

## Office for Civil Rights, Education

## § 110.35

(1) 60 days elapse from the time the complaint is received;

(2) Prior to the end of the 60-day period, an agreement is reached; or

(3) Prior to the end of the 60-day period, the mediator determines that agreement cannot be reached.

(f) The mediator shall return unresolved complaints to ED.

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

### § 110.33 Investigation.

(a) *Initial investigation.* ED investigates complaints that are unresolved after mediation or reopened because of a violation of the mediation agreement. ED uses methods during the investigation to encourage voluntary resolution of the complaint, including discussions with the complainant and recipient to establish the facts and, if possible, resolve the complaint to the mutual satisfaction of the parties. ED may seek the assistance of any involved State, local, or other Federal agency.

(b) *Formal investigation, conciliation, and hearing.* If ED cannot resolve the complaint during the early stages of the investigation, ED completes the investigation of the complaint and makes formal findings. If the investigation indicates a violation of the Act or these regulations, ED attempts to achieve voluntary compliance. If ED cannot obtain voluntary compliance, ED begins enforcement as described in § 110.35.

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

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

### § 110.34 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who—

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of ED's investigation, conciliation, and enforcement process.

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

### § 110.35 Compliance procedure.

(a) ED may enforce the Act and these regulations under § 110.35(a) (1) or (2) through—

(1) Termination of, or refusal to grant or continue, a recipient's Federal financial assistance from ED for a program or activity in which the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law, including, but not limited to—

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations; or

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or of these regulations.

(b) ED limits any termination or refusal under § 110.35(a)(1) to the particular recipient and to the particular program or activity ED finds in violation of the Act or these regulations. ED will not base any part of a termination on a finding with respect to any program or activity that does not receive Federal financial assistance from ED.

(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