

**Office of Inspector General
Dispute Resolution Process**

Report #A-1415-015

October 2015

Executive Summary

In accordance with the Department of Education's (department) fiscal year (FY) 2014-15 audit plan, the Office of Inspector General conducted an audit of the Division of Vocational Rehabilitation's (DVR) Dispute Resolution Process. The purpose of this audit was to ensure the department has sufficient internal controls in place to address requests and complaints made by DVR customers and applicants (individuals), and to determine whether the DVR dispute resolution process is operating in compliance with applicable regulations. During this audit we noted that, in general, the department has sufficient controls to address requests and complaints. However, we noted instances where the department could make improvements to strengthen certain controls. For example, we cited instances where the department did not timely respond to requests or document the resolution, accepted requests submitted after mandated time frames, and failed to adequately address administrative hearing requests. The Audit Results section below provides details of the instances noted during our audit.

Scope, Objectives, and Methodology

The scope of this audit included requests and complaints made by DVR customers and applicants during the period of October 1, 2013, through September 30, 2014. We established the following objectives for our audit:

1. Determine if DVR effectively responds to requests for dispute resolution;
2. Determine if the ombudsman office has sufficient internal controls to coordinate the dispute resolution process; and
3. Determine if DVR ensures administrative hearing requests are handled in accordance with applicable regulations.

To accomplish our objectives we reviewed applicable laws, rules, and regulations; interviewed appropriate department staff; reviewed policies and procedures; reviewed a sample of complaints and supporting documentation; and evaluated management controls.

Background

The goal of the DVR dispute resolution process is to resolve DVR customer and applicant disputes in a timely manner, empower the customers and applicants to discuss their concerns directly with DVR staff, and promote a collaborative exchange to the greatest extent possible. The process is available to individuals to assist in resolving issues regarding determinations

made by DVR that affect the provision of vocational rehabilitation services. The DVR dispute resolution process includes ombudsman services, mediation, administrative review, and administrative hearing.

The ombudsman office provides impartial services to individuals who have questions or concerns or believe they have been treated unfairly, and attempts to resolve the issues at the lowest administrative level possible. The ombudsman office receives requests and complaints through e-mail, postal mail, and by phone. If an individual requests mediation, administrative review, or administrative hearing, the ombudsman office forwards the information to the appropriate parties.

If an individual is not satisfied with the resolution provided by the ombudsman office or DVR field office, the individual has the right to request another level of resolution. The individual can choose mediation, which is a process whereby a neutral and impartial third person encourages and facilitates the resolution of the dispute between DVR and the individual with the objective of a mutually acceptable and voluntary agreement. The third person is a court-appointed qualified mediator who is trained in vocational rehabilitation mediation.

Administrative reviews are conducted by DVR area directors or designees. The individual or authorized representative may attend the administrative review in person or by teleconference and may present information relevant to the determination. The area director or designee will render a decision based on the individual's case record, applicable laws and regulations, DVR policy, and information presented at the administrative review.

If the individual is not satisfied with the resolution offered by DVR, the individual can request an administrative hearing. Alternatively, the individual may bypass the ombudsman services, mediation, and administrative review and request an administrative hearing. An administrative hearing provides a fair and impartial hearing conducted by an administrative law judge (ALJ) assigned by the Division of Administrative Hearings (DOAH). The individual may be represented at the hearing by an attorney or competent person; may present witnesses and evidence; and may examine all witnesses, evidence, and other relevant information. The ALJ will issue a recommended order based on federal and Florida law.

The ombudsman office received 2,323 complaints and requests during the period of October 1, 2013, through September 30, 2014. Of these, 841 complaints were informational requests and were resolved by the ombudsman office. The ombudsman office forwarded 1,450 complaints to the appropriate DVR area office for resolution. Of the remaining 32 complaints, the individuals requested 13 administrative reviews and 19 administrative hearings. There was no mediation conducted during our audit period. There were 163 administrative review requests that were not included in the ombudsman database because the request was made directly to the DVR area directors.

Audit Results

During our review we noted that the ombudsman office is very committed to providing impartial services to individuals. Ombudsman office staff go above and beyond in addressing complaints through local resolution, where the emphasis is on achieving quick, effective resolutions to the satisfaction of the individuals. The ombudsman office successfully and timely resolved 841 informational complaints received during the period of October 1, 2013, through September 30, 2014. These include non-DVR customer requests for information about the DVR program, or DVR customer requests for an explanation of policy. The ombudsman office conducted follow-up activities to ensure DVR field offices adequately addressed complaints and the individuals were satisfied with the resolution. The ombudsman office updated the database to reflect the status of complaints in a timely manner. Although the department has adequate controls in place to ensure the quality of dispute resolution, there were certain areas where the department could make improvements.

