

§ 7.8

Notice need not be given if the employee stated in writing that he would agree to the determination of ownership which was in fact made.

§ 7.8 Employee's right of appeal.

An employee who is aggrieved by a determination of the Department may appeal to the Commissioner of Patents, pursuant to section 4(d) of Executive Order 10096, as amended by Executive Order 10930, and regulations issued thereunder, by filing a written appeal with the Commissioner, in duplicate, and a copy of the appeal with the Secretary within 30 days (or such longer period as the Commissioner may, for good cause, fix in any case) after receiving written notice of such determination.

PART 8—DEMANDS FOR TESTIMONY OR RECORDS IN LEGAL PROCEEDINGS

Sec.

- 8.1 What is the scope and applicability of this part?
- 8.2 What definitions apply?
- 8.3 What are the requirements for submitting a demand for testimony or records?
- 8.4 What procedures are followed in response to a demand for testimony?
- 8.5 What procedures are followed in response to a demand for records?

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474, unless otherwise noted.

SOURCE: 57 FR 34646, Aug. 5, 1992, unless otherwise noted.

§ 8.1 What is the scope and applicability of this part?

(a) Except as provided in paragraph (c) of this section, this part establishes the procedures to be followed when the Department or any employee of the Department receives a demand for—

- (1) Testimony by an employee concerning—
 - (i) Records contained in the files of the Department;
 - (ii) Information relating to records contained in the files of the Department; or
 - (iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status; or

34 CFR Subtitle A (7–1–10 Edition)

(2) The production or disclosure of any information or records referred to in paragraph (a)(1) of this section.

(b) This part does not create any right or benefit, substantive or procedural, enforceable by any person against the Department.

(c) This part does not apply to—

(1) Any proceeding in which the United States is a party before an adjudicative authority;

(2) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress; or

(3) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the mission or functions of the Department.

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

[57 FR 34646, Aug. 5, 1992, as amended at 73 FR 27748, May 14, 2008]

§ 8.2 What definitions apply?

The following definitions apply to this part:

Adjudicative authority includes, but is not limited to—

(1) A court of law or other judicial forums; and

(2) Mediation, arbitration, or other forums for dispute resolution.

Demand includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

Department means the U.S. Department of Education.

Employee means a current or former employee or official of the Department or of an advisory committee of the Department, including a special government employee, unless specifically provided otherwise in this part.

Legal proceeding means—

(1) A proceeding before an adjudicative authority;

(2) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress, to the extent of matter within the committee's or subcommittee's jurisdiction; or

(3) An administrative proceeding.

Secretary means the Secretary of Education or an official or employee of

Office of the Secretary, Education

§ 8.4

the Department acting for the Secretary under a delegation of authority.

Testimony means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

United States means the Federal Government of the United States and any of its agencies or instrumentalities.

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

[57 FR 34646, Aug. 5, 1992, as amended at 73 FR 27748, May 14, 2008]

§ 8.3 What are the requirements for submitting a demand for testimony or records?

(a) A demand for testimony of an employee or a demand for records issued pursuant to the rules governing the legal proceeding in which the demand arises—

(1) Must be in writing; and

(2) Must state the nature of the requested testimony or records, why the information sought is unavailable by any other means, and the reason why the release of the information would not be contrary to an interest of the Department or the United States”.

(b) Service of a demand for testimony of an employee must be made on the employee whose testimony is demanded, with a copy simultaneously delivered to the General Counsel, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue, SW., room 6E300, Lyndon Baines Johnson Building, Washington, DC 20202-2100.

(c) Service of a demand for records, as described in § 8.5(a)(1), must be made on an 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 Officer, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management, U.S. Department of Education,

400 Maryland Avenue, SW., room 9161, PCP, 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; 73 FR 27748, May 14, 2008]

§ 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.

(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*