

## Office of the Secretary, Education

## § 81.2

under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

### Subpart E—Entitlement [Reserved]

## PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

### Subpart A—General Provisions

Sec.

- 81.1 Purpose.
- 81.2 Definitions.
- 81.3 Jurisdiction of the Office of Administrative Law Judges.
- 81.4 Membership and assignment to cases.
- 81.5 Authority and responsibility of an Administrative Law Judge.
- 81.6 Hearing on the record.
- 81.7 Non-party participation.
- 81.8 Representation.
- 81.9 Location of proceedings.
- 81.10 Ex parte communications.
- 81.11 Motions.
- 81.12 Filing requirements.
- 81.13 Mediation.
- 81.14 Settlement negotiations.
- 81.15 Evidence.
- 81.16 Discovery.
- 81.17 Privileges.
- 81.18 The record.
- 81.19 Costs and fees of parties.
- 81.20 Interlocutory appeals to the Secretary from rulings of an ALJ.

### Subpart B—Hearings for Recovery of Funds

- 81.30 Basis for recovery of funds.
- 81.31 Measure of recovery.
- 81.32 Proportionality.
- 81.33 Mitigating circumstances.
- 81.34 Notice of a disallowance decision.
- 81.35 Reduction of claims.
- 81.36 Compromise of claims under General Education Provisions Act.

81.37 Application for review of a disallowance decision.

81.38 Consideration of an application for review.

81.39 Submission of evidence.

81.40 Burden of proof.

81.41 Initial decision.

81.42 Petition for review of initial decision.

81.43 Review by the Secretary.

81.44 Final decision of the Department.

81.45 Collection of claims.

### APPENDIX TO PART 81—ILLUSTRATIONS OF PROPORTIONALITY

AUTHORITY: 20 U.S.C. 1221e-3, 1234-1234i, and 3474(a), unless otherwise noted.

SOURCE: 54 FR 19512, May 5, 1989, unless otherwise noted.

### Subpart A—General Provisions

#### § 81.1 Purpose.

The regulations in this part govern the enforcement of legal requirements under applicable programs administered by the Department of Education and implement Part E of the General Education Provisions Act (GEPA).

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

#### § 81.2 Definitions.

The following definitions apply to the terms used in this part:

*Administrative Law Judge* (ALJ) means a judge appointed by the Secretary in accordance with section 451 (b) and (c) of GEPA.

*Applicable program* means any program for which the Secretary of Education has administrative responsibility, except a program authorized by—

(a) The Higher Education Act of 1965, as amended;

(b) The Act of September 30, 1950 (Pub. L. 874, 81st Congress), as amended; or

(c) The Act of September 23, 1950 (Pub. L. 815, 81st Congress), as amended.

*Department* means the United States Department of Education.

*Disallowance decision* means the decision of an authorized Departmental official that a recipient must return funds because it made an expenditure of funds that was not allowable or otherwise failed to discharge its obligation to account properly for funds. Such a

### §81.3

decision, referred to as a “preliminary departmental decision” in section 452 of GEPA, is subject to review by the Office of Administrative Law Judges.

*Party* means either of the following:

(a) A recipient that appeals a decision.

(b) An authorized Departmental official who issues a decision that is appealed.

*Recipient* means the recipient of a grant or cooperative agreement under an applicable program.

*Secretary* means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

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

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

### §81.3 Jurisdiction of the Office of Administrative Law Judges.

(a) The Office of Administrative Law Judges (OALJ) established under section 451(a) of GEPA has jurisdiction to conduct the following proceedings concerning an applicable program:

- (1) Hearings for recovery of funds.
- (2) Withholding hearings.
- (3) Cease and desist hearings.

(b) The OALJ also has jurisdiction to conduct other proceedings designated by the Secretary. If a proceeding or class of proceedings is so designated, the Department publishes a notice of the designation in the FEDERAL REGISTER.

(Authority: 5 U.S.C. 554, 20 U.S.C. 1234(a))

### §81.4 Membership and assignment to cases.

(a) The Secretary appoints Administrative Law Judges as members of the OALJ.

(b) The Secretary appoints one of the members of the OALJ to be the chief judge. The chief judge is responsible for the efficient and effective administration of the OALJ.

(c) The chief judge assigns an ALJ to each case or class of cases within the jurisdiction of the OALJ.

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

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

### §81.5 Authority and responsibility of an Administrative Law Judge.

(a) An ALJ assigned to a case conducts a hearing on the record. The ALJ regulates the course of the proceedings and the conduct of the parties to ensure a fair, expeditious, and economical resolution of the case in accordance with applicable law.

(b) An ALJ is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(c) An ALJ is disqualified in any case in which the ALJ has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party's attorney as to make it improper for the ALJ to be assigned to the case.

(d)(1) An ALJ may disqualify himself or herself at any time on the basis of the standards in paragraph (c) of this section.

(2) A party may file a motion to disqualify an ALJ under the standards in paragraph (c) of this section. A motion to disqualify must be accompanied by an affidavit that meets the requirements of 5 U.S.C. 556(b). Upon the filing of such a motion and affidavit, the ALJ decides the disqualification matter before proceeding further with the case.

(Authority: 5 U.S.C. 556(b); 20 U.S.C. 1221e-3, 1234 (d), (f)(1) and (g)(1), and 3474(a))

### §81.6 Hearing on the record.

(a) A hearing on the record is a process for the orderly presentation of evidence and arguments by the parties.

(b) Except as otherwise provided in this part or in a notice of designation under §81.3(b), an ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) At a party's request, the ALJ shall confer with the parties in person or by conference telephone call before