

§ 668.119

given official notice, or on facts stipulated to by the parties.

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992]

§ 668.119 Appeal to the Secretary.

(a) Within 30 days of its receipt of the initial decision of the hearing official, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the hearing official should be overturned or modified.

(b) The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material.

(c) In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(1) The admissible evidence already in the record;

(2) Matters that may be given official notice; or

(3) Stipulations of the parties

(d) The opposing party shall file its response to the appeal, if any, with the Secretary within 30 days of that party's receipt of the appeal to the Secretary.

(e) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

(f) Neither party may introduce new evidence on appeal.

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992; 57 FR 60035, Dec. 17, 1992]

§ 668.120 Decision of the Secretary.

(a)(1) The Secretary issues a final decision. The Secretary may affirm, modify, or reverse the decision of the hearing official, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision.

34 CFR Ch. VI (7-1-14 Edition)

(2) The Secretary may delegate the performance of functions under this section to a designated department official.

(b) If the Secretary modifies, remands, or overturns the initial decision of the hearing official, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action;

(2) Is provided to both parties; and

(3) Unless the decision is remanded to the hearing official for further review or determination of fact, becomes final upon its issuance.

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992; 57 FR 60035, Dec. 17, 1992]

§ 668.121 Final decision of the Department.

(a) In the event that the initial decision of the hearing official is appealed, the decision of the Secretary is the final decision of the Department, unless the hearing official's decision is remanded by the Secretary.

(b) In the event that the initial decision of the hearing official is not appealed within the time limit specified in § 668.119(a), the initial decision automatically becomes the final decision of the Department.

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987; 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992]

§ 668.122 Determination of filing, receipt, and submission dates.

(a)(1) Appeals and written submissions to a hearing official referred to in this subpart may be hand-delivered, mailed, or filed electronically by use of the Office of Hearings and Appeals Electronic Filing System (OES).

(2)(i) Service on the other party of a document required to be served on another party may be made by mail or by hand delivery, or, if agreed upon by the parties, by use of the OES or by any other means agreed to by the parties. A party who agrees to receive a document filed by another party by any means other than service by mail or

hand-delivery may limit that agreement to one or more particular documents.

(ii) A party who agrees to service of a document through the OES thereby agrees that the notice of such filing provided to the party by the OES suffices to meet any obligation of the filing party under these regulations to provide a copy of that document.

(b) All mailed written submissions referred to in this subpart shall be mailed by certified mail, return receipt requested.

(c) Determination of filing, receipt, or submission dates is based on the date of hand-delivery, the date of receipt recorded by the U.S. Postal Service, the date a document sent electronically by using the OES is recorded as received as indicated in the confirmation of receipt email for E-filing, or for other means, the date on which the delivery is recorded in the medium used for delivery.

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987, as amended at 78 FR 48051, Aug. 7, 2013]

§ 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or program review determination, subject to the provisions of § 668.24(c)(3), the Department of Education will take steps to collect the debt at issue or otherwise effect the determination that was subject to the request for review.

(Authority: 20 U.S.C. 1094)

[59 FR 22453, Apr. 29, 1994]

§ 668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a copy of a petition or any certification must be served upon the parties as provided in § 668.122(a)(2). The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties in the manner provided in § 668.122(a)(2).

(e) A party's response to a petition or certification for interlocutory review must be filed within 7 days after service of the petition or statement, as applicable, and may not exceed 10 pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official as provided in § 668.122(a)(2).

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review