

**TITLE 20 - EDUCATION****CHAPTER 31 - GENERAL PROVISIONS CONCERNING EDUCATION****SUBCHAPTER IV - ENFORCEMENT****§ 1234. Office of Administrative Law Judges****(a) Establishment; duties**

The Secretary shall establish in the Department of Education an Office of Administrative Law Judges (hereinafter in this subchapter referred to as the “Office”) which shall conduct—

- (1) recovery of funds hearings pursuant to section 1234a of this title,
- (2) withholding hearings pursuant to section 1234d of this title,
- (3) cease and desist hearings pursuant to section 1234e of this title, and
- (4) other proceedings designated by the Secretary.

**(b) Appointment**

The administrative law judges (hereinafter “judges”) of the Office shall be appointed by the Secretary in accordance with section 3105 of title 5.

**(c) Employment requirements; chief judge**

The judges shall be officers or employees of the Department. The judges shall meet the requirements imposed for administrative law judges pursuant to section 3105 of title 5. In choosing among equally qualified candidates for such positions the Secretary shall give favorable consideration to the candidates’ experience in State or local educational agencies and their knowledge of the workings of Federal education programs in such agencies. The Secretary shall designate one of the judges of the Office to be the chief judge.

**(d) Assignment of judges**

For the purposes of conducting hearings described in subsection (a) of this section, the chief judge shall assign a judge to each case or class of cases. A judge shall be disqualified in any case in which the judge 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 judge to be assigned to the case.

**(e) Review and evidentiary functions**

The judge shall review and may require that evidence be taken on the sufficiency of the preliminary departmental determination as set forth in section 1234a of this title.

**(f) Conduct of proceedings; costs and fees of parties**

- (1) The proceedings of the Office shall be conducted according to such rules as the Secretary shall prescribe by regulation in conformance with the rules relating to hearings in title 5, sections 554, 556, and 557.
- (2) The provisions of title 5, section 504, relating to costs and fees of parties, shall apply to the proceedings before the Department.

**(g) Discovery; scope, time, etc.; issue and enforcement of subpoenas**

- (1) In order to secure a fair, expeditious, and economical resolution of cases and where the judge determines that the discovered information is likely to elicit relevant information with respect to an issue in the case, is not sought primarily for the purposes of delay or harassment, and would serve the ends of justice, the judge may order a party to—
  - (A) produce relevant documents;
  - (B) answer written interrogatories that inquire into relevant matters; and
  - (C) have depositions taken.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

The judge shall set a time limit of 90 days on the discovery period. The judge may extend this period for good cause shown. At the request of any party, the judge may establish a specific schedule for the conduct of discovery.

(2) In order to carry out the provisions of subsections (f)(1) and (g)(1) of this section, the judge is authorized to issue subpoenas and apply to the appropriate court of the United States for enforcement of a subpoena. The court may enforce the subpoena as if it pertained to a proceeding before that court.

**(h) Mediation of disputes**

The Secretary shall establish a process for the voluntary mediation of disputes pending before the Office. The mediator shall be agreed to by all parties involved in mediation and shall be independent of the parties to the dispute. In the mediation of disputes the Secretary shall consider mitigating circumstances and proportion of harm pursuant to section 1234b of this title. In accordance with rule 408 of the Federal Rules of Evidence, evidence of conduct or statements made in compromise negotiations shall not be admissible in proceedings before the Office. Mediation shall be limited to 120 days, except that the mediator may grant extensions of such period.

**(i) Professional personnel; employment, assignment, or transfer**

The Secretary shall employ, assign, or transfer sufficient professional personnel, including judges of the Office, to ensure that all matters brought before the Office may be dealt with in a timely manner.

(Pub. L. 90–247, title IV, § 451, as added Pub. L. 95–561, title XII, § 1232, Nov. 1, 1978, 92 Stat. 2346; amended Pub. L. 100–297, title III, § 3501(a), Apr. 28, 1988, 102 Stat. 349.)

**References in Text**

The Federal Rules of Evidence, referred to in subsec. (h), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**Amendments**

1988—Pub. L. 100–297 amended section generally, substituting provisions relating to Office of Administrative Law Judges for provisions relating to Education Appeal Board.

**Effective Date of 1988 Amendment**

Section 3501(b) of Pub. L. 100–297 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting sections 1234f to 1234i of this title and amending this section and sections 1232d and 1234a to 1234e of this title] shall be effective 180 days after the date of enactment of this Act [Apr. 28, 1988].

“(2) The amendments made by this part [part D (§ 3501) of title III of Pub. L. 100–297, enacting sections 1234f to 1234i of this title and amending this section and sections 1232d and 1234a to 1234e of this title] shall not apply to any case in which the recipient, prior to the effective date of this part, received a written notice that such recipient must return funds to the Department.”

**Effective Date**

Subchapter effective 120 days after Nov. 1, 1978, see section 1261 of Pub. L. 95–561, set out as a note under section 1232c of this title.