

§ 101.113

or his decisional staff. It is improper that such interested persons or any members of the Department's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgement of any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper for any person to solicit communications to any such officer, or his decisional staff, other than proper communications by parties or amici curiae.

§ 101.113 Ex parte communications.

Only persons employed by or assigned to work with the reviewing authority who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the reviewing authority, or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The reviewing authority, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

§ 101.114 Expeditious treatment.

Requests for expeditious treatment of matters pending before the responsible Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

§ 101.115 Matters not prohibited.

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests

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

for extensions of time are not deemed ex parte communications prohibited by § 101.113. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible Department official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of part 100 of this title are not prohibited.

§ 101.116 Filing of ex parte communications.

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he considers the memorandum to be incorrect.

Subpart L—Posttermination Proceedings

§ 101.121 Posttermination proceedings.

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that since entry of the order, it has brought its program or activity into compliance with the requirements of the Act, and with the Regulation thereunder, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it

believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to paragraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

Subpart M—Definitions

§ 101.131 Definitions.

The definitions contained in §100.13 of this subtitle apply to this part, unless the context otherwise requires, and the term “reviewing authority” as used herein includes the Secretary of Education, with respect to action by that official under §101.106.

Transition provisions: (a) The amendments herein shall become effective upon publication in the FEDERAL REGISTER.

(b) These rules shall apply to any proceeding or part thereof to which part 100 of this title applies. In the case of any proceeding or part thereof governed by the provisions of 34 CFR, part 100 (Title VI regulations of the Department of Education) as that part existed prior to the amendments published in the FEDERAL REGISTER on Oct. 19, 1967 (effective on that date), the rules in this part 101 shall apply as if those amendments were not in effect.

PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General Provisions

- Sec.
- 104.1 Purpose.
 - 104.2 Application.
 - 104.3 Definitions.
 - 104.4 Discrimination prohibited.
 - 104.5 Assurances required.

- 104.6 Remedial action, voluntary action, and self-evaluation.
- 104.7 Designation of responsible employee and adoption of grievance procedures.
- 104.8 Notice.
- 104.9 Administrative requirements for small recipients.
- 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

Subpart B—Employment Practices

- 104.11 Discrimination prohibited.
- 104.12 Reasonable accommodation.
- 104.13 Employment criteria.
- 104.14 Preemployment inquiries.

Subpart C—Accessibility

- 104.21 Discrimination prohibited.
- 104.22 Existing facilities.
- 104.23 New construction.

Subpart D—Preschool, Elementary, and Secondary Education

- 104.31 Application of this subpart.
- 104.32 Location and notification.
- 104.33 Free appropriate public education.
- 104.34 Educational setting.
- 104.35 Evaluation and placement.
- 104.36 Procedural safeguards.
- 104.37 Nonacademic services.
- 104.38 Preschool and adult education.
- 104.39 Private education.

Subpart E—Postsecondary Education

- 104.41 Application of this subpart.
- 104.42 Admissions and recruitment.
- 104.43 Treatment of students; general.
- 104.44 Academic adjustments.
- 104.45 Housing.
- 104.46 Financial and employment assistance to students.
- 104.47 Nonacademic services.

Subpart F—Health, Welfare, and Social Services

- 104.51 Application of this subpart.
- 104.52 Health, welfare, and other social services.
- 104.53 Drug and alcohol addicts.
- 104.54 Education of institutionalized persons.

Subpart G—Procedures

- 104.61 Procedures.
- APPENDIX A TO PART 104—ANALYSIS OF FINAL REGULATION
- APPENDIX B TO PART 104—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE,