

Office for Civil Rights, Education

§ 110.39

(c) ED takes no action under paragraph (a) of this section until—

(1) ED has advised the recipient of its failure to comply with the Act or with these regulations and has determined that voluntary compliance cannot be obtained; and

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Secretary files a report if any action is taken under § 110.35(a)(1).

(d) The Secretary also may defer granting new Federal financial assistance from ED to a recipient if termination proceedings in § 110.35(a)(1) are initiated.

(1) New Federal financial assistance from ED includes all assistance for which ED requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from ED does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the initiation of termination proceedings.

(2) ED does not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 110.35(a)(1). A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and ED. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(Authority: 42 U.S.C. 6104)

[58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]

§ 110.36 Hearings, decisions, and post-termination proceedings.

(a) The following ED procedural provisions applicable to Title VI of the Civil Rights Act of 1964 also apply to ED's enforcement of these regulations: 34 CFR 100.9 and 100.10 and 34 CFR part 101.

(b) Action taken under section 305 of the Act is subject to judicial review as provided by section 306 of the Act.

(Authority: 42 U.S.C. 6104-6105)

§ 110.37 Procedure for disbursement of funds to an alternate recipient.

(a) If the Secretary withholds funds from a recipient under these regulations, the Secretary may disburse the funds withheld directly to an alternate recipient: any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) The Secretary requires any alternate recipient to demonstrate—

(1) The ability to comply with the Act and these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

(Authority: 42 U.S.C. 6104)

[58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]

§ 110.38 Remedial action by recipients.

If ED finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action that ED may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated or if the entity that has discriminated is a subrecipient, both recipients or recipient and subrecipient may be required to take remedial action.

(Authority: 42 U.S.C. 6103)

§ 110.39 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if—

(1) One hundred eighty days have elapsed since the complainant filed the complaint with ED, and ED has made no finding with regard to the complaint; or

(2) ED issues any finding in favor of the recipient.

(b) If ED fails to make a finding within 180 days or issues a finding in favor of the recipient, ED promptly—

(1) Advises the complainant of this fact;