

**MEMORANDUM OF AGREEMENT BETWEEN  
THE DIVISION OF HEARINGS AND APPEALS AND  
THE DEPARTMENT OF WORKFORCE DEVELOPMENT, DIVISION OF  
VOCATIONAL REHABILITATION**

**I. Preamble.**

The Department of Workforce Development (DWD), Division of Vocational Rehabilitation (DVR) administers the vocational rehabilitation program pursuant to 29 USC 701 and 796i, 34 CFR 300 to 399, Chapter 47 Wis. Stats., and Wisconsin Administrative Code DWD Chapters 60, 65, 68, and 75. DVR provides vocational rehabilitation services for individuals with disabilities so that such individuals may prepare for and engage in gainful employment. Any person aggrieved by a determination of eligibility or ineligibility for vocational rehabilitation services or by the furnishing or denial of vocational rehabilitation services may commence an appeal as provided under rules promulgated by the department under Wis. Stat. §47.02(5), and 34 CFR Part 361.57. In addition, the DWD administers the Randolph Sheppard Act (20 USC 107) as further regulated in 34 CFR 395.13 and Wis. Admn. Code DWD Ch. 60.

Pursuant to Wis. Stats. §227.43(1m) and §227.43(3)(e), the Division of Hearings and Appeals (DHA) may contract with agencies to provide impartial hearings and contested case hearing services and set fees for these services to cover total costs. These services include the appointment of administrative law judges (ALJs) to conduct hearings, and to make findings and orders pursuant to DWD 75 in order to meet its obligations for impartial due process hearings under 34 CFR 361.57 and evidentiary hearings under 34 CFR 395.13. With this MOU, DWD enters into this agreement with the DHA.

**II. Agreement.**

DWD-DVR and DHA agree that DHA shall conduct impartial hearings for DVR arising under 34 CFR Part 361, Wis.Stat. §47.02(5), and evidentiary hearings of decisions made under 34 CFR 395.13 and Wis. Admn. Code DWD §60.05 for the period beginning July 1, 2018 and continuing until June 30, 2021. DHA will ensure impartial and properly-trained hearing officers are assigned to each case, that decisions are timely issued and served, and that the hearing records are maintained and returned to the DWD-DVR at the conclusion of the appeal hearing. DWD-DVR agrees to provide necessary training to the hearing officers regarding its programs and the rehabilitation case process.

DWD will pay DHA an estimated cost of \$67,000.00 (average annual cost based on SFY's 16-18 expenditures) per State Fiscal Year. The actual amount due to the DHA will be based on the number of DVR hearings completed by DHA within the State Fiscal Year and the total cost as prescribed in Wis.Stat. §227.43(3)(e). Payments shall be invoiced and made quarterly. Unless modified or terminated by the parties at least 90 days prior to its expiration, this agreement will continue under the same agreed-upon terms until June 30, 2021. In addition, DWD-DVR will provide training on DVR policies

and procedures for ALJs at an agreed upon time and location. DVR will also notify DHA regarding policy updates and it will be the responsibility of the DVR Appeals Coordinator to notify ALJs of these changes. Modifications to the agreement may be made by mutual agreement.

Actual costs will be determined at the end of the fiscal year and monies refunded or a final invoice submitted at the end of the fiscal year. Invoices will be issued mid-quarter and payments due by the end of the quarter.

### **III. Decisions.**

Following the close of the record in each contested hearing, the ALJ provided and assigned by DHA shall prepare an administrative decision, including findings of fact, conclusions of law, opinion and order. The decision shall be served electronically and by mail or personal service, pursuant to Wis. Stat. sec. 227.48, on all parties to the proceeding and upon the DVR. It is the understanding of DHA and DVR that the procedures outlined in 34 CFR 361.57, Wis. Admin. Code Chapters DWD 75, 34 CFR 395.13 and DWD 60.05, where applicable, and HA 1, and Wis. Stats. 227.46 will be adhered to in making the decision in all cases conducted pursuant to this agreement. The ALJ shall issue a final decision as authorized by Wis. Admin. Code Chapter DWD 75 or 60.05, or as otherwise requested by DWD.

### **IV. Responsibilities of the Parties.**

Other miscellaneous costs and expenses, such as court reporter, translator, subpoena and witness fees, are the separate responsibility of the parties to the hearing and not DHA.

