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Rule Citation: NMAC 6.101.2 Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation

Overview of Adopted Rule

Agency: Public Education Department

Rulemaking Action: Repeal and Replace

Date Adopted: September 12, 2024

Effective Date: September 24, 2024

Rule's Purpose: The rule intends to provide general policy for applicants for, or recipients of, vocational rehabilitation services who are dissatisfied with any determination made by the New Mexico Division of Vocational Rehabilitation (DVR) that affects the provision of their vocational rehabilitation services.

Summary of Adopted Rule NMAC 6.101.2: Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation

The Public Education Department's (PED) repeal and replace of NMAC 6.101.2 describes the process by which an applicant for, or recipient of, vocational rehabilitation services can request a timely review of a determination by DVR. The rule also describes the process for mediation and fair hearings, as well as the roles of a mediator and fair hearing officer.

Mediation. The department's rule requires that a request for mediation be made in writing to the DVR director within 45 calendar days of the date of the contested determination. The mediation process must be completed within 30 calendar days of the mediation request and must be conducted by a mediator appointed on a random basis from a qualified pool. The mediator must not be a DVR employee. The rule specifies DVR must pay the costs of mediation up to eight hours, but must not be required to pay any costs related to the representation of an applicant or recipient.

Fair Hearing. Similarly, the rule requires that a request for fair hearing be made in writing to the DVR director within 45 calendar days of the date of the contested determination. The fair hearing must be held within 60 calendar days of the request of review of the contested determination. The hearing must be conducted by a hearing officer appointed on a random basis from a qualified pool. The hearing officer must not be a DVR employee. The rule also specifies the requirements and process for a pre-hearing conference, the process of the fair hearing, and the duties of the hearing officer. The rule specifies DVR must pay the costs of the fair hearing, including the pre-hearing conference, but must not be required to pay any costs related to the representation of an applicant or recipient.

Impact

PED's rule greatly expands on the specificity of the mediation and fairing hearing process, clarifying requirements for applicants for, and recipients of, vocational rehabilitation services, as well as for DVR staff.