

Office of the Secretary, Education

§ 86.410

schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

§ 86.408 What are the procedures for conducting a pre-hearing conference?

(a)(1) A pre-hearing conference may be convened by the ALJ if the ALJ thinks that such a conference would be useful, or if requested by—

(i) The designated Department official; or

(ii) The IHE.

(2) The purpose of a pre-hearing conference is to allow the parties to settle, narrow, or clarify the dispute.

(b) A pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

§ 86.409 What are the procedures for conducting a hearing on the record?

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an ALJ.

(b) An ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) The hearing process may be expedited as agreed by the ALJ, the designated Department official, and the IHE. Procedures to expedite may include, but are not limited to, the following:

(1) A restriction on the number or length of submissions.

(2) The conduct of the hearing by telephone conference call.

(3) A review limited to the written record.

(4) A certification by the parties to facts and legal authorities not in dispute.

(d)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.

(2) The designated Department official has the burden of persuasion in any proceeding under this subpart.

(3)(i) The parties may agree to exchange relevant documents and information.

(ii) The ALJ may not order discovery, as provided for under the Federal Rules of Civil Procedure, or any other exchange between the parties of documents or information.

(4) The ALJ accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(e) The ALJ makes a transcribed record of any evidentiary hearing or oral argument that is held, and makes the record available to—

(1) The designated Department official; and

(2) The IHE on its request and upon payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR part 5).

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

§ 86.410 What are the procedures for issuance of a decision?

(a)(1) The ALJ issues a written decision to the IHE, the designated Department official, and the Secretary by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing if one is held; or

(iii) The date on which the ALJ terminates the hearing in accordance with § 86.401(c)(3).

(2) The ALJ's decision states whether the violation or violations contained in the Secretary's notification occurred, and articulates the reasons for the ALJ's finding.