

## G. HEARING OFFICER'S FINDINGS OF FACT AND DECISION

(1) The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DOHA, with a copy to the parties.

(2) The Director, DOHA, shall forward to the Director, of the DoD school system, or to the Military Medical Department concerned, copies with all personally identifiable information deleted, of the hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DOHA Appeal Board.

(3) The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section I of this appendix. The DoD school system or the Military Medical Department concerned shall implement the decision as soon as practicable after it becomes final.

## H. DETERMINATION WITHOUT HEARING

(1) At the request of a parent of an infant, toddler, or child age 3 to 21, inclusive, when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and conclusions of law in the period fixed by paragraph D.(17) of this appendix.

(2) The DoD school system or the Military Medical Department concerned may oppose a request to waive a hearing. In that event, the hearing officer shall rule on that request.

(3) Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph F.(6) of this appendix. A party submitting such documents shall provide copies to all other parties.

## I. APPEAL

(1) A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DOHA, at P.O. Box 3656, Arlington, Virginia 22203, within 15 business days of receipt of the findings of fact and conclusions of law. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete on mailing.

(2) Within 30 business days of receipt of the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DOHA, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DOHA, within 20 business days of receiving the statement, and shall deliver a copy of each

reply to the appellant. Submission is complete on mailing.

(3) The Director, DOHA, shall refer the matter on appeal to the DOHA Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 45 business days of receiving timely submitted replies under paragraph I.(2) of this appendix.

(4) The determination of the DOHA Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right under sections 921–932 and chapter 33 of title 20, United States Code to bring a civil action on the matters in dispute in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(5) No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this appendix before seeking judicial review of a determination made under this appendix.

## J. PUBLICATION AND INDEXING OF FINAL DECISIONS

The Director, DOHA, shall ensure that final decisions in cases arising under this appendix are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with DoD Directive 5400.11.

## APPENDIX H TO PART 57—MONITORING

## A. MONITORING

(1) The DoDEA and the Military Medical Departments shall establish procedures for monitoring special services requiring:

(i) Periodic on-site monitoring at each administrative level.

(ii) The DoD school systems to report annually that the provision of special education and related services is in compliance with this part.

(iii) The Military Medical Departments to report annually that the provision of EIS is in compliance with this part.

(2) The Director, DoDEA, and the Surgeons General of the Military Medical Departments shall submit reports to the DoD-CC not later than July 31 each year that summarize the status of compliance. The reports shall:

(i) Identify procedures conducted at Headquarters and at each subordinate level, including on-site visits, to evaluate compliance with this part.

(ii) Summarize the findings.

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(iii) Describe corrective actions required of the programs that were not in compliance and the technical assistance that shall be provided to ensure they reach compliance.

### B. USD(P&R) OVERSIGHT

(1) On behalf of the USD(P&R), the DoD-CC or designees, shall make periodic unannounced visits to selected programs to ensure the monitoring process is in place and to validate the compliance data and reporting. The DoD-CC may use other means in addition to the procedures in this section to ensure compliance with the requirements established in this part.

(2) For DoD-CC monitoring visits, the Secretaries of the Military Departments, or designees, shall:

(i) Provide necessary travel funding and support for their respective team members.

(ii) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which they are responsible.

(iii) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(iv) Address monitoring teams' recommendations concerning early intervention and related services for which the Secretary concerned has responsibility, including those to be furnished through an inter-Service agreement, are promptly implemented.

(3) For DoD-CC monitoring visits, the Director, DoDEA shall:

(i) Provide necessary travel funding and support for team members from the Office of the Under Secretary (P&R); the Office of GC, DoD; and DoD school systems.

(ii) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which he/she is responsible.

(iii) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(iv) Address the monitoring teams' recommendations concerning special education and related services for which the DoD school system concerned has responsibility.

(4) The ASD(HA), or designee, shall provide technical assistance to the DoD monitoring teams when requested.

(5) The GC, DoD, or designee, shall:

(i) Provide legal counsel regarding monitoring activities conducted pursuant to this part to the USD(P&R), the ASD(HA), and, where appropriate, to DoDEA, monitored Agencies, and monitoring teams.

(ii) Provide advice about the legal requirements of this part and Federal law to the DoD school systems, military medical commanders, and military installation commanders, and to other DoD personnel as appropriate, in connection with monitoring activities conducted pursuant to this part.

## PART 60—FAMILY ADVOCACY COMMAND ASSISTANCE TEAM (FACAT)

Sec.

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AUTHORITY: 10 U.S.C. 1794; 42 U.S.C. 13031.

SOURCE: 79 FR 25676, May 6, 2014, unless otherwise noted.

### § 60.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for implementation and use of the FACAT in accordance with 10 U.S.C. 1794.

### § 60.2 Applicability.

(a) This part applies to Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities and all other organizational entities in the DoD (hereinafter referred to collectively as the "DoD Components").

(b) The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

### § 60.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

*Child.* An unmarried person under 18 years of age for whom a parent, guardian, foster parent, caregiver, employee of a residential facility, or any staff person providing out-of-home care is legally responsible. The term "child" means a biological child, adopted child, stepchild, foster child, or ward. The term also includes a sponsor's family member (except the sponsor's spouse) of any age who is incapable of self-support because of a mental or physical incapacity, and for whom treatment in a DoD medical treatment program is authorized.