Initial Complaint

Anyone may submit a complaint to the ombudsman office at any time through e-mail, postal mail, or by phone. Complaints regarding the delivery of rehabilitation services made to offices outside DVR are redirected to the ombudsman office. For those complaints requiring action by the DVR counselor or supervisor, the ombudsman office forwards those complaints to the appropriate DVR field staff, usually on the same day they receive the complaint. The ombudsman office enters all complaint information in their database and utilizes alerts generated by the database to track each complaint. Upon notice from the DVR field staff that a resolution has been reached, the ombudsman office follows up with the individual to ensure they are satisfied with the resolution.

Finding 1: DVR field staff did not respond timely to the ombudsman office

The Ombudsman Complaint Process requires DVR field staff to acknowledge receipt of a complaint within one working day after notification of the complaint. The Ombudsman Complaint Process also requires DVR field staff to provide the ombudsman office with a resolution to the complaint within 7 working days of receipt. The ombudsman office utilizes alerts generated by the database to take follow-up action to ensure DVR field staff respond in a timely manner.

We reviewed a sample of 41 complaints forwarded to DVR field staff and noted DVR field staff did not timely acknowledge receipt of three complaints (7.32%). DVR field staff failed to acknowledge one complaint and acknowledged two of the complaints one day late.

Our sample included 21 complaints that required resolution from DVR field staff. We noted DVR field staff did not provide resolution to the ombudsman office by the due date for four complaints (19.05%). DVR field staff failed to provide resolution for two complaints and provided resolution for the other two complaints three and eight days after the due date.

DVR field staff's failure to timely respond to the ombudsman office hinders the ability of the ombudsman office to monitor and report the resolution status of individual complaints.

Recommendation

We recommend DVR timely acknowledge and provide resolution for assigned complaints in compliance with its internal procedures to ensure applicants and individuals are satisfied with dispute resolution outcomes, thereby reducing the likelihood of escalation to a higher administrative level.

Management's Response

The DVR Area Directors will be copied on Ombudsman's office assigned complaints to avoid delay when assigned staff are absent from the office and monitor compliance. A Technical Assistance e-mail will again be distributed to DVR counselors and supervisors regarding the time frame for responding to complaints.

Administrative Review

If an individual is not satisfied with any determination made by DVR, one option available to the individual is administrative review. The individual must make the request to the appropriate DVR area director in writing within 21 days of receipt of the notice of determination from the DVR counselor. An individual may contact the ombudsman office for assistance with requesting an administrative review, and the ombudsman will provide information and necessary assistance and document the request in the database. The ombudsman office will then advise the individual to make the request to the area director if they still wish to have an administrative review. The administrative review must take place within 60 days of the individual's request, unless the parties agree to a specific extension of time. The area director or designee will render a decision and issue the decision letter.

Each area office maintains separate records of requests for administrative review. Individuals made 166 requests for administrative review through the ombudsman office and the six DVR area offices during the period of October 1, 2013, through September 30, 2014. We sampled and reviewed 19 of the 166 administrative review requests.

Finding 2: DVR accepted administrative review requests after the mandated time frame

Florida Administrative Code (F.A.C) 6A-25.011(1)(b) states, "The individual or his or her authorized representative shall have twenty-one (21) calendar days from the date of receipt of the notification of determination to inform the division in writing of his or her desire for an administrative review. If the division provides the notification to the individual or authorized representative by mail, five (5) days shall be added to the prescribed period. The individual, the individual's representative or Client Assistance Program, if representing the individual, may initiate a timely request to extend the twenty-one (21) days." DVR's Counselor Policy Manual also requires the request to be made within 21 days.

Two of the 19 administrative review requests (10.53%) were not made within the required time frame. The individuals made the requests and the DVR area offices accepted the requests 37 and 45 days after receiving the decision letters. DVR stated they erroneously accepted the administrative review request that was 45 days late. The individual reportedly delayed the administrative review process for the other request. However, there was no documentation to show that the individual requested or DVR granted an extension of the 21 days.

DVR's current practice of accepting late administrative review requests hinders the department's ability to demonstrate compliance with rule and policy due to the lack of consistent treatment of applicable regulations to all administrative review requests.

