

PART 8—DEMANDS FOR TESTIMONY OR RECORDS IN LEGAL PROCEEDINGS

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AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474, unless otherwise noted.

SOURCE: 57 FR 34646, Aug. 5, 1992, unless otherwise noted.

§ 8.1 What is the scope and applicability of this part?

(a) Except as provided in paragraph (c) of this section, this part establishes the procedures to be followed if the Department or any departmental employee receives a demand for—

- (1) Testimony by an employee concerning—
- (i) Records contained in the files of the Department;
 - (ii) Information relating to records contained in the files of the Department; or
 - (iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status; or
- (2) The production or disclosure of any information or records referred to in paragraph (a)(1) of this section.
- (b) This part does not create any right or benefit, substantive or procedural, enforceable by any person against the Department.

(c) This part does not apply to—

- (1) Any proceeding in which the United States is a party before an adjudicative authority;
- (2) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress; or
- (3) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's

testimony does not relate to the mission or functions of the Department.

(Authority: 5 U.S.C. 301; 20 U.S.C. 3474)

§ 8.2 What definitions apply?

The following definitions apply to this part:

Adjudicative authority includes, but is not limited to—

- (1) A court of law or other judicial forums; and
- (2) Mediation, arbitration, or other forums for dispute resolution.

Demand includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

Department means the U.S. Department of Education.

Employee means a current employee or official of the Department or of an advisory committee of the Department, including a special government employee, unless specifically provided otherwise in this part.

Legal proceeding means—

- (1) A proceeding before an adjudicative authority;
- (2) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress, to the extent of matter within the committee's or subcommittee's jurisdiction; or
- (3) An administrative proceeding.

Secretary means the Secretary of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Testimony means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

United States means the Federal Government of the United States and any of its agencies or instrumentalities.

(Authority: 5 U.S.C. 301; 20 U.S.C. 3474)

§ 8.3 What are the requirements for submitting a demand for testimony or records?

- (a) A demand for testimony of an employee or former employee, or a demand for records issued pursuant to the rules governing the legal proceeding in which the demand arises—