution _____
 - c. Architecture Barriers _____
 - d. Conditions in Facilities _____
 - e. Consent _____
 - f. Contracts/Ownership of Property _____
 - g. Criminal Justice Issues _____
 - h. Day Care _____
 - i. Early Intervention (Part H) _____
 - j. Education _____
 - k. Employment _____
 - l. Financial Entitlements _____
 - m. Guardianship/Conservatorship _____
 - n. Habilitation Services _____
 - o. Housing _____
 - p. Insurance _____
 - q. Medical Services _____
 - r. Neglect _____
 - s. Records (access, confidentiality, etc.) _____

- t. Rehabilitation Services _____
- u. Rights of Privacy _____
- v. Sterilization _____
- w. Transportation (non-education related) _____
- x. Voting _____
- y. Wills/Estate Planning _____
- z. Zoning _____
- aa. Other (specify) _____

PAIR SERVICES PROVIDED:

1. The following PAIR services were provided to the individual:
 - a. Information/advice about rights _____
 - b. Referral to another appropriate entity _____
 - c. Counseling/advice (advisory/interpretational) _____
 - d. Assistance/advocacy through negotiation _____
 - e. Assistance/advocacy through mediation (or ADR) _____
 - f. Assistance/advocacy with administrative remedies _____
 - g. Assistance/advocacy with legal remedies _____
 - h. Other (specify) _____
2. If mediation was not marked in #e above, but PAIR assisted the individual in pursuing an administrative or legal remedy (in #f or #g above), why was mediation/ADR not used?

*** Indicate if reason was not stated in the file.

ISSUE RESOLUTION/PAIR INVOLVEMENT:

1. Was the issue(s) resolved?
yes _____ no _____
2. If no, is the case activity still ongoing?
yes _____ no _____ (If no, why not?)
3. Is it clear in the file how PAIR assisted in effecting a resolution?

CONFIDENTIALITY OF CLIENT INFORMATION:

1. Is there a signed written release form in the case file?

yes _____ no _____ (If no but information was shared, this is a compliance issue.)

*** NOTE: Best practice would encourage PAIRs to document that all rights of confidentiality are explained to the individual prior to the individual signing a consent for release of information form.

CASE CLOSURE:

1. Is the case closed?

yes _____ no _____ (If no, skip this section.)

2. How was the client told case was closed?

- a. closing letter _____
- b. telephone call _____
- c. in-person meeting _____
- d. other (specify) _____
- e. client was not notified (explain) _____

3. Is the notification documented in the case file (i.e. copy of closing letter, case note)?

yes _____ no _____

OTHER REVIEWER COMMENTS/NOTES:

PART IV
FISCAL REVIEW GUIDE

PART IV FISCAL REVIEW GUIDE

COMPLIANCE/LEGAL REQUIREMENTS/CITES:

Section 509(f)(7), 509(g), and 509(j) of the Rehabilitation Act of 1973, as amended

34 CFR 381.33

Other Fiscal Issues to Review:

Fiscal Management System: See 34 CFR 74.21; 74.40 through 74.48; 74.51 and 74.52; 34 CFR 76.700 through 76.707, except 76.704; 76.720; and 76.730; 34 CFR 80.20; 80.36; 80.40; and 80.41.

Funding Sources: See 34 CFR 74.22; 34 CFR 76.707 and 76.760; and 34 CFR 80.21.

Contract Provisions: See 34 CFR 74.48; 34 CFR 80.36(i) and 80.37; and 34 CFR 381.30.

Record Retention: See 34 CFR 74.53 and 34 CFR 80.42.

Accounting System: See 34 CFR 74.21 and 34 CFR 80.20.

Grant Related Income: See 34 CFR 74.24 and 34 CFR 80.25.

Property/Equipment: See 34 CFR 74.30 through 74.37 and 34 CFR 80.31 through 80.32.

Personnel System: See 34 CFR 381.21.

Travel Expenditures: See OMB Circulars 87 and A122.

