

## Off. of Postsecondary Educ., Education

## § 602.44

(b) Department staff may send the notice described in paragraph (a) of this section at any time the staff concludes that the agency fails to comply with the criteria for recognition in subpart B of this part or is not effective in its performance with respect to those criteria.

(Authority: 20 U.S.C. 1099b)

### § 602.42 What are the response and hearing procedures?

(a) If the agency wishes either to respond to the notice or request a hearing, or both, it must do so in writing no later than 30 days after it receives the notice of the Secretary's intent to limit, suspend, or terminate recognition.

(1) The agency's submission must identify the issues and facts in dispute and the agency's position on them.

(2) If neither a response nor a request for a hearing is filed by the deadline, the notice of intent becomes a final decision by the Secretary.

(b)(1) After receiving the agency's response and hearing request, if any, the Secretary chooses a subcommittee composed of five members of the Advisory Committee to adjudicate the matter and notifies the agency of the subcommittee's membership.

(2) The agency may challenge membership of the subcommittee on grounds of conflict of interest on the part of one or more members and, if the agency's challenge is successful, the Secretary will replace the member or members challenged.

(c) After the subcommittee has been selected, Department staff sends the members of the subcommittee copies of the notice to limit, suspend, or terminate recognition, along with the agency's response, if any.

(d)(1) If a hearing is requested, it is held in Washington, DC, at a date and time set by Department staff.

(2) A transcript is made of the hearing.

(3) Except as provided in paragraph (e) of this section, the subcommittee allows Department staff, the agency, and any interested party to make an oral or written presentation, which may include the introduction of written and oral evidence.

(e) On agreement by Department staff and the agency, the subcommittee review may be based solely on the written materials submitted.

(Authority: 20 U.S.C. 1099b)

### § 602.43 How is a decision on limitation, suspension, or termination of recognition reached?

(a) After consideration of the notice of intent to limit, suspend, or terminate recognition, the agency's response, if any, and all submissions and presentations made at the hearing, if any, the subcommittee issues a written opinion and sends it to the Secretary, with copies to the agency and the senior Department official. The opinion includes—

(1) Findings of fact, based on consideration of all the evidence, presentations, and submissions before the subcommittee;

(2) A recommendation as to whether a limitation, suspension, or termination of the agency's recognition is warranted; and

(3) The reasons supporting the subcommittee's recommendation.

(b) Unless the subcommittee's recommendation is appealed under § 602.44, the Secretary issues a final decision on whether to limit, suspend, or terminate the agency's recognition. The Secretary bases the decision on consideration of the full record before the subcommittee and the subcommittee's opinion.

(Authority: 20 U.S.C. 1099b)

#### APPEAL RIGHTS AND PROCEDURES

### § 602.44 How may an agency appeal the subcommittee's recommendation?

(a) Either the agency or the senior Department official may appeal the subcommittee's recommendation. If a party wishes to appeal, that party must—

(1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after receipt of the recommendation;

(2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the recommendation; and