

Office of the Secretary, Education

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programs will be added at a particular school. Examples of these new programs include those for vocational education, physical education, libraries, and similar programs.

Student Health and Welfare means an allowance that is earned if the proposed program and plan of use of the property provides for cafeteria, clinic, infirmary, bus loading shelters, or other uses providing for the well-being and health of students and eliminating safety and health hazards.

Research means an allowance that is earned if the proposed use of the property will be predominantly for research by faculty or graduate students under school auspices, or other primary educational research.

Service to Handicapped means an allowance that is earned if the proposed program and plan of use for the property will be for special education for the physically or mentally handicapped.

PART 15—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

§ 15.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 264-255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48021, Dec. 17, 1987]

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AUTHORITY: 5 U.S.C. 504, unless otherwise noted.

SOURCE: 58 FR 47192, Sept. 7, 1993, unless otherwise noted.

Subpart A—General

§ 21.1 Equal Access to Justice Act.

- (a) The Equal Access to Justice Act (the Act) provides for the award of fees and other expenses to applicants that—
 - (1) Are prevailing parties in adversary adjudications before the Department of Education; and

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(2) Meet all other conditions of eligibility contained in this part.

(b) An eligible applicant, as described in paragraph (a) of this section, is entitled to receive an award unless—

(1) The adjudicative officer, the Civil Rights Reviewing Authority (CRRRA), or the Secretary on review, determines that—

(i) The Department's position was substantially justified; or

(ii) Special circumstances make an award unjust; or

(2) The adversary adjudication is under judicial review, in which case the applicant may receive an award only as described in §21.11.

(c) The determination under paragraph (b)(1)(i) of this section is based on the administrative record, as a whole, made during the adversary adjudication for which fees and other expenses are sought.

(Authority: 5 U.S.C. 504(a)(1) and (c)(1))

§21.2 Time period when the Act applies.

The Act applies to any adversary adjudication covered under this part pending or commenced before the Department on or after August 5, 1985.

(Authority: 5 U.S.C. 504(note))

§21.3 Definitions.

The following definitions apply to this part:

Act means the Equal Access to Justice Act.

Adjudicative officer means the Administrative Law Judge, hearing examiner, or other deciding official who presided at the underlying adversary adjudication.

(Authority: 5 U.S.C. 504(b)(1)(D))

Adversary adjudication means a proceeding—

(1) Conducted by the Department for the formulation of an order or decision arising from a hearing on the record under the Administrative Procedure Act (5 U.S.C. 554);

(2) Listed in §21.10; and

(3) In which the position of the Department was represented by counsel or other representative who entered an

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appearance and participated in the proceeding.

(Authority: 5 U.S.C. 504(b)(1)(C))

Application subject to the jurisdiction of the CRRRA means an application for fees and expenses based on an underlying proceeding conducted under 34 CFR parts 100, 101, 104, 106, or 110.

(Authority: 5 U.S.C. 504(b)(1)(C); 20 U.S.C. 1681; 29 U.S.C. 794; 42 U.S.C. 2000d–1 *et seq.* and 6101 *et seq.*)

CRRRA means the Civil Rights Reviewing Authority, the reviewing authority established by the Secretary to consider applications under 34 CFR parts 100, 101, 104, 106, and 110.

(Authority: 5 U.S.C. 504(b)(1)(C); 20 U.S.C. 1681; 29 U.S.C. 794; 42 U.S.C. 2000d–1 *et seq.* and 6101 *et seq.*)

Department means the U.S. Department of Education.

Department's counsel means counsel for the Department of Education or another Federal agency.

Employee means:

(1) A person who regularly performs services for an applicant—

(i) For remuneration; and

(ii) Under the applicant's direction and control.

(2) A part-time or seasonal employee who performs services for an applicant—

(i) For remuneration; and

(ii) Under the applicant's direction and control.

(Authority: 5 U.S.C. 504(c)(1))

Fees and other expenses means an eligible applicant's reasonable fees and expenses—

(1) Related to the issues on which it was the prevailing party in the adversary adjudication; and

(2) Further described in §§21.33 and 21.50.

(Authority: 5 U.S.C. 504 (a)(1), (b)(1)(A), and (c)(1))

Party means a "person" or a "party" as those terms are defined in the Administrative Procedure Act (5 U.S.C. 551(3)), including an individual, partnership, corporation, association, unit of local government, or public or private organization that meets the requirements in §21.20. The term does not