

(2) Subpart K, § 222.165 (hearings concerning determinations under section 8009 of the Act).

(Authority: 20 U.S.C. 7711(a))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35418, July 1, 1997]

§ 222.151 When is an administrative hearing provided to a local educational agency?

(a) Any local educational agency (LEA) that is adversely affected by the Secretary's (or the Secretary's delegatee's) action or failure to act upon the LEA's application under the Act or Pub. L. 81-874 is entitled to an administrative hearing in accordance with this subpart.

(b) An applicant is entitled to an administrative hearing under this subpart only if—

(1) The applicant files a written request for an administrative hearing within 30 days of its receipt of written notice of the adverse action; and

(2) The issues of fact or law specified in the hearing request are material to the determination of the applicant's rights and are not committed wholly to the discretion of the Secretary.

(Authority: 20 U.S.C. 7711(a))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35418, July 1, 1997]

§ 222.152 When may a local educational agency request reconsideration of a determination?

(a)(1) An LEA may request reconsideration of any determination made by the Secretary (or the Secretary's delegatee) under the Act or Pub. L. 81-874, either in addition to or instead of requesting an administrative hearing under § 222.151.

(2) A request for reconsideration, or actual reconsideration by the Secretary (or the Secretary's delegatee), does not extend the time within which an applicant must file a request for an administrative hearing under § 222.151, unless the Secretary (or the Secretary's delegatee) extends that time limit in writing.

(b) The Secretary's (or the Secretary's delegatee's) consideration of a request for reconsideration is not prejudiced by a pending request for an administrative hearing on the same mat-

ter, or the fact that a matter has been scheduled for a hearing. The Secretary (or the Secretary's delegatee) may, but is not required to, postpone the administrative hearing due to a request for reconsideration.

(c) The Secretary (or the Secretary's delegatee) may reconsider any determination under the Act or Pub. L. 81-874 concerning a particular party unless the determination has been the subject of an administrative hearing under this part with respect to that party.

(Authority: 20 U.S.C. 7711(a))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35418, July 1, 1997]

§ 222.153 How must a local educational agency request an administrative hearing?

An applicant requesting a hearing in accordance with this subpart must—

(a)(1) If it mails the hearing request, address it to the Secretary, c/o Director, Impact Aid Program, 600 Independence Ave., SW, Portals 4200, Washington, DC 20202-6244; or

(2) If it hand-delivers the hearing request, deliver it to the Director, Impact Aid Program, Portals Building, Room 4200, 1250 Maryland Avenue, SW, Washington DC;

(b) Clearly specify in its written hearing request the issues of fact and law to be considered; and

(c) Furnish a copy of its hearing request to its State educational agency (SEA) (unless the applicant is an SEA).

(Authority: 20 U.S.C. 7711(a))

§ 222.154 How must written submissions under this subpart be filed?

(a) All written submissions under this subpart must be filed by hand-delivery, mail, or facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) If agreed upon by the parties, a party may serve a document upon the other party or parties by facsimile transmission.

(c) The filing date for a written submission under this subpart is the date the document is—

- (1) Hand-delivered;
- (2) Mailed; or

§ 222.155

(3) Sent by facsimile transmission.

(d) A party other than the Department filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department, including by the administrative law judge (ALJ).

(e) Any party filing a document by facsimile transmission must file a follow-up hard copy by hand-delivery or mail within a reasonable period of time.

(Authority: 20 U.S.C. 7711(a))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35419, July 1, 1997]

§ 222.155 When and where is an administrative hearing held?

Administrative hearings under this subpart are held at the offices of the Department in Washington, DC, at a time fixed by the ALJ, unless the ALJ selects another place based upon the convenience of the parties.

(Authority: 20 U.S.C. 7711(a))

§ 222.156 How is an administrative hearing conducted?

Administrative hearings under this subpart are conducted as follows:

(a) The administrative hearing is conducted by an ALJ appointed under 5 U.S.C. 3105, who issues rules of procedure that are proper and not inconsistent with this subpart.

(b) The parties may introduce all relevant evidence on the issues stated in the applicant's request for hearing or on other issues determined by the ALJ during the proceeding. The application in question and all amendments and exhibits must be made part of the hearing record.

(c) Technical rules of evidence, including the Federal Rules of Evidence, do not apply to hearings conducted under this subpart, but the ALJ may apply rules designed to assure production of the most credible evidence available, including allowing the cross-examination of witnesses.

(d) Each party may examine all documents and other evidence offered or accepted for the record, and may have the opportunity to refute facts and arguments advanced on either side of the issues.

34 CFR Ch. II (7-1-08 Edition)

(e) A transcript must be made of the oral evidence unless the parties agree otherwise.

(f) Each party may be represented by counsel.

(g) The ALJ is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(Authority: 5 U.S.C. 556 and 3105; 20 U.S.C. 7711(a))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35419, July 1, 1997]

§ 222.157 What procedures apply for issuing or appealing an administrative law judge's decision?

(a) *Decision.* (1) The ALJ—

(i) Makes written findings and an initial decision based upon the hearing record; and

(ii) Forwards to the Secretary, and mails to each party, a copy of the written findings and initial decision.

(2) An ALJ's initial decision constitutes the Secretary's final decision without any further proceedings unless—

(i) A party, within the time limits stated in paragraph (b)(1)(ii) of this section, requests the Secretary to review the decision and that request is granted; or

(ii) The Secretary otherwise determines, within the time limits stated in paragraph (b)(2)(ii) of this section, to review the initial decision.

(3) When an initial decision becomes the Secretary's final decision without any further proceedings, the Department's Office of Hearings and Appeals notifies the parties of the finality of the decision.

(b) *Administrative appeal of an initial decision.* (1)(i) Any party may request the Secretary to review an initial decision.

(ii) A party must file such a request for review within 30 days of the party's receipt of the initial decision.

(2) The Secretary may—

(i) Grant or deny a timely request for review of an initial decision; or

(ii) Otherwise determine to review the decision, so long as that determination is made within 45 days of the date of receipt of the initial decision.

(3) The Secretary mails to each party written notice of—