to ensure the efficient conduct of the proceedings.
  (e) A non-party participant shall comply with the requirements for parties in §81.11 and §81.12.

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

§ 81.8 Representation.
  (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 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 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))

§ 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(b); 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)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))


§ 81.13 Mediation.

(a) Voluntary mediation is available for proceedings that are pending before the OALJ.

(b) A mediator must be independent of, and agreed to by, the parties to the case.

(c) A party may request mediation by filing a motion with the ALJ assigned to the case. The OALJ arranges for a mediator if the parties to the case agree to mediation.

(d) A party may terminate mediation at any time. Mediation is limited to 120 days unless the mediator informs the ALJ that—

(1) The parties are likely to resolve some or all of the dispute; and

(2) An extension of time will facilitate an agreement.

(e) The ALJ stays the proceedings during mediation.

(f)(1) Evidence of conduct or statements made during mediation is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during settlement negotiations.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement agreement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 554(c)(1), 1221e–3, 1234(f)(1), and 3474(a))


§ 81.14 Settlement negotiations.

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations, or for approval of a settlement agreement, the ALJ may grant a stay of the proceedings upon a finding of good cause.

(b) Evidence of conduct or statements made during settlement negotiations is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during settlement negotiations.

(b) The ALJ may take official notice of facts that are generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(Authority: 5 U.S.C. 556 (d) and (e); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

§ 81.16 Discovery.

(a) The parties to a case are encouraged to exchange relevant documents and information voluntarily.

(b) The ALJ, at a party’s request, may order compulsory discovery described in paragraph (c) of this section if the ALJ determines that—

(1) The order is necessary to secure a fair, expeditious, and economical resolution of the case;

(2) The discovery requested is likely to elicit relevant information with respect to an issue in the case;

(3) The discovery request was not made primarily for the purposes of delay or harassment; and

(4) The order would serve the ends of justice.

(c) If a compulsory discovery is permissible under paragraph (b) of this section, the ALJ may order a party to do one or more of the following: