

**§ 28.610 Conduct of investigations.**

(a) *Periodic compliance reviews.* The designated agency official (or designee) shall from time to time review the practices of recipients to determine whether they are complying with these Title IX regulations.

(b) *Complaints.* Any person who believes himself or herself or any specific class of individuals to be subjected to discrimination prohibited by these Title IX regulations may by himself or herself or by a representative file with the designated agency official (or designee) a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency official (or designee).

(c) *Investigations.* The designated agency official (or designee) will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with these Title IX regulations. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with these Title IX regulations occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with these Title IX regulations.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with these Title IX regulations, the designated agency official (or designee) will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 28.615.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the designated agency official (or designee) will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX

or these Title IX regulations, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under these Title IX regulations. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of these Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under these Title IX regulations.

[65 FR 52882, Aug. 30, 2000]

**§ 28.615 Procedure for effecting compliance.**

(a) *General.* If there appears to be a failure or threatened failure to comply with these Title IX regulations, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with these Title IX regulations may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 28.115.* If an applicant fails or refuses to furnish an assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to § 28.115, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under paragraph (c) of this section except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to September 29, 2000.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.*

**§ 28.620**

(1) No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

(i) The designated agency official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to these Title IX regulations; and

(iii) The expiration of 30 days after the Secretary has filed with the committee of the House, and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* (1) No action to effect compliance by any other means authorized by law shall be taken until:

(i) The designated agency official has determined that compliance cannot be secured by voluntary means;

(ii) The recipient has been notified of its failure to comply and of the action to be taken to effect compliance; and

(iii) The expiration of at least 10 days from the mailing of such notice to the recipient.

(2) During this period of at least 10 days additional efforts shall be made to persuade the recipient to comply with these Title IX regulations and to take such corrective action as may be appropriate.

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**§ 28.620 Hearings.**

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 28.615(c), reasonable notice shall be given by registered or certified

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mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the designated agency official that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under 20 U.S.C. 1682 and § 28.615(c) and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the designated agency official unless the official determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing officer designated in accordance with 5 U.S.C. 556(b).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this