

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

1. Preamble.

The Department of Workforce Development (DWD), Division of Vocational Rehabilitation (DVR) administers the vocational rehabilitation program pursuant to 29 U.S.C. §§ 701 and 796i, 34 CFR Parts 300 to 399, Wis. Stat. Ch. 47, and Wis. Admin. Code Chs. DWD 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 361.57.

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 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 to meet its obligations for impartial due process hearings under 34 CFR 361.57.

With this Memorandum of Understanding (MOU), DVR enters into an agreement with the DHA (collectively, the parties) for such services.

2. Agreement.

DVR and DHA agree that DHA shall conduct hearings for DVR arising under 34 CFR Part 361 and Wis. Stat. § 47.02(5) for the period beginning July 1, 2023 and continuing until June 30, 2026. Unless modified or terminated by the parties at least 90 days prior to its expiration, this MOU will continue under the same agreed-upon terms until June 30, 2026.

DVR is responsible for identifying training topics and training DHA hearing officers on DVR policies and procedures at an agreed upon time and location. DVR will also notify DHA regarding policy updates, and it will be the responsibility of the DVR hearing coordinator to notify DHA of these changes. Modifications to the MOU may be made by mutual written agreement.

DVR and DHA agree that this MOU is not the sole means by which DWD may select an impartial hearing officer conduct hearings for DVR arising under 34 CFR Part 361 and Wis. Stat. § 47.02(5). DWD will notify DHA each time it intends to use this MOU for services, as described in Section 3.i. of this MOU.

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3. Services to be Provided

- i. DVR will notify DHA when it needs a hearing officer to provide contested case hearing services for DVR for cases arising under 34 CFR Part 361 and Wis. Stat. § 47.02(5). In notifying DHA, DVR will provide:
 - a. A copy of the completed Request for Hearing form identifying the issue and resolution requested by the applicant or eligible individual appealing a DVR decision;
 - b. Information on the type of appeal (e.g., DVR eligibility decision, 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); and
 - c. Information on whether the applicant or eligible individual has a representative for the hearing.
- ii. Upon notification, DHA shall assign a hearing officer that meets the qualifications specified in DWD 75.12.
- iii. The DHA assigned hearing officer shall have all authorities specified in DWD 75.13 when conducting hearings and making findings and orders for DVR under this MOU.
- iv. The DHA assigned hearing officer shall provide contested case hearing services to DVR. In doing so, the assigned hearing officer shall follow all requirements of 34 CFR 361.57 and DWD 75.
- v. In cases involving accommodation requests, DHA will coordinate and pay for the accommodation(s) and invoice DVR for actual costs of the accommodation(s) and receive reimbursement upon properly submitted invoices.

4. Cost and Payment of Services

The amount due to the DHA will be based on the total cost in the fiscal year as prescribed in Wis. Stat. § 227.43(3)(e). DHA will use an FTE metric to assess costs based on personnel (salary and fringe), IT, rent, and chargebacks and will apportion these costs according to the time spent on DVR hearings.

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DHA agrees to track and report actual costs incurred and assure DVR funds received under this agreement will be spent solely on DVR activities. Invoices to be received no later than 15 days after the end of each quarter.

Other miscellaneous costs and expenses, such as court reporter, translator, subpoena, and witness fees, will be included in the costs invoiced to DWD/DVR.

Invoices to be addressed as follows:

DWD – DIV OF VOC REHAB
ATTN: DVR BUDGET ANALYST
PO BOX 7852
MADISON WI 53707-7852

Enter the invoice into STAR as an inter-agency invoice, and e-mail it to Einvoice@dwd.wisconsin.gov.

There is no need to mail in a hard copy of the invoice if the above steps are followed.

5. Records

Following the completion of any case closed under this agreement, any files and records generated by DHA 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.

DVR will be responsible for assembling, procuring, the required transcription and submitting the record for review in matters which are appealed by one of the parties.

6. Confidentiality

DHA will maintain confidentiality of all information pertaining to the impartial hearing, whether verbal or written presentation, as required in 34 CFR 361.38. and Wis. Admin. Code Ch. DWD 68. DHA will safeguard the personal information of the appellants and will communicate with the parties and the department through secure communication.

7. Reporting Requirements

DHA agrees to provide the following:

- i. Documentation provided on a quarterly basis for each case showing the time spent on administrative, hearing, pre-hearing, research, and writing.

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- ii. Reporting for each decision rendered by DHA to include:
 - a. Request for Hearing Date of Receipt
 - b. Hearing Officer Assigned
 - c. Date of Pre-Hearing
 - d. Date of Hearing

- iii. The data needed by DVR to complete the annual report. DHA to provide the information as described below or as modified by mutual agreement by October 1st of each year of the agreement.

The Number of Hearing Requests to include:

- a. Requests resolved prior to DHA rendering a decision.
- b. Decisions largely or entirely supporting the applicant or eligible individual.
- c. Decisions largely or entirely supporting the State VR agency.
- d. Requests not resolved during the federal fiscal year. This may include situations in which the applicant or eligible individual died, left the State, or withdrew their request.
- e. Cases that were not resolved or finalized
- f. All decisions rendered by DHA during the fiscal year ending September 30th of each year.

All reporting to be sent to: DVRSpecialContracts@dwd.wisconsin.gov

8. 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 federal regulations and administrative rules promulgated by DWD. In the event that DWD rules do not apply to issues before a DHA hearing officer 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 and applicable federal law.

9. Litigation.

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

IN WITNESS WHEREOF, the parties hereto have executed this agreement this _____ day of _____, 2023, in Madison, Wisconsin.

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By: DocuSigned by:
Brian Hayes 6/8/2023
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Brian Hayes, Administrator
Division of Hearings and Appeals
Department of Administration

By: DocuSigned by:
Delora Newton 6/8/2023
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Delora Newton, Administrator
Division of Vocational Rehabilitation
Department of Workforce Development

By: DocuSigned by:
Pamela McGillivray 7/11/2023
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Pamela McGillivray, Deputy Secretary
Department of Workforce Development