

(b) The ALJ, at a party's request, may order compulsory discovery described in paragraph (c) of this section if the ALJ determines that—

(1) The order is necessary to secure a fair, expeditious, and economical resolution of the case;

(2) The discovery requested is likely to elicit relevant information with respect to an issue in the case;

(3) The discovery request was not made primarily for the purposes of delay or harassment; and

(4) The order would serve the ends of justice.

(c) If a compulsory discovery is permissible under paragraph (b) of this section, the ALJ may order a party to do one or more of the following:

(1) Make relevant documents available for inspection and copying by the party making the request.

(2) Answer written interrogatories that inquire into relevant matters.

(3) Have depositions taken.

(d) The ALJ may issue a subpoena to enforce an order described in this section and may apply to the appropriate court of the United States to enforce the subpoena.

(e) The ALJ may not compel the discovery of information that is legally privileged.

(f)(1) The ALJ limits the period for discovery to not more than 90 days but may grant an extension for good cause.

(2) At a party's request, the ALJ may set a specific schedule for discovery.

(Authority: 20 U.S.C. 1234(f)(1) and (g))

§ 81.17 Privileges.

The privilege of a person or governmental organization not to produce documents or provide information in a proceeding under this part is governed by the principles of common law as interpreted by the courts of the United States.

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

§ 81.18 The record.

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and makes the transcript available to the parties. Transcripts are made available to non-

Departmental parties at a cost not to exceed the actual cost of duplication.

(b) The record of a hearing on the record consists of—

(1) All papers filed in the proceeding;

(2) Documentary evidence admitted by the ALJ;

(3) The transcript of any evidentiary hearing or oral argument; and

(4) Rulings, orders, and subpoenas issued by the ALJ.

(Authority: 5 U.S.C. 556(e), 557(c); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

[54 FR 19512, May 5, 1989, as amended at 58 FR 43473, Aug. 16, 1993]

§ 81.19 Costs and fees of parties.

The Equal Access to Justice Act, 5 U.S.C. 504, applies by its terms to proceedings under this part. Regulations under that statute are in 34 CFR part 21.

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

§ 81.20 Interlocutory appeals to the Secretary from rulings of an ALJ.

(a) A ruling by an ALJ may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of an initial decision, grant review of a ruling upon either an ALJ's certification of the ruling to the Secretary for review, or the filing of a petition seeking review of an interim ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

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(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be accompanied by a copy of the ruling and any findings and opinions relating to the ruling. The petition must be filed with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(c) A copy of the petition must be provided to the ALJ at the time the petition is filed under paragraph (b)(2) of this section, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect that service.

(d) If a party files a petition under this section, the ALJ may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the ALJ's receipt of the petition for interlocutory review. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e)(1) A party's response, if any, to a petition or certification for interlocutory review must be filed within seven days after service of the petition or certification, and may not exceed ten pages, double-spaced, in length. A copy of the response must be filed with the ALJ by hand delivery, by regular mail, or by facsimile transmission.

(2) A party shall serve a copy of its response on all parties on the filing date by hand-delivery or regular mail. If agreed upon by the parties, service of a copy of the response may be made upon the other parties by facsimile transmission.

(f) The filing of a request for interlocutory review does not automatically stay the proceedings. Rather, a stay during consideration of a petition for review may be granted by the ALJ if the ALJ has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order

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a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument or other existing material in the administrative record with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a request for interlocutory review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the ALJ's ruling.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1234(f)(1))

[58 FR 43473, Aug. 16, 1993]

Subpart B—Hearings for Recovery of Funds

§ 81.30 Basis for recovery of funds.

(a) Subject to the provisions of § 81.31, an authorized Departmental official requires a recipient to return funds to the Department if—

(1) The recipient made an unallowable expenditure of funds under a grant or cooperative agreement; or

(2) The recipient otherwise failed to discharge its obligation to account properly for funds under a grant or cooperative agreement.

(b) An authorized Departmental official may base a decision to require a recipient to return funds upon an audit report, an investigative report, a monitoring report, or any other evidence.

(Authority: 20 U.S.C. 1234a(a) (1) and (2))

[54 FR 19512, May 5, 1989. Redesignated and amended at 58 FR 43473, Aug. 16, 1993]

§ 81.31 Measure of recovery.

A recipient that made an unallowable expenditure or otherwise failed to discharge its obligation to account properly for funds shall return an amount that—

(a) Meets the standards for proportionality in § 81.32;

(b) In the case of a State or local educational agency, excludes any amount