

§ 81.8

§ 81.8 Representation.

A party to, or other participant in, a case may be represented by counsel.

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

§ 81.9 Location of proceedings.

(a) An ALJ may hold conferences of the parties in person or by conference telephone call.

(b) Any conference, hearing, argument, or other proceeding at which the parties are required to appear in person is held in the Washington, DC metropolitan area unless the ALJ determines that the convenience and necessity of the parties or their representatives requires that it be held elsewhere.

(Authority: 5 U.S.C. 554(b); 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

§ 81.10 Ex parte communications.

A party to, or other participant in, a case may not communicate with an ALJ on any fact in issue in the case or on any matter relevant to the merits of the case unless the parties are given notice and an opportunity to participate.

(Authority: 5 U.S.C. 554(d)(1), 557(d)(1)(A); 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

§ 81.11 Motions.

(a) To obtain an order or a ruling from an ALJ, a party shall make a motion to the ALJ.

(b) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(c) If a party files a motion, the party shall serve a copy of the motion on the other party on the filing date by hand-delivery or by mail. If agreed upon by the parties, service of the motion may be made upon the other party by facsimile transmission.

(d) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may

34 CFR Subtitle A (7-1-14 Edition)

deny a motion without awaiting a response.

(e) The date of service of a motion is determined by the standards for determining a filing date in § 81.12(d).

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

[54 FR 19512, May 5, 1989, as amended at 57 FR 56795, Nov. 30, 1992]

§ 81.12 Filing requirements.

(a) Any written submission to an ALJ or the OALJ under this part must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) If a party files a brief or other document with an ALJ or the OALJ, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail. If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(c) Any written submission to an ALJ or the OALJ must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d)(1) The filing date for a written submission to an ALJ or the OALJ is the date the document is—

- (i) Hand-delivered;
- (ii) Mailed; or
- (iii) Sent by facsimile transmission.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next business day.

(e) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(f) If a document is filed by facsimile transmission, a follow-up hard copy must be filed by hand-delivery or by mail within a reasonable period of time.

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

[54 FR 19512, May 5, 1989, as amended at 57 FR 56795, Nov. 30, 1992]