

§ 110.31

may conduct these reviews in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, ED attempts to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, ED arranges for enforcement as described in § 110.35.

(Authority: 42 U.S.C. 6103)

§ 110.31 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with ED alleging discrimination prohibited by the Act or by these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged discrimination. However, for good cause shown, ED may extend this time limit.

(b) ED attempts to facilitate the filing of complaints, if possible, by—

(1) Accepting as a complete complaint any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant;

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a complete complaint;

(3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations;

(4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact ED for information and assistance regarding the complaint resolution process.

(c) A complaint is considered to be complete on the date that ED receives all the information necessary to proc-

34 CFR Ch. I (7-1-10 Edition)

ess it, as described in paragraph (b)(1) of this section.

(d) ED returns to the complainant any complaint outside the jurisdiction of these regulations and states the reason or reasons why it is outside the jurisdiction of the regulations.

(Authority: 42 U.S.C. 6103)

§ 110.32 Mediation.

(a) ED promptly refers to the Federal Mediation and Conciliation Service or to the mediation agency designated by the Secretary of Health and Human Services, all complaints that—

(1) Fall within the jurisdiction of the Act and these regulations, unless the age distinction complained of is clearly within an exemption under § 110.2(b); and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or to make an informed judgment that an agreement is not possible. The recipient and the complainant need not meet with the mediator at the same time, and the meeting may be conducted by telephone or other means of effective dialogue if a personal meeting between the party and the mediator is impractical.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to ED. ED takes no further action on the complaint unless informed that the complainant or the recipient fails to comply with the agreement, at which time ED reinstates the complaint.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with ED. Mediation ends if—

Office for Civil Rights, Education

§ 110.35

(1) 60 days elapse from the time the complaint is received;

(2) Prior to the end of the 60-day period, an agreement is reached; or

(3) Prior to the end of the 60-day period, the mediator determines that agreement cannot be reached.

(f) The mediator shall return unresolved complaints to ED.

(Authority: 42 U.S.C. 6103)

§ 110.33 Investigation.

(a) *Initial investigation.* ED investigates complaints that are unresolved after mediation or reopened because of a violation of the mediation agreement. ED uses methods during the investigation to encourage voluntary resolution of the complaint, including discussions with the complainant and recipient to establish the facts and, if possible, resolve the complaint to the mutual satisfaction of the parties. ED may seek the assistance of any involved State, local, or other Federal agency.

(b) *Formal investigation, conciliation, and hearing.* If ED cannot resolve the complaint during the early stages of the investigation, ED completes the investigation of the complaint and makes formal findings. If the investigation indicates a violation of the Act or these regulations, ED attempts to achieve voluntary compliance. If ED cannot obtain voluntary compliance, ED begins enforcement as described in § 110.35.

(Authority: 42 U.S.C. 6103)

[58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]

§ 110.34 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who—

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of ED's investigation, conciliation, and enforcement process.

(Authority: 42 U.S.C. 6103)

§ 110.35 Compliance procedure.

(a) ED may enforce the Act and these regulations under § 110.35(a) (1) or (2) through—

(1) Termination of, or refusal to grant or continue, a recipient's Federal financial assistance from ED for a program or activity in which the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law, including, but not limited to—

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations; or

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or of these regulations.

(b) ED limits any termination or refusal under § 110.35(a)(1) to the particular recipient and to the particular program or activity ED finds in violation of the Act or these regulations. ED will not base any part of a termination on a finding with respect to any program or activity that does not receive Federal financial assistance from ED.

(c) ED takes no action under paragraph (a) of this section until—

(1) ED has advised the recipient of its failure to comply with the Act or with these regulations and has determined that voluntary compliance cannot be obtained; and

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Secretary files a report if any action is taken under § 110.35(a)(1).

(d) The Secretary also may defer granting new Federal financial assistance from ED to a recipient if termination proceedings in § 110.35(a)(1) are initiated.

(1) New Federal financial assistance from ED includes all assistance for which ED requires an application or