### **V. Records.**

Following the completion of any case closed under this agreement, any files and records generated by DHA in that case will be considered the files and records of DWD/DVR and will be returned to DWD/DVR within a reasonable time following the expiration of any controlling appeal period. DHA will not be the custodian for these records. DWD/DVR will be responsible for assembling, procuring and required transcription, and submitting the record for review in matters which are appealed by one of the parties. DWD/DVR will also be responsible for representing or requesting representation for appeals.

### **VI. Record Keeping**

DHA agrees to provide documentation for each case showing the time spent on administrative, hearing, pre-hearing, research, and writing pertaining to that case. DHA also agrees to provide to DWD/DVR the data needed to complete the annual report by October 1<sup>st</sup> for each year of the agreement, as described in the appendix, or as modified

by mutual agreement. DHA agrees to track and report actual costs incurred and assure DVR funds received under this agreement will be spent solely on DVR activities.

Data pertaining to annual report and invoices to be sent to:  
[DVRSpecialContracts@dwd.wisconsin.gov](mailto:DVRSpecialContracts@dwd.wisconsin.gov)

**VII. Application of Administrative Rules.**

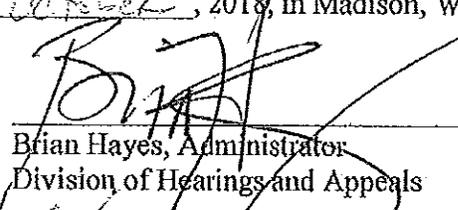
Hearings conducted under this agreement shall be consistent with state and federal laws and shall be held in accordance with applicable administrative rules promulgated by the federal government and DWD. In the event that DWD rules do not apply to issues before an ALJ conducting a hearing pursuant to this agreement, DHA may apply rules contained in Wis. Admin. Code Chapter HA 1, to the extent consistent with Wisconsin Statutes.

**VIII. Litigation.**

DWD agrees to be responsible for the management of all disputes and suits at law or in equity arising out of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this  
15 day of October, 2018, in Madison, Wisconsin.

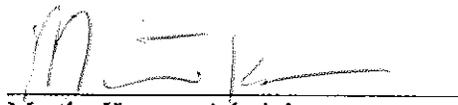
By:

  
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Brian Hayes, Administrator  
Division of Hearings and Appeals

By:

  
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Delora Newton, Administrator  
Division of Vocational Rehabilitation  
Department of Workforce Development

By:

  
\_\_\_\_\_  
Martha Kerner, Administrator  
Division of Operations  
Department of Workforce Development

APPENDIX to  
Memorandum of Agreement Between  
DOA/Division of Hearings & Appeal (DHA) &  
DWD/Division of Vocational Rehabilitation (DVR)

Annual Reporting Data (to be maintained by DHA):

DHA agrees to maintain and provide information to DVR in accordance with an agreed upon schedule, the number of disputes resolved during the impartial hearing process by categories outlined below:

1. The number of disputes that were resolved before the hearing officer could render a decision. In most of these cases, the parties settled the dispute prior to actually getting to the hearing. However, sometimes, the parties reached a settlement just as the hearing was beginning or soon after it began. The key fact to keep in mind is that the dispute was resolved without the hearing officer rendering a decision.
2. The number of decisions rendered by the hearing officer that largely or entirely supported the position of the individual on the major issue(s). A major issue is one deemed vital to the individual in his/her initiation or successful completion of VR services.
3. The number of decisions rendered by the hearing officer that largely or entirely supported the position of the State VR agency on the major issue(s).
4. The total number of decisions actually rendered by the hearing officer during the fiscal year ending September 30.
5. The total number of disputes that were resolved somehow at some point during the hearing process (i.e., after a request for a hearing was made)
6. The number of disputes that were not resolved during the hearing process during the fiscal year. This includes those situations in which the individual died, left the State, or withdrew his/her request for a hearing for whatever reason.

In addition, DHA should track the following logistical information: Date of receipt of the Request for Hearing, Hearing officer assigned, date of Pre-Hearing, date of Formal Hearing. DVR will provide the following information with each referral to DHA: A copy of the completed Request for Hearing form identifying the issue and resolution stated by the individual appealing a DVR decision, information on the type of Dispute (Eligibility, nature/scope of IPE, quality of counseling services, delivery/quality of other VR

services, cost of services, termination of services/case closure, Other complaint/issue), whether the individual is represented or not.

Above information can be reviewed during the annual Agreement meeting between the Divisions as needed for annual or progress reporting and to document areas of concern.

