

§ 33.19

(4) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(5) Administer oaths and affirmations;

(6) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(7) Rule on motions and other procedural matters;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, rule on, exclude, or limit evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Upon motion of a party, decide cases, in whole or in part, by summary judgment if there is no disputed issue of material fact;

(14) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(15) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

(Authority: 31 U.S.C. 3803(g))

§ 33.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues.

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement.

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents.

(4) Whether the parties can agree to submission of the case on a stipulated record.

(5) Whether a party chooses to waive appearance at an oral hearing and to

34 CFR Subtitle A (7-1-06 Edition)

submit only documentary evidence (subject to the objection of other parties) and written argument.

(6) Limitation of the number of witnesses.

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits.

(8) Discovery.

(9) The time and place for the hearing.

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

(Authority: 31 U.S.C. 3803(g))

§ 33.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 33.4(b) are based, unless those documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of the documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 33.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 33.9.

(Authority: 31 U.S.C. 3803(g)(3)(B)(ii), 3803(e))