

§ 8.4

(c) Service of a demand for records, as described in § 8.5(a)(1), must be made on an employee or former employee who has custody of the records, with a copy simultaneously delivered to the General Counsel at the address listed in paragraph (b) of this section. For assistance in identifying the custodian of the specific records demanded, contact the Records Management Branch Chief, Office of Information Resources Management, U.S. Department of Education, 7th and D Streets, SW., ROB-3, Washington, DC 20202-4753.

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

(Approved by the Office of Management and Budget under control number 1801-0002)

[57 FR 34646, Aug. 5, 1992, as amended at 58 FR 7860, Feb. 9, 1993]

§ 8.4 What procedures are followed in response to a demand for testimony?

(a) After an employee receives a demand for testimony, the employee shall immediately notify the Secretary and request instructions.

(b) An employee may not give testimony without the prior written authorization of the Secretary.

(c)(1) The Secretary may allow an employee to testify if the Secretary determines that the demand satisfies the requirements of § 8.3 and that granting permission—

(i) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, rules, and regulations; and

(ii) Would not be contrary to an interest of the United States, which includes furthering a public interest of the Department and protecting the human and financial resources of the United States.

(2) The Secretary may establish conditions under which the employee may testify.

(d) If a response to a demand for testimony is required before the Secretary determines whether to allow an employee to testify, the employee or counsel for the employee shall—

(1) Inform the court or other authority of the regulations in this part; and

(2) Request that the demand be stayed pending the employee's receipt of the Secretary's instructions.

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

(e) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the Secretary's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and the regulations in this part.

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

§ 8.5 What procedures are followed in response to a demand for records?

(a)(1) After an employee receives a demand for records issued pursuant to the rules governing the legal proceeding in which the demand arises, the employee shall immediately notify the Secretary and request instructions.

(2) If an employee receives any other demand for records, the Department—

(i) Considers the demand to be a request for records under the Freedom of Information Act; and

(ii) Handles the demand under rules governing public disclosure, as established in 34 CFR part 5.

(b) An employee may not produce records in response to a demand as described in paragraph (a)(1) of this section without the prior written authorization of the Secretary.

(c) The Secretary may make these records available if the Secretary determines that the demand satisfies the requirements of § 8.3 and that disclosure—

(1) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, rules, and regulations; and

(2) Would not be contrary to an interest of the United States, which includes furthering a public interest of the Department and protecting the human and financial resources of the United States.

(d) If a response to a demand for records as described in paragraph (a)(1) of this section is required before the Secretary determines whether to allow an employee to produce those records, the employee or counsel for the employee shall—

(1) Inform the court or other authority of the regulations in this part; and