

§ 42.211

28 CFR Ch. I (7–1–12 Edition)

§ 42.211 Resumption of suspended funds.

(a) Payment of suspended funds made available under the JSIA or the Juvenile Justice Act shall resume only if—

(1) Such State government or unit of general local government enters into a compliance agreement signed by the Director of OJARS in accordance with § 42.209;

(2) Such State government or unit of general local government:

(i) Complies fully with the final order or judgment of a Federal or State court, if that order or judgement covers all matters raised by the Director of OJARS in the notice pursuant to § 42.208, or

(ii) Is found to be in compliance with section 815(c)(1) of the JSIA by such court;

(3) After a hearing, the Director of OJARS, pursuant to § 42.213, finds that noncompliance has not been demonstrated; or

(4) An administrative law judge has determined, under § 42.212, that it is likely that the State government or unit of local government will prevail on the merits.

(b) Full compliance with a court order, for the purposes of paragraph (2) of this section, includes the securing of an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

§ 42.212 Preliminary hearing.

(a) Prior to the suspension of funds under § 42.210(a), but within the 90-day period after notification under § 42.208, the State government or unit of local government may request an expedited preliminary hearing on the record in accordance with 5 U.S.C. 554 in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under § 42.213, prevail on the merits on the issue of the alleged noncompliance.

(b) The preliminary hearing shall be initiated within 30 days of request. The ALJ shall make his finding within 15 days after the conclusion of the preliminary hearing.

§ 42.213 Full hearing.

(a) At any time after notification of noncompliance under § 42.208, but before the conclusion of the 120-day suspension period referred to in § 42.210, a State government or unit of general local government may request a hearing on the record in accordance with 5 U.S.C. 554 in order to contest the findings of determination of noncompliance made under § 42.208. The Office shall initiate the hearing within 60 days of request.

(b) Within 30 days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the 120-day period referred to in § 42.210, the Director of OJARS shall make a finding of compliance or noncompliance.

(1) If the Director makes a finding of noncompliance, the Director shall:

(i) Notify the Attorney General in order that the Attorney General may institute a civil action under section 815(c)(3) of the JSIA;

(ii) Cause to have terminated the payment of funds under the JSIA and/or the Juvenile Justice Act; and

(iii) If appropriate, seek repayment of funds.

(2) If the Director makes a finding of compliance, payment of the suspended funds and reconsideration of applications shall resume.

§ 42.214 Judicial review.

Any State government or unit of general local government aggrieved by a final determination of the Office under § 42.213 may appeal such determination as provided in section 805 of the JSIA.

§ 42.215 Other actions authorized under the JSIA.

(a) The Director of OJARS may, at any time, request the Attorney General to file suit to enforce compliance with section 815(c)(1). OJARS will monitor the litigation through the court docket and liaison with the Civil Rights Division of the Department of Justice. Where the litigation does not result in timely resolution of the matter, and funds have not been suspended pursuant to § 42.215(b), OJARS will institute administrative proceedings unless enjoined from doing so by the court.