

by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 264-255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48021, Dec. 17, 1987]

PART 21—EQUAL ACCESS TO JUSTICE

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AUTHORITY: 5 U.S.C. 504, unless otherwise noted.

SOURCE: 58 FR 47192, Sept. 7, 1993, unless otherwise noted.

Subpart A—General

§21.1 Equal Access to Justice Act.

(a) The Equal Access to Justice Act (the Act) provides for the award of fees and other expenses to applicants that—

- (1) Are prevailing parties in adversary adjudications before the Department of Education; and
- (2) Meet all other conditions of eligibility contained in this part.

(b) An eligible applicant, as described in paragraph (a) of this section, is entitled to receive an award unless—

(1) The adjudicative officer, the Civil Rights Reviewing Authority (CRRA), or the Secretary on review, determines that—

- (i) The Department's position was substantially justified; or
- (ii) Special circumstances make an award unjust; or

(2) The adversary adjudication is under judicial review, in which case the applicant may receive an award only as described in §21.11.

(c) The determination under paragraph (b)(1)(i) of this section is based on the administrative record, as a whole, made during the adversary adjudication for which fees and other expenses are sought.

(Authority: 5 U.S.C. 504(a)(1) and (c)(1))

§21.2 Time period when the Act applies.

The Act applies to any adversary adjudication covered under this part pending or commenced before the Department on or after August 5, 1985.

(Authority: 5 U.S.C. 504(note))

§21.3 Definitions.

The following definitions apply to this part:

Act means the Equal Access to Justice Act.

Adjudicative officer means the Administrative Law Judge, hearing examiner,