

Comments Summary
Clearinghouse Rule CR 22-008

The Department of Workforce Development held one public hearing on February 18, 2022, for Clearinghouse Rule CR 22-008, which revises chs. DWD 65, 68, and 75 relating to the order of selection for vocational rehabilitation services; the protection, use, and release of personal information; and the appeal procedures for vocational rehabilitation services.

The oral and written comments received on the rule are summarized below. Except for Steven Wheeler, the individuals below commented on their own behalf. Mr. Wheeler commented on behalf of Disability Rights Wisconsin, Inc. (DRW).

Name	Comment	Response
Deb Henderson-Guenther, Wisconsin Rehabilitation Council (WRC) member	The commenter expressed concern over the shortened appeal deadline because the informal resolution of consumer complaints often takes several months and there are occasional delays in obtaining records from DVR. The commenter suggested that DVR consider creating internal timelines for responding to consumers and their representatives during the informal resolution process and for responding to record requests.	The rule shortens the appeal deadline from 12 months to 180 days. The majority of states have vocational rehabilitation appeal deadlines that are shorter than 180 days. The Department believes that both DVR and consumers benefit from the timelier resolution of disputes, which promotes efficiency. In addition, both DVR and consumers will be able to more effectively preserve and present evidence that may otherwise deteriorate due to delays in the appeal process. DVR has been looking at its internal processes for records request and is exploring different options to improve timeliness.
Ramsey Lee, WRC member	The commenter supported most of the rule's revisions, but objected to the shortened appeal deadline and noted that a 5-day deadline is not adequate and could cause undue hardship for consumers. The commenter also stated that the DWD administrator should have the right to review ALJ decisions if the review is helpful to consumers. The commenter also suggested that DWD should make it easier for consumers to contact DVR counselors and expressed concern about the accessibility of DWD's website.	As noted in the Department's response to Deb Henderson-Guenther, the appeal deadline is shortened to 180 days, not 5 days. Also, the rule does not eliminate the Department secretary's authority to review decisions. Instead, under the rule, the Department secretary cannot delegate that authority to a designee. Regarding the comment about contact, DVR counselors can be reached by telephone and email and the Department and DVR are continuously working on improving consumer outreach. The Department has contacted the commenter for additional information about the website accessibility issue. While this issue is not related to the rule, the Department takes the issue very seriously and will attempt to determine if any improvements are needed.

Cornelius Sawyer	The commenter noted that although he requested review of hearings in which hearing officers made mistakes, no reviews were done. The commenter questioned whether hearing officers will comply with the revised rule and noted that the system will not improve unless hearing officer mistakes are corrected.	The Memorandum of Understanding between DVR and DOA's Division of Hearings and Appeals (DHA) requires administrative law judges (ALJs) to comply with ch. DWD 75.
Lawrence Brown	The commenter objected to the rule's shortened appeal deadline. The commenter shared Deb Henderson-Guenter's concerns about the length of time for the informal resolution process. The commenter stated that the informal resolution process should have reasonable time limits so that consumers can get help on deciding whether to appeal.	See the Department's response to Deb Henderson-Guenter.
Steven Wheeler, DRW Supervising Attorney and WRC Chair	Regarding ch. DWD 65, the commenter supported the rule's authorization of DVR to provide job retention assistance to people with less significant disabilities under an order of selection (OSS). The commenter encouraged an aggressive approach to requests for federal vocational rehabilitation funding in order to avoid imposition of an OSS. The commenter also supported the rule's revisions that achieve consistency with federal regulations.	The Department appreciates the commenter's support. While the comment about funding is not related to the rule, DVR does make every effort to avoid the need to impose an OSS.
	Regarding ch. DWD 68, the commenter supported the rule's revisions that make the record request process more accessible to consumers.	The Department appreciates the commenter's support.
	The commenter also made the following comments:	
	<ul style="list-style-type: none"> • The revision of s. DWD 68.15 (1) "appears to leave open the possibility that the method DVR uses to document an amendment request may not be the specific statement requested by the consumer." To address this concern, the commenter suggested adding language based on s. 103.13 (4), Stats., regarding disputes involving personnel records. 	The Department did not intend to allow the possibility described by the commenter to occur. Therefore, the Department modified the treatment of s. DWD 68.15 to address this concern, as well as the request for clarity in Rules Clearinghouse comment 5e. As modified, s. DWD 68.15 requires that any document submitted by a consumer to correct alleged inaccurate or misleading information "shall" be included in the case record.

<p>Steven Wheeler (continued)</p>	<ul style="list-style-type: none"> Section DWD 68.14 (1e) "appears to eliminate any right of a consumer to access their own case file, changing the access to purely discretionary." The commenter suggested edits to clarify that access is not discretionary. 	<p>The rule does not eliminate the right of consumers to access their own case files. Section DWD 68.14 (1e) provides that case files may be released to clients "as provided in this section," which is s. DWD 68.14. Subsection (1m) of that section states that, upon the request of a consumer, the consumer's case records "shall" be released to the consumer, subject to the exception under s. DWD 68.14 (2) for certain medical, psychological, or other information that may be harmful to a consumer. Therefore, no modification of the rule is necessary.</p>
	<p>The commenter made the following comments about the revisions to ch. DWD 75:</p>	
	<ul style="list-style-type: none"> DVR's discussions with the WRC terminated before the WRC could provide full feedback to DVR. Additional public discussion is needed to ensure consistency between state rules under ch. DWD 75 and federal regulations under 34 CFR 361.57. 	<p>The rule is not inconsistent with the federal regulations. In addition, DVR believes that WRC had sufficient time to provide feedback on the rule at the following meetings:</p> <ul style="list-style-type: none"> December 9, 2021: combined meeting of WRC Executive Committee and the Policy Review and Administration Committee (90 minutes). December 16, 2021: WRC Policy Review and Administration Committee (1 hour). January 10, 2022: WRC Executive Committee (90-minute agenda included a discussion of the rule). January 11, 2022: WRC special meeting (2 hours). February 10, 2022: WRC meeting (rule discussion for approximately 1 hour of the 7-hour agenda).

Steven Wheeler (continued)	<ul style="list-style-type: none"> Section DWD 75.16 (8) (b) should be amended to allow notices of certain rescheduled hearings to be sent by electronic mail. 	The Department modified the rule as recommended by the requester.
	<ul style="list-style-type: none"> Section DWD 75.12 should be amended to incorporate 34 CFR 361.57 (f) (1) (ii), which requires DVR and the WRC to jointly identify the hearing officers that are included on the list of qualified impartial hearing officers that hear appeals. The commenter stated that the Rehabilitative Services Administration (RSA) of the U.S. Department of Education has advised DRW that DVR's current method of identifying hearing officers for inclusion on the list does not constitute joint identification. 	The suggested amendment is not necessary because the Memorandum of Understanding between DVR and DHA requires hearings to be conducted in accordance with federal regulations and DWD rules. Although the RSA has not advised DVR about any concerns about joint identification, the Department will continue discussions with WRC about this issue.
	<ul style="list-style-type: none"> Section DWD 75.12 should also be amended to incorporate 34 CFR 361.57 (f) (2) (i), which requires impartial hearing officers to be assigned on a random basis, except when an agreement is reached under 34 CFR 361.57 (f) (2) (ii). The commenter stated that DHA does not appear to comply with this requirement because it is not included in the Memorandum of Understanding between DHA and DVR for DHA to conduct hearings. 	As noted in the response to the above comment, the suggested amendment is not necessary because the Memorandum of Understanding requires hearings to be conducted in accordance with federal regulations and DWD rules. However, the Department appreciates the commenter's concern and will investigate the issue further.
	<ul style="list-style-type: none"> Section DWD 75.08 (5), which allows either party to file a motion for a substitute hearing officer for reasons of conflict of interest, bias, or qualifications, should be amended to ensure that an official other than the hearing officer determines whether the hearing officer is qualified. 	The Department appreciates the comment but does not believe the suggested amendment is necessary, as the current appeal process is sufficient to address this concern. If a consumer disagrees with a final decision of an ALJ, the consumer is able to challenge the ALJ's decision on the substitution motion as part of a petition for circuit court review.

<p>Steven Wheeler (continued)</p>	<ul style="list-style-type: none"> The rule's amendment of s. DWD 75.16 (14) should be revised so that DVR has the first opportunity to present evidence at a hearing only when DVR has the burden of proof. Alternatively, the requirements regarding the order in which parties proceed in a hearing should be removed from ch. DWD 75 to ensure that DHA follows s. HA 1.12 (3), which requires the party with the burden of proof to have the first opportunity to present evidence. 	<p>The suggested amendments are not necessary because the rule