Financial Audits: See OMB Circular A133 (promulgated 6/30/97); and 34 CFR Part 80 Appendix.

Lobbying: See 34 CFR Part 82.

Debarment and Suspension Requirements: See 34 CFR 74.13; 34 CFR 80.35; and 34 CFR 85.100 through 85.510.

Drug Free Workplace Requirements: See 34 CFR 85.600 through 85.630.

7. Is there coordination between program and fiscal staff in the development of the PAIR budget?

yes _____ no _____ (Describe further.)

8. What is the approval process for the PAIR budget?

9. Who monitors PAIR expenditures to assure they are appropriate and within budgeted costs?

10. How often are expenditures reviewed?

11. What are the regular requirements and practices of the organization with respect to bonding or insurance?

12. Who prepares the Financial Status Report, Standard Form 269 (SF-269)?

13. Who signs the SF-269?

14. Is the SF-269 submitted to RSA on a timely basis?

yes _____ no _____ (If no, why?)

15. Is the SF-269 reconciled with the Education Payment System SF-272?

yes _____ no _____ (If no, why?)

16. Review a sample of expenditures charged to each object class to determine whether the charges are reasonable, allowable, and allocable.

**** Request to review with the PAIR director, or designee, copies of the PAIR budgets for the grant years included in the review. Also, review SF-269 and annual reports for the same time periods.

FUNDING SOURCES:

1. How does the designated (and/or operating) PAIR agency receive the Federal funds for operation of the PAIR (i.e. letter of credit, treasury check, etc.)?

2. Has the PAIR experienced delays in receiving Federal funds?

yes _____ no _____ (If yes, explain.)

3. Are PAIR services funded only with RSA funds?

yes _____ no _____ (If no, list all other sources and amounts of funding.)

4. Specify the total amount of funds budgeted for the present fiscal year. Be sure to include Federal and non-Federal funds.)

5. Specify the total funds expended last fiscal year.

6. Is the designated agency aware that PAIR funds not obligated or expended at the end of the appropriated fiscal year remain available for obligation and expenditures during the succeeding fiscal year?

yes _____ no _____ (If no, this is a compliance issue.)

7. Is the designated agency aware that it is considered a State and governed by 34 CFR 76.707 for the purposes of when obligations are to be made with PAIR funds?

yes _____ no _____

8. Given the fact that the designated agency operates programs in addition to the PAIR program, is there an approved cost allocation plan or indirect cost rate? (NOTE: There is no prior approval requirement for non-profits using a direct allocation methodology.)

yes _____ no _____

9. If no, what methodology is used for the allocation of administrative costs?

10. If yes, does the cost allocation plan include all programs that are administered by the designated agency, including the PAIR?

yes _____ no _____ (If no, explain.)

11. Did the review of the cost allocation plan reveal an equitable distribution of administrative costs to the program? (NOTE: Only allowable costs should be included.)

yes _____ no _____ (if no, explain.)

**** Request a copy of the cost allocation plan.

12. If the eligible system is located in a State agency, did the State or State agency expend not more than 5 percent of the allotment for the costs of administering the PAIR program?

yes _____ no _____ not applicable _____

CONTRACT PROVISIONS:

1. Is the designated agency the sole provider of PAIR services?

yes _____ no _____ (If yes, skip the rest of this contracts section.)

2. If no and the designated PAIR contracts with another entity to provide PAIR services, list the amounts and purposes of each of the contracts funded, in whole or part, by the designated PAIR agency. (NOTE: Some designated PAIR programs contract with more than one entity to provide services.)

3. Do all contracts specifically relate to the purposes of PAIR?
yes _____ no _____ (If no, this is a compliance issue. Explain.)

4. Do the contracts contain sufficient provisions to define a sound and complete agreement?
yes _____ no _____ (If no, this is a problem.)

