

cases shall not be paid by Job Corps except in accordance with paragraph (b) of this section), in accordance with guidelines issued by the Job Corps Director.

(b) Job Corps shall not pay the expenses of legal counsel or representation in any criminal case or proceeding for a student, unless the Center Director has certified to the Regional Director, and the Regional Director has approved, that a public defender is not available. With such approval of the Regional Director, Job Corps may compensate attorneys obtained pursuant to paragraph (a) of this section in criminal cases for reasonable expenses. Compensation shall be at the rates no higher than those set forth in the Criminal Justice Act of 1964, as amended (18 U.S.C. 3006A(d)).

§ 638.535 Voting rights.

The Job Corps Director shall develop procedures to enable eligible students and staff to vote either locally or by absentee ballot. See also § 638.814 (a) through (c) of this part.

§ 638.536 Religious rights.

The right to worship or not worship as he/she chooses shall not be denied to any student. Religious services may not be held on-center unless the center is so isolated as to make transportation to and from community religious facilities impractical. If religious services are held on-center, no federal funds shall be paid to those who conduct such services. Services shall not be confined to one religious denomination. The center operator shall instruct students that students are not obligated by Job Corps to attend such services. See also §§ 638.539(g) and 638.813 of this part.

§ 638.537 Disclosure of information.

(a) *Requests for information.* The Job Corps Director shall develop administrative procedures to respond to requests for information or records pertaining to students and such other disclosures as may be necessary.

(b) *Freedom of Information Act—(1) Disclosure.* Disclosure of Job Corps information shall be in accordance with the Freedom of Information Act and

shall be handled according to DOL regulations at 29 CFR part 70.

(2) *Contractors.* Job Corps contractors are not “agencies” for Freedom of Information Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(c) *Privacy Act of 1974.* When DOL maintains a system of records covered by the Privacy Act of 1974, or provides by contract for a contractor, such as a screening agency or a contract center operator, to operate by or on behalf of the Job Corps such a system of records to accomplish a Job Corps function, the requirements of the DOL regulations at 29 CFR part 70a apply to such system or records.

§ 638.538 Disciplinary procedures and appeals.

(a) The center operator shall establish reasonable rules and regulations for student behavior, in accordance with procedures developed by the Job Corps Director. Such rules shall be established to ensure high standards of behavior and conduct.

(b) The center operator shall develop reasonable sanctions for breaking established rules, in accordance with procedures developed by the Job Corps Director.

(c) The center operator shall ensure that all students have the opportunity for due process in disciplinary proceedings, in accordance with procedures developed by the Job Corps Director. Such center procedures, at a minimum, shall include center review boards where the penalty of termination might be imposed, and procedures for appealing, to a regional appeal board designated by the Regional Director, center decisions to terminate a student. See § 638.407 of this part. The decision of the regional appeal board shall be final agency action.

[55 FR 12996, Apr. 6, 1990; 55 FR 23634, June 11, 1990]

§ 638.539 Complaints and disputes.

(a) *Center and other deliverer grievance procedures.* Each center operator or other Job Corps deliverer shall establish and maintain a grievance procedure for complaints about its programs and activities from students and other

interested parties. A hearing on each complaint shall be conducted, using the established grievance procedure, within 30 days of filing of the complaint and a decision on the complaint shall be made by the Center Director or with the knowledge of the Center Director not later than 60 days after the filing of the complaint. Except for a complaint alleging fraud or criminal activity, complaints shall be made within one year of the alleged occurrence. (Section 144(a))

(b) *Federal review of student grievances.* Where a student or a person denied enrollment has exhausted the center or other deliverer grievance procedure established pursuant to paragraph (a) of this section, the student may appeal the decision to the regional appeal board. The regional appeal board shall review the appeal and determine within 120 days after receiving the appeal whether to reverse, affirm, or remand the decision. The decision of the regional appeal board shall be final agency action. (Section 144(c))

(c) *Federal review of non-student grievances.* (1) Where the grievance or complaint is made by an interested party other than a student, should the deliverer fail to provide a decision as required in paragraph (a) of this section, the complainant may then request from the Regional Director a determination whether reasonable cause exists to believe that the Act or this part has been violated. The request shall be filed no later than 10 days from the date on which the complainant should have received a decision pursuant to paragraph (a) of this section, and shall describe with specificity the facts and the proceedings (if any) below.

(2) The Regional Director shall act within 90 days of receipt of the request and where there is reasonable cause to believe the Act or this part has been violated shall direct the deliverer to issue a decision adjudicating the dispute pursuant to the deliverer's grievance procedures. The Regional Director's action is not final agency action on the merits of the dispute and therefore is not appealable under the Act. See sections 144(c) and 166(a) of the Act. If the deliverer does not comply with the Regional Director's order within 60 days, the Regional Director

may impose a sanction on the deliverer for failing to issue a decision.

(d) *Failures to comply with the Act.* Where DOL has reason to believe that the center operator or other deliverer is failing to comply with the requirements of the Act, the Regional Director shall investigate the allegation or belief and determine within 120 days after receiving the complaint whether such allegation or complaint is true. As the result of such a determination, the Regional Director may:

(1) Direct the deliverer to handle a complaint through the grievance procedures established under paragraph (a) of this section; or

(2) Investigate and determine whether the deliverer is in compliance with the Act and this part. If the Regional Director determines that the deliverer is not in compliance with the Act or this part, the appropriate sanctions set forth in section 164 of the Act shall be applied, subject to paragraph (e) or (f) of this section, as appropriate. (Section 163 (b) and (c))

(e) *Contract disputes.* A dispute between DOL and a Job Corps contractor shall be handled only pursuant to the Contract Disputes Act and 41 CFR part 29-60.

(f) *Inter-agency disputes.* A dispute between DOL and a federal agency operating a center shall be handled only pursuant to the interagency agreement with that agency for the operation of the center.

(g) *Nondiscrimination.* Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(1) 29 CFR part 34 and subparts B and C and Appendix A of 29 CFR part 32 for programs receiving financial assistance under JTPA.

(2) 29 CFR part 33 for programs conducted by the Department of Labor; and

(3) 41 CFR chapter 60 for entities that have a federal "government contract" as that term is defined in the applicable regulations.

See also §638.813(a) of this part, regarding discrimination.

[55 FR 12996, Apr. 6, 1990, as amended at 58 FR 69100, Dec. 29, 1993]