contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

1. The conditions in paragraph (a) of this section do not exist; and

2. Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.


§ 85.745 How is fact-finding conducted?

(a) If fact-finding is conducted—

1. You may present witnesses and other evidence, and confront any witness presented; and

2. The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Department of Education agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.


§ 85.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

1. All information in support of the suspending official’s initial decision to suspend you;

2. Any further information and argument presented in support of, or opposition to, the suspension; and

3. Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.


§ 85.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official’s receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.


§ 85.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those