



Subject: Dispute Resolution and Appeals

Policy No: 2015-22

Effective Date: 2/1/2011

Revised: 4/26/2019

1. Purpose:

This policy communicates the Benton-Franklin Workforce Development Council's (BFWDC) guidelines and standards by which dispute resolution between partners in the WorkSource System will be handled in the event disputes cannot be resolved at the lowest level.

2. Background:

The BFWDC is issuing this policy in conformance with Washington State Employment Security Department (ESD) Policy Number 5410, Revision 1, to provide standards for addressing disputes regarding contracts, awards, monitoring and oversight outcomes, administrative agreements, memoranda, and partnerships. This policy applies to WorkSource Columbia Basin (WSCB) system partners, including those regarding documents such as the Memorandum of Understanding (MOU), the One-Stop Operator Agreement, and other policies and procedures regarding the integration and coordination of services throughout the WorkSource System.

Operational Procedure

All disputes or conflicts involving two or more parties will be handled at the lowest possible level and follow BFWDC dispute resolution procedures. All actions and decisions relating to the dispute will be appropriately documented. Disputes will generally fall into one of the categories listed below:

1. General conflicts over the normal course of providing employer and job seeker services.
2. One-Stop Operator disputes, including One-Stop Operator Agreement and amendments.
3. Memorandum of Understanding (MOU) disputes prior to failure to sign.
4. MOU disputes regarding failure to sign.

A. Resolution process for disputes involving general conflicts and the One-Stop Operator:

- All attempts to resolve disputes among or between WSCB partners will begin with negotiations between the disagreeing parties. Partners are expected to communicate and negotiate with each other, in good faith, to resolve disagreements in a cooperative and timely manner.
- Should the parties be unable to directly resolve their dispute, they will notify the BFWDC of the dispute, and provide an explanation of the matter in writing. The written document should state the problem, a history of resolution strategies attempted and their outcomes, and the desired resolution. The BFWDC Executive Committee will review the dispute and provide a written recommendation.
- If the above local-level resolution process fails and the disagreeing parties cannot reach agreement, the following process applies: Should the parties continue to disagree, they may appeal to the Employment Security Department (ESD) Commissioner for resolution, as the representative of the Governor and in consultation with Chief Local Elected Officials (CLEO). A decision will be issued within 30 calendar days of receiving appeals.

B. Resolution process for disputes involving the MOU prior to failure to sign:

In the event that disputes should arise regarding the terms and conditions, the performance, or administration of the MOU Agreement and cannot be resolved at the lowest level, the following procedure will be followed:

- Each party to this agreement shall select an individual to participate in a dispute resolution panel.
- These individuals shall select, by a simple majority vote, a person not a party to this Agreement who will chair the dispute resolution panel.
- The panel shall hear the facts of the dispute and render a decision by simple majority vote.
- All actions taken to resolve the dispute must be documented.
- If the above local-level resolution process fails and the disagreeing parties cannot reach agreement they may appeal to the ESD Commissioner for resolution, as the representative of the Governor and in consultation with Chief Local Elected Officials. A decision will be issued within 30 calendar days of receiving appeals.
- This process shall be invoked before proceeding to any lawsuit or civil action.

C. Resolution process for disputes involving failure to sign the WorkSource MOU:

All steps in Section B must be completed and documented. When the BFWDC board and partners have entered into good faith negotiations and have still reached an impasse, the following additional steps shall be taken:

- The BFWDC board and required partners must send a letter to the Commissioner of Employment Security, as the administrative entity of the Workforce Innovation and Opportunity Act (WIOA), notifying of the impasse and outlining the issues. Documentation of the attempts to resolve the dispute should be attached.
- The ESD Commissioner may seek alternatives to propose a resolution.
- If an impasse continues, notifications of failure to sign will be issued with applicable sanctions to the extent of applicable state and federal laws.

The above steps are intended to provide assistance to resolve disputes and add clarification. They do not supersede or replace language in the WIOA or regulations.

D. Resolution process for disputes involving ESD:

When disputes occur which directly involve the ESD, the first approach is to attempt to reach resolution at the local level. If the parties continue to disagree, either party can request the services of an independent mediator or hearing officer, with the process as follows:

- a) The selection process for the mediator or hearing officer must be concluded within 10 business days and include the following:
 - Each party to the dispute will identify one representative.
 - From a list of three mediators/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.
 - Both parties to the dispute agree to share the cost of the mediator/hearing officer equally.
- b) The mediator or hearing officer will, within 30 calendar days of being retained, deliver a recommendation, in writing, to the ESD Commissioner.
- c) 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:
 - Undisclosed conflict of interest on the part of the mediator/hearing officer.
 - Clear misapplication of the law and/or regulations.
 - The finding does not fit the record or facts of the case.
- d) If the ESD Commissioner rejects the mediator/hearing officer 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).
- e) If one or more of the parties to the dispute is dissatisfied with the ESD Commissioner’s decision, the decision can be appealed to the U.S. Department of Labor as described in WIOA Section 181(c).

- f) 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.