

§81.3

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 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.

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(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))

§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