

WAC 67-25-600 Resolving a disagreement about vocational rehabilitation services. (1) If at any time during the vocational rehabilitation process the department makes a decision relating to the provision of vocational rehabilitation services that a participant does not agree with, the participant or the participant's representative has the right to use one or more of the following options to resolve the issue:

- (a) Talk to the vocational rehabilitation counselor or to the counselor's supervisor to resolve the disagreement;
- (b) Ask for help or information from the client assistance program;
- (c) Request mediation; and/or
- (d) Request a fair hearing.

(2) Efforts to reach agreement with the vocational rehabilitation counselor or supervisor will not be used to deny or delay mediation or a fair hearing.

(3) Mediation is voluntary and must be agreed to by both the participant and the department. Mediation is not used to deny or delay a fair hearing. A participant may request both mediation and a fair hearing at the same time if agreement is:

- (a) Reached during mediation, the fair hearing is canceled.
- (b) Not reached during mediation, the fair hearing is held as scheduled.

(4) Mediation is conducted by a trained mediator who knows the laws and rules about vocational rehabilitation services and who does not work for the department. The mediator does not make case service decisions.

(5) During mediation, the mediator:

- (a) Allows each party to present information or evidence;
- (b) Helps each party listen to and understand the other party's position;
- (c) Reviews and explains any laws that apply; and
- (d) Facilitates an agreement, if possible, between the parties.

(6) If agreement is reached during mediation, the department will provide a written statement of the agreement to the participant. Agreements made through mediation are not legally binding.

(7) The participant may choose to be represented by a family member, advocate or other individual at the mediation meeting.

(8) The department schedules mediation sessions in a timely manner at a convenient location to all parties.

(9) The department pays for costs related to mediation, except costs related to a representative or attorney engaged by the participant.

(10) The department will pay for vocational rehabilitation services necessary for the participant to engage in mediation, such as transportation or child care.

(11) Information discussed during mediation is kept confidential and may not be used in a later hearing or civil proceeding, if one is held. Before beginning a mediation session, all parties must sign a statement of confidentiality.

(12) A fair hearing is a proceeding as outlined under the Administrative Procedure Act, chapter 34.05 RCW and chapter 388-02 WAC. An administrative law judge who works for the office of administrative hearings holds a fair hearing.

(13) A participant who does not agree with a decision made by the department about eligibility or vocational rehabilitation services may

ask for a fair hearing within forty-five calendar days of that decision.

(14) To ask for a fair hearing, the participant must send a written request to the office of administrative hearings. The written request must include:

- (a) The participant's name, address, and telephone number;
- (b) A written statement about the decision and the reasons for disagreement; and
- (c) Any other information that supports the participant's position.

(15) The office of administrative hearings must hold a formal hearing within sixty days of receipt of written request for a hearing, unless:

- (a) The participant or the department ask for a delay; and
- (b) There is a reasonable cause for the delay.

(16) After the participant submits a request for a fair hearing, the department will offer the participant a prehearing meeting. The prehearing is optional for the participant and can be conducted in person, by telephone, or by another method agreeable to both parties. The purpose of the prehearing meeting is to:

- (a) Clarify the decision with which the participant disagrees;
- (b) Provide copies of laws, rules or other information to be presented in the fair hearing;
- (c) Explain how the fair hearing is conducted; and
- (d) Settle the disagreement, if possible.

(17) During the formal hearing, the participant and the department may present information, witnesses and/or documents to support their position.

(18) The participant may choose to be represented by an attorney, a relative, or someone else;

(19) The administrative law judge makes a decision after:

- (a) Hearing all of the information presented;
- (b) Reviewing any documents submitted; and
- (c) Reviewing relevant federal and state laws and regulations.

(20) The office of administrative hearings sends a written report of the findings and decisions to the customer and to the department within thirty days of the formal hearing.

(21) The office of administrative hearings decision is final and the department must implement the decision.

(22) If a participant does not agree with the office of administrative hearings decision, the individual may pursue civil action through superior court to review that decision.

(23) The department will not suspend, reduce, or terminate services to a participant while waiting for a formal hearing decision, unless the department believes the participant:

- (a) Provided false information to obtain vocational rehabilitation services; or
- (b) Committed fraud or other criminal action to obtain vocational rehabilitation services.

[Statutory Authority: P.L. 113-128 and 34 C.F.R. Part 361. WSR 18-14-101, amended and recodified as § 67-25-600, filed 7/3/18, effective 8/3/18. Statutory Authority: 34 C.F.R. 361.42, the Rehabilitation Act and Washington state Constitution. WSR 08-19-068, § 67-25-570, filed 9/15/08, effective 10/16/08. Statutory Authority: Chapter 74.18 RCW. WSR 05-08-097, § 67-25-570, filed 4/4/05, effective 5/5/05. Statutory Authority: Chapter 74.15 RCW. WSR 95-06-057, § 67-25-570, filed

2/28/95, effective 3/31/95. Statutory Authority: Chapter 74.18 RCW. WSR 90-11-047, § 67-25-570, filed 5/11/90, effective 6/11/90; WSR 88-09-006 (Order 88-1), § 67-25-570, filed 4/11/88. Statutory Authority: 1983 c 194 § 18. WSR 84-01-042 (Order 83-08), § 67-25-570, filed 12/15/83. Formerly WAC 67-20-570.]