

North Central Workforce Development Area

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LOCAL DIRECTIVE

Directive #: 18-173

Date: July 1, 2018

TO: North Central WorkSource System Partners
FROM: Dave Petersen, Executive Director
SUBJECT: Dispute Resolution and Appeals Process

This directive describes the process by which SkillSource will address and resolve disputes regarding contracts, allotments, monitoring and oversight outcomes, and administrative agreements and memoranda involving local and/or system partners. It also describes conditions where the State may be required to address and resolve such disputes in the event they cannot be handled at the local level, and procedures that should be followed if it is determined the State has a conflict of interest.

1. Dispute Procedures

In all circumstances disputes will be resolved at the lowest level possible via these procedures. All steps taken to resolve disputes will be documented.

In the event of a dispute between SkillSource, fiscal agent for the North Central WDB, and any local and/or system partner relating to contracts, allotments, monitoring and oversight outcomes, and/or administrative agreements and memoranda, the first step is always for the disagreeing parties to attempt to negotiate a resolution between themselves. It is expected that partners enter into good-faith negotiations, communicate openly and directly, and that every effort will be made to resolve any problems or disputes in a cooperative manner.

If the parties cannot directly resolve their dispute, the WDB Executive Director will review documentation of all actions taken to resolve the dispute, meet with all aggrieved parties if deemed necessary, and issue a written recommendation for resolving the issue.

If the WDB Executive Director's recommendation does not resolve the dispute, the disputing parties may appeal the matter to the Employment Security Department (ESD) Commissioner, as the representative of the Governor, and in consultation with appropriate Chief Elected Officials. A decision will be issued within 30 calendar days of receiving the appeal.

In addition to these steps, per WorkSource System Policy #1013 REV 1, any failure to sign or execute an MOU between the WDB and a required partner must be reported by the WDB to the ESD Commissioner. The Commissioner, in consultation with the Chief Local Elected Official, can issue a recommendation for resolving

the impasse. Alternatively, the Commissioner may propose options such as asking the parties to seek third-party mediation or consultation with the Governor's Office to develop a resolution.

If an impasse has not been resolved through the alternatives available described herein, any partner that fails to execute an MOU may not be permitted to serve on the WDB. This sanction is in addition to, not in lieu of, any other remedies that may be applicable to the WDB or to each partner for failure to comply with the statutory requirement.

These steps are intended to provide local guidance to clarify dispute resolution procedures and do not supersede or replace language in the Workforce Innovation and Opportunity act, or regulations.

2. Dispute Procedures involving ESD

If the dispute involves the ESD, either party to the dispute can request the services of an intermediate mediator or hearing officer. The selection for the mediator or hearing officer must be concluded within 10 business days and must include the following:

- a. Each party to the dispute will identify one representative.
- b. From a list of three mediators or hearing officers identified through a mutually-agreed-upon source (e.g. local dispute resolution councils, State Department of Enterprise services, etc.), each representative will eliminate one individual with the remaining individual selected by that process of elimination.
- c. Both parties to the dispute agree to share the cost of the mediator/hearing officer equally.

The mediator or hearing officer will within 30 days of being retained, deliver a recommendation, in writing, to the ESD Commissioner. The ESD Commissioner has five business days to render a decision by accepting or rejecting the recommendation with the latter limited to three "just cause" allowances:

- a. Undisclosed conflict of interest on the part of the mediator/hearing officer.
- b. Clear misapplication of the law and/or regulations.
- c. The finding does not fit the record or the facts of the case.

If the ESD Commissioner rejects the mediator/hearing officer's recommendation, either party to the dispute and Commissioner's (rejection) decision can be appealed to the U.S. Department of Labor as described in WIOA Section 181(c).

Per WIOA Section 121(h) and proposed 20 CFR 678.725-750, local disputes related to funding of one-stop infrastructure costs are exempt from this policy and will instead be addressed through application of the state One-Stop funding mechanism determined by the Governor and subject to a state-level appeals process established by the Governor.

References

WIOA Section 181(c) – Grievance Procedure
WIOA Policy 5410, revision 1