5. Are advance payments made to contractors?
yes _____ no _____

6. For those contracts in excess of \$100,000 are there provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate?
yes _____ no _____ not applicable _____

7. For those contracts in excess of \$100,000 are there suitable provisions for termination by the awarding party?
yes _____ no _____ not applicable _____

8. Have the contractors provided adequate documentation for bonding and insurance?
yes _____ no _____ (If no, explain.)

RECORD RETENTION:

1. For what period of time does the PAIR program retain its fiscal records?

2. Do the record retention policies or guidelines of the PAIR program meet, at a minimum, the 3-year retention requirements in EDGAR 34 CFR 74.53 or 80.42?
yes _____ no _____ (If no, explain.)

**** Request a sample of fiscal records to verify minimum compliance with retention requirements.

ACCOUNTING SYSTEM:

1. How is the accounting system maintained?

computerized _____ manually _____

2. The organization maintains a formal accounting system as reflected by:

a. general ledger _____

b. general journal _____

c. grant ledger _____

d. other (specify) _____

3. Do the records permit a clear and documented audit trail?

yes _____ no _____ (If no, this is a problem. Explain.)

4. Did the reviewer have total access to the PAIR accounting records?

yes _____ no _____ (If no, explain.)

5. Are PAIR funds accounted for separately?

yes _____ no _____

6. Does the accounting system provide for recording expenditures for PAIR by budget cost category?

yes _____ no _____

7. Does the accounting system adequately identify receipts and expenditures for PAIR?

yes _____ no _____ (If no, explain.)

8. Does the accounting system require that all entries be supported by adequate documentation?

yes _____ no _____ (If no, this is a compliance issue. Explain.)

9. Are the purchasing and payment functions separated?
yes _____ no _____
10. Who signs the payments/authorizations?
11. In your opinion, does the internal control system for payment/billing have sufficient safeguards built into it?
yes _____ no _____ (If no, this is a problem. Explain.)
12. Does the accounting system provide for the prompt recording and reporting of all financial transactions?
yes _____ no _____
13. Are all vouchers consistent in detail and accountability?
yes _____ no _____ (If no, this is a problem.)
14. If yes, are they based upon written policies and procedures of the organization?
yes _____ no _____

**** If a sampling of vouchers for several months indicates there is a trend of inconsistency or faulty documentation and accounting, you may want to review vouchers for an entire grant period.

GRANT-RELATED INCOME:

1. Has the grantee generated grant-related income, or does it anticipate generating such income?
yes _____ no _____
2. If yes, specify the sources and anticipated amounts.

3. For non-State agencies: Has the designated agency deposited advances of grant funds in interest-bearing accounts or earned other investment income?

yes _____ no _____

4. If yes, have these funds been returned to the Department of Education?

yes _____ no _____

5. If program income has been or will be generated, how is the income used?

6. Is the program income earned under the PAIR grant documented in the grantee's records and reported on the SF-269?

yes _____ no _____ (If no, explain.)

7. If the agency used the additional alternative for reporting program income, was prior approval received from RSA?

yes _____ no _____

PROPERTY/EQUIPMENT:

1. Does the organization maintain a record of all property/equipment purchased with grant funds, including date of purchase and costs?

yes _____ no _____ (If no, this is a problem. Explain.)

**** If yes, review the record of all property/equipment purchases with grant funds.

2. Is the property tagged or otherwise marked to identify it as organizational property?

yes _____ no _____

3. How frequently does the organization conduct property inventories?

4. Who conducts the property inventories?

5. Does the organization have written policies, procedures and controls for purchasing/disposing equipment/property obtained with grant funds?

yes _____ no _____

PERSONNEL SYSTEM:

1. Does the organization have a current personnel manual with written personnel policies and procedures?

yes _____ no _____
2. Is the manual periodically reviewed and updated?

yes _____ no _____
3. Does the manual contain clearly defined compensation policies, including fringe benefits, vacation, sick leave, etc.?

yes _____ no _____
4. Do the policies address conflict of interest matters?

yes _____ no _____ (If no, this is a compliance issue.)
5. Does the PAIR program maintain time and attendance records for each employee by pay period?

yes _____ no _____ (You may want to review time/attendance sheets.)
6. Are PAIR employee salaries based upon the level of compensation for non-Federally funded employees of equal status?

yes _____ no _____

TRAVEL EXPENDITURES:

1. Does PAIR have a clearly written travel policy and implementing procedures?

yes _____ no _____ (If yes, you may want to review them.)

2. If no, what policies and procedures does PAIR use for travel?

3. If yes, does the travel reimbursement policy comply with State or the organization's internal policies and procedures?
yes _____ no _____ (If no, this is a problem.)

4. The PAIR travel policy, if applicable, provides for reimbursement by:
 - a. actual expense _____; or
 - b. per diem rate _____.

5. Are all trips using Federal funds justified and documented?
yes _____ no _____

6. What is the ratio of staff training travel to travel used in serving PAIR clients?

7. Are funds provided to PAIR clients to assure their attendance at required meetings or appointments?
yes _____ no _____

8. If yes, how much was spent for this purpose during the past year?

FINANCIAL AUDITS:

1. Has the designated agency been audited in accordance with the requirements in the revised OMB Circular A-133, which was promulgated on June 30, 1997?
yes _____ no _____

**** If yes, get a copy of the PAIR audit reports and related findings by the auditors, including the auditor's management letter.

2. If yes, has a copy of the audit report been sent to the appropriate Federal office?
yes _____ no _____

3. Was the audit conducted in accordance with generally accepted auditing standards, including those of the U.S. General Accounting office, as specified in OMB Circular A-133?

yes _____ no _____ (If no, this is a problem.)

4. If the designated agency has not had an audit, is it familiar with the Federal audit requirements for grantees?

yes _____ no _____ (If no, this is a problem.)

5. If the PAIR was included in the recent audit, did the report contain any PAIR recommendations?

yes _____ no _____ (If yes, explain.)

6. If yes, were the recommendations implemented?

yes _____ no _____ (If no, explain why.)

ANNUAL REPORT:

1. Who is responsible for preparing the Annual PAIR Report?

2. Is the report reviewed by another individual to check the accuracy of reported financial and statistical information prior to the sign-off?

yes _____ no _____ (If yes, by whom?)

3. Who signs the Annual Report?

LOBBYING:

1. Does the designated PAIR agency engage in lobbying and/or political activities as defined in appropriate OMB Circulars?

yes _____ no _____ (If no, skip the rest of this section.)
2. If yes, what funds does the designated agency use to support these activities?
3. How does the designated agency record these activities to assure no Federal funds are used?

DEBARMENT AND SUSPENSION REQUIREMENTS:

1. Does the agency comply with the government-wide requirements concerning debarment and suspension?

yes _____ no _____ (If no, this is a problem.)

DRUG-FREE WORKPLACE REQUIREMENTS:

1. Does the agency comply with the government-wide requirements for a drug-free workplace?

yes _____ no _____ (If no, this is a problem.)

PART V
INTERVIEW GUIDES

CLIENT SATISFACTION REVIEW GUIDE

Reviewer _____ Date _____

State _____

1. How did you hear about PAIR?
2. What services did you receive from PAIR?
3. Were you satisfied with the services you received from PAIR?
4. How could PAIR improve its services?
5. Would you come back to PAIR if you had problems again?
6. Additional comments:

INTERVIEW GUIDE FOR PAIR ADVOCATES

Reviewer _____ **Date** _____

State _____ **Advocate's name** _____

1. When you are assigned a case, how do you approach it initially?
2. How do you see your role when working with a client?
3. Describe your style/approach to conflict resolution.
4. Are there any barriers that prevent you from doing your job effectively? If yes, what changes would you recommend?
5. Additional comments:

INTERVIEW GUIDE FOR OTHER PROGRAMS

Reviewer _____ **Date** _____ **State** _____

Interviewee's Name _____ **Program** _____

1. What is your title? Responsibilities?
2. In what circumstances do you interact with PAIR and its staff?
3. In your opinion, how effective is the PAIR's advocacy? Explain.
4. What are PAIR's strengths?
5. What are PAIR's weaknesses?
6. What suggestions, if any, do you have for improving PAIR?