### Impartial Due Process Hearings:

#### 1. Impartiality

- A) Other than conducting and deciding appeals, a hearing officer may not receive funds or services directly or indirectly from DVR.
- B) A hearing officer must recuse him/herself from a case if s/he:
  - 1) Was involved in previous decisions regarding the vocational rehabilitation of the appellant.
  - 2) Has a personal or financial interest in the outcome of the case.
  - 3) Is an employee of an agency involved in the decision the appellant is appealing.
  - 4) Is a spouse, parent or child of the appellant.
  - 5) Was involved as a mediator with the appellant.
- C) The hearing officer must avoid any appearance of partiality towards any party appearing before him/her.

#### 2. Hearing Process

- A) When requested to conduct a DVR Impartial hearing, the hearing officer contacts the appellant and the WDA Manager to obtain needed information.
- B) The hearing officer schedules a hearing within 60 calendar days from the date of the appellant's request for review. Either party may request a waiver of the 60-day time limit to allow a reasonable extension of time to arrange the necessary hearing.
- C) The hearing officer conducts a prehearing meeting prior to the impartial hearing. A prehearing meeting is initiated by the hearing officer with the appellant and the WDA Manager at the hearing officer's discretion. Note: For the prehearing interview, a face-to-face meeting, joint conference call or videoconference are suitable options, if available and agreed upon by the parties (verifying that the individual is comfortable with these options). The DVR Impartial Hearing Coordinator will assist with arranging conference and videoconference calls, reviewing schedules when needed.
- D) The purpose of a prehearing meeting is for the parties to agree on the details of the impartial hearing, including the issue being appealed. It may also include the exchange of documents (exhibits) and identification of potential witnesses. When appropriate, during the prehearing meeting, the hearing officer may suggest reconciliation of differences (via

mediation/conciliation with another party) and/or encourage settlement between parties.

- E) If a mutually agreeable reconciliation is attained during the prehearing interview, the hearing officer will send a prehearing meeting outcome letter addressed to the applicant, including the agreed upon timeframe to carry out the resolution activities. The hearing officer shall send a copy of the prehearing meeting outcome letter to the WDA Manager and Impartial Hearing Coordinator at the same time. If no resolution is reached, the hearing officer proceeds to the scheduled impartial hearing. If it is resolved, the hearing officer will prepare a closing letter dismissing the appeal.
- F) The hearing officer observes all state and federal law, regulations and policies concerning the conduct of and procedures for DVR impartial hearings.
- G) Within 30 days of the conclusion of the hearing, the hearing officer shall prepare and send a written decision letter. The decision shall contain the following:
  - 1) A statement relating to the appellant's issue and outcome desired – required.
  - 2) Statutory, regulatory or policy requirements cited in the letter – required.
  - 3) Rationale for the decision – required.
  - 4) A statement acknowledging that this is the final decision under 34 CFR 361.57(e)(3) – required.
  - 5) A statement that the appellant, under 34 CFR 361.57(i) and ch. 227, Wis. Stats., may choose to petition the courts. The decision letter will also note the procedures for filing a claim in circuit court - required.

Suggested language:  
This is my final decision under 34 CFR 361.57(e)(3). If you disagree with this decision, you are entitled under 34 CFR 361.57(i) and under Wisconsin state law to file a petition for judicial review. You can file the petition with the Circuit Court in the county where you live or with any federal court of competent jurisdiction. The petition must be filed no more than 30 days after the date of this hearing decision. A copy of the petition for review must also be sent by certified mail to the Wisconsin Department of Workforce Development, P.O. Box 7852, Madison WI 53707-7852; and also to any other "parties in interest" named in this decision. The full process for petitions for judicial review is stated in s. 227.53, Wis. Stats. A copy of the Wisconsin Statutes can be found at your local library or courthouse or on the Internet.
  - 6) Inclusion of any relevant exhibits.
  - 7) Your personal style for ending the letter.
- H) The hearing officer shall mail the decision letter to the appellant or their representative via certified mail within 30 calendar days of the impartial hearing date. The hearing officer shall send a copy of the decision letter

to the DVR representative and to the DVR Impartial Hearing Coordinator  
at the same time.

### 3. Confidentiality

The hearing officer will maintain confidentiality of all information pertaining to the impartial hearing, whether verbal or written presentation, as required in 34 CFR sec. 361.38. The hearing officer will safeguard the personal information of the appellants and will communicate with the parties and the department through secure communication.