Recommendation

We recommend DVR consistently apply and enforce policies and procedures regarding administrative review requests across the division in accordance with their policy and Florida Administrative Code.

Management's Response

Area Directors were provided procedural guidance by Deputy General Counsel regarding the policy and Florida Administrative Code.

Finding 3: DVR area directors did not timely issue decision letters

DVR's Counselor Policy Manual states, "The DVR Area Director or his or her designee shall render a decision based upon the individual's case record, any information presented by the individual or by DVR at the administrative review, any other pertinent information, and applicable laws, regulations, and DVR policy. The Area Director or his or her designee shall render a decision in writing consisting of findings and conclusions within five (5) working days of the administrative review." F.A.C 6A-25.011(1)(e) also states, "the Area Director or his or her designee shall render a decision in writing consisting of findings and conclusions within five (5) working days of the administrative review."

DVR did not issue decision letters timely for 5 of the 19 administrative reviews (26.32%). The written decision letters were dated 1 to 15 working days after the required time frame. DVR indicated the area director issued two of the decision letters late because the individual provided additional information after the administrative review was conducted. However, the applicable regulations do not allow for submission of additional documentation or information after the administrative review is held.

Failure to issue decision letters timely does not align with the goal of speedy resolution. DVR's current practice of accepting additional documentation or information after the administrative review hinders the department's ability to demonstrate compliance with rule and policy due to the lack of consistent treatment of applicable regulations to all administrative review requests.

Recommendation

We recommend DVR timely issue decision letters in compliance with their policy and Florida Administrative Code.

Management's Response

Area Directors were provided procedural guidance by Deputy General Counsel regarding the policy and Florida Administrative Code.

Administrative Hearing

If an individual is not satisfied with any determination made by DVR, the individual may request an administrative hearing before an administrative law judge (ALJ) assigned by the Division of Administrative Hearings (DOAH). The individual may also bypass the ombudsman services, mediation, and administrative review and request an administrative hearing. The individual must make the request in writing to the director of DVR within 21 days after receiving the administrative review decision, or if the individual bypasses the administrative review option, within 21 days after the individual receives the determination.

The DVR director's office forwards the request to the ombudsman office, which documents the information in the database and forwards the request to the Office of General Counsel (OGC). The OGC ensures the requests for administrative hearing are legally sufficient, meaning they are made in a timely manner and in accordance with applicable regulations.

34 CFR 361.57(e)(1) requires an administrative hearing to be conducted within 60 days of the individual's request, unless resolution is achieved prior to the 60th day or the parties agree to a specific extension of time. The Florida Statutes relating to the administrative procedure act provide timelines that present a challenge to the department in meeting the requirement, as they almost necessitate the agreement to a specific extension of time by the parties. When the administrative hearing request meets all applicable requirements, chapter 120 of the Florida Statutes provides the OGC 15 days to refer the request to DOAH. The statute then provides DOAH 15 days from the receipt of the referral to grant or deny the request. Upon acceptance of the request for administrative hearing, DOAH will issue an initial order that assigns the case to an administrative law judge (ALJ). The initial order requires the individual and OGC to jointly or separately respond with a date, time, and location of hearing. All dates must be more than 30 and less than 70 days from the date of the initial order. The parties may additionally request a continuance, which the ALJ usually grants.

After the ALJ conducts the hearing, the individual and the OGC may file post-hearing submissions (proposed recommended orders) within a time designated by the ALJ. The ALJ will then issue a written report of findings and conclusions (recommended order), which is sent to the commissioner, who will then render the final order.

There were 19 administrative hearing requests made to DVR during the period of October 1, 2013, through September 30, 2014. We reviewed all 19 administrative hearing requests. Ten of

the 19 individuals withdrew their request prior to DOAH scheduling the hearing. Due to the above mentioned circumstances, only one of the nine scheduled administrative hearings occurred within 60 days of the individual's request.

Finding 4: The administrative hearing process needs improvement

The OGC maintains an excel spreadsheet for DVR administrative hearing requests. We noted that this tracking mechanism did not capture all relevant information pertaining to DVR administrative hearing requests, such as the date the hearing request or amended petition was received or the issuance dates of the proposed recommended orders and the final orders. The OGC also did not consistently use the tracking mechanism to record the administrative hearing requests received, as only 7 of the 19 hearing requests made during the audit period were included in the spreadsheet.

The OGC later stated, "The spreadsheet referred to as the 'tracking mechanism' is not our primary method of tracking administrative hearings. The primary method is through the eALJ electronic docket and Microsoft Outlook's calendar function." However, the eALJ electronic docket does not record all activities pertaining to the administrative hearing requests, such as the date of DWLA issuance, the date of exhibits exchanged with the individual, or the date of final order issuance. The electronic docket is more of a timeline for each administrative hearing case as opposed to a tracking mechanism, and the dates provided in the electronic docket do not always correspond with the dates on the documents. The use of Microsoft Outlook's calendar function is contingent on the OGC staff's consistency in the addition of all applicable due dates.

Lack of adequate tracking hinders the department's ability to ensure they meet required timelines and adequately monitor the status of administrative hearing requests, as is demonstrated in the following noted deficiencies.

Action on administrative hearing requests

The ombudsman office forwards requests for administrative hearings to the OGC, usually on the same day they receive the requests. The ombudsman office then attempts to contact the individual to inquire if they would like to withdraw their request for an administrative hearing and resolve the issue at a lower level, such as administrative review or mediation. The OGC prepares the formal hearing case and referral to DOAH while the ombudsman office reaches out to the individual.

The OGC was unable to provide documentation to demonstrate that they took any action for one of the 19 individuals that requested an administrative hearing. The ombudsman office had indicated that the individual may be willing to resolve the dispute at a lower administrative level, but after repeated attempts to contact the individual, they were unable to obtain confirmation through a signed withdrawal letter. Since the individual did not officially withdraw the request for an administrative hearing, the OGC should have referred the request to DOAH after determining it to be legally sufficient.

The ombudsman office closes complaints in the database after they forward the hearing requests to the OGC since the ombudsman office's involvement in the appeal process ends at that point. Therefore, the ombudsman office does no further follow-up on the status of these complaints. Due to the lack of documentation or tracking of this complaint, it is impossible to confirm that the OGC took appropriate action following receipt of the complaint from the ombudsman office. This also hinders the department's ability to provide verifiable evidence for source of decisions or actions.

Referral to DOAH

Section 120.569(2)(a), Florida Statutes (F.S.), requires the OGC to notify the Division of Administrative Hearing of a request for administrative hearing within 15 days after receipt of the request.

The OGC did not forward nine of the 19 administrative hearing requests to DOAH because the individuals withdrew the request or the request did not meet the legal requirements. Two (20%) of the 10 administrative hearing requests referred to DOAH were not referred timely. The OGC forwarded both requests 3 days after the statutorily required time frame. Failure to timely refer hearing requests to DOAH hinders DVR's ability to address individual complaints in a timely manner.

Exchange of exhibits and witness lists

34 CFR 361.57 requires that the parties be provided with an opportunity to submit evidence and other information that supports their position and to present witnesses during the hearing. The ALJ's order of pre-hearing instructions requires the individual and OGC to exchange exhibits and a list of witnesses no later than seven days before the hearing.

There is no documentation to demonstrate when or if the OGC timely exchanged exhibits and witness lists with the individuals. The OGC discards the mailing receipts after the hearing is conducted. As such, we were unable to determine whether the OGC timely exchanged the required documentation with the individual. The OGC asserts that no evidence exists to show the department failed to timely submit exhibits or witness lists, and the issue would need to be raised at the administrative hearing.

Discarding of the mailing receipts after the hearing may limit the OGC's ability to demonstrate that they provided required documentation to the individual within the required time frame. As such, the OGC's ability to produce sufficient records upon request may be hindered.

Recommendation

We recommend DVR collaborate with OGC to develop and document procedures for administrative hearing requests to ensure all requests are adequately addressed and documented, and all proceedings are conducted timely and in accordance with applicable regulations. The OGC should consider utilizing the ombudsman office's database to capture the dates of each step in the administrative hearing process and to document the status of the requests. The information

would then be available to both DVR and OGC for the purpose of tracking and providing the status of administrative hearing requests to the individuals.

Management's Response

DVR will collaborate with OGC to establish written procedures for administrative hearing requests. Consideration will be given to OGC using the Ombudsman's database for logging details of administrative hearings on the designated legal tab/page, which would permit tracking of all hearing requests.

Closing Comments

The Office of the Inspector General would like to recognize and acknowledge the Division of Vocational Rehabilitation and the Office of General Counsel for their assistance during the course of this audit. Our fieldwork was facilitated by the cooperation and assistance extended by all personnel involved.

To promote accountability, integrity, and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our audit was conducted under the authority of section 20.055, F.S., and in accordance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The audit was conducted by Sandar Sie and supervised by Janet Snyder, CIA, CGAP, Audit Director.

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