

§ 303.448

beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1), 1439)

§ 303.448 Civil action.

(a) *General.* Any party aggrieved by the findings and decision made under §§ 303.440 through 303.445 who does not have the right to an appeal under § 303.446(b), and any party aggrieved by the findings and decision under § 303.446(b), has the right to bring a civil action with respect to the due process complaint under § 303.440. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) *Time limitation.* The party bringing the action has 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under part C of the Act, in the time allowed by that State law.

(c) *Additional requirements.* In any action brought under paragraph (a) of this section, the court—

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) *Rule of construction.* Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that

34 CFR Ch. III (7–1–12 Edition)

before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§ 303.440 and 303.446 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(2), 1415(i)(3)(A), 1415(l), 1439)

§ 303.449 State enforcement mechanisms.

Notwithstanding §§ 303.431(b)(6) and 303.442(d)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or a resolution meeting, there is nothing in this part that would prevent the State from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court or competent jurisdiction or in a district court of the United States.

(Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B), 1439)

Subpart F—Use of Funds and Payor of Last Resort

GENERAL

§ 303.500 Use of funds, payor of last resort, and system of payments.

(a) *Statewide system.* Each statewide system must include written policies and procedures that meet the requirements of the—

(1) Use of funds provisions in § 303.501; and

(2) Payor of last resort provisions in §§ 303.510 through 303.521 (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under part C of the Act within the State).

(b) *System of Payments.* A State may establish, consistent with §§ 303.13(a)(3) and 303.203(b), a system of payments for early intervention services under part C of the Act, including a schedule of sliding fees or cost participation fees (such as co-payments, premiums, or