

§ 410.1311 Unaccompanied children with disabilities.

(a) ORR shall provide notice to the unaccompanied children in its custody of the protections against discrimination under section 504 of the Rehabilitation Act at 45 CFR part 85 assured to children with disabilities in its custody. ORR must also provide notice of the available procedures for seeking reasonable modifications or making a complaint about alleged discrimination against children with disabilities in ORR's custody. This notice must be provided in a manner that is accessible to children with disabilities.

(b) ORR shall administer the UC Program in the most integrated setting appropriate to the needs of unaccompanied children with disabilities in accordance with 45 CFR 85.21(d), unless ORR can demonstrate that this would fundamentally alter the nature of its UC Program.

(c) ORR shall make reasonable modifications to its programs, including the provision of services, equipment, and treatment, so that an unaccompanied child with one or more disabilities can have equal access to the UC Program in the most integrated setting appropriate to their needs. ORR is not required, however, to take any action that it can demonstrate would fundamentally alter the nature of a program or activity.

(d) Where applicable, ORR shall document in the child's ORR case file any services, supports, or program modifications being provided to an unaccompanied child with one or more disabilities.

(e) In addition to the requirements for release of unaccompanied children established elsewhere in this part and through any subregulatory guidance ORR may issue, ORR shall adhere to the following requirements when releasing unaccompanied children with disabilities to a sponsor:

(1) ORR's assessment under § 410.1202 of a potential sponsor's capability to provide for the physical and mental well-being of the child must necessarily include explicit consideration of the impact of the child's disability or disabilities. Correspondingly, ORR must consider the potential benefits to the child of release to a community-based setting.

(2) In planning for a child's release and conducting post-release services (PRS), ORR and any entities through which ORR provides PRS shall make reasonable modifications in their policies, practices, and procedures if needed to enable released unaccompanied children with disabilities to live in the most integrated setting appropriate to their needs, such as with a sponsor. ORR is not required, however, to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity. ORR will affirmatively support and assist otherwise viable potential sponsors in accessing and coordinating appropriate post-release community-based services and supports available in the community to support the sponsor's ability to care for a child with one or more disabilities, as provided for under § 410.1210.

(3) ORR shall not delay the release of a child with one or more disabilities solely because post-release services are not in place before the child's release.