

LCB File No. R229-05

**PROPOSED REGULATION OF THE DEPARTMENT OF
EMPLOYMENT, TRAINING AND REHABILITATION**

(This draft replaces the one posted 12/28/2005)

NOTE: DELETIONS ARE INDICATED BY STRIKETHROUGH (-) AND ADDITIONS ARE INDICATED BY BOLD-ITALIC PRINT

Chapter 615 of NAC is hereby amended by adding thereto the provisions set forth as sections 1 to 16, inclusive, of this regulation.

Section 1: *"Bureau" defined. "Bureau" shall have the meaning ascribed to it in NRS 615.031.*

Sec. 2: *Any person applying for or receiving vocational rehabilitation who is aggrieved by any action of the bureau with respect to him is entitled to follow the procedures set forth in sections 1 to 16, inclusive, of this regulation.*

Sec. 3: *Notwithstanding any other provision of sections 1 to 16, inclusive, of this regulation, a person applying for, or receiving vocational rehabilitation, who disagrees with a decision of the bureau, must make a request for a fair hearing in writing to the administrator or his designee within 60 days of the event giving rise to the disagreement or shall be barred from requesting a fair hearing, unless the bureau, in its sole discretion, determines that there is a good faith reason for the delay in requesting a fair hearing. Nothing herein shall be construed to prevent informal discussions and written settlements between a person applying for, or receiving vocational rehabilitation, and the administrator or his designee.*

Sec. 4: *A person applying for, or receiving vocational rehabilitation, who disagrees with a decision of the bureau may request in writing, to the administrator or his designee, alternative dispute resolution through the Client Assistance Program as specified in 29 U.S.C. § 732(g)(3)(A) and, or, mediation pursuant to 29 U.S.C. § 722(c). A request for alternative dispute resolution or mediation under this section shall not relieve a person applying for or receiving vocational rehabilitation from the responsibility of timely requesting a fair hearing in writing pursuant to section 3. A request for alternative dispute resolution and, or, mediation under this section shall be made within 30 days of the event giving rise to the disagreement.*

Sec. 5: *After receiving a request for a fair hearing as specified in section 3, the bureau shall promptly forward the request to the chief hearing officer of the Department of Administrations Hearing Divisions for random assignment to a neutral hearing officer.*

Sec. 6: *The assigned hearing officer shall conduct a fair hearing pursuant to the provisions of NRS chapter 233B and the fair hearing must be set no later than 60 days after the bureau's receipt of the written request for the fair hearing. The fair hearing shall be set at a time and location which is reasonable to the parties.*

Sec. 7: *If both parties agree, they may stipulate in writing to continue the fair hearing.*

Sec. 8: *The hearing officer may require that the parties to a fair hearing provide pre-hearing statements setting forth the facts of the case, issues of law, a witness list, and proposed exhibits to be used at the hearing.*

Sec. 9: *The complaining party may be represented by an attorney or other designated representative at the fair hearing.*

Sec. 10: *The hearing officer is not bound by the technical rules of evidence and decisions concerning the admissibility of evidence must be made in accordance with NRS 233B.123.*

Sec. 11: *Each party must be granted the opportunity to present his case, examine and cross-examine witnesses, and rebut evidence. The complaining party shall present his case first, followed by the case of the bureau, followed by such rebuttal evidence as is allowed by the hearing officer.*

Sec. 12: *Unless otherwise provided by statute or regulation, a complaint may be resolved by, mutual agreement of the parties, settlement, consent decree or default of a party.*

Sec. 13: *Transcript of proceedings. Upon request of a party, the bureau will provide a transcript of the proceedings of the fair hearing. The bureau may require payment of the cost incurred for providing the transcript unless prohibited by federal or state law. The bureau shall not be required to produce or create a transcript of proceedings unless requested by the claimant as set forth in this section, or unless required to by law.*

Sec. 14: *The record of the fair hearing, on any appeal or other judicial action, must include:*

- (a). The transcript of the oral testimony provided at the hearing;*
- (b). All pleadings and motions filed by the parties;*
- (c). Any rulings made by the hearing officer, including rulings on offers of proof;*
- (d). Evidence that was admitted;*
- (e). Facts which were officially noticed by the hearing officer; and*
- (f). Any other decision, opinion or report of the hearing officer.*

Sec. 15: *Not later than 30 days after the fair hearing, the hearing officer shall issue a written decision meeting the requirements of NRS chapter 233B.*

Sec. 16: *The decision of the hearing officer shall be final for purposes of judicial review and any appeal by either party must be filed within the timelines established by NRS 233B.130(2)(c).*

NAC 615.038 is hereby amended to read as follows:

NAC 615.038 “Division” defined. “Division” ~~[means the rehabilitation division of the department of human resources.]~~ *shall have the meaning ascribed to it in NRS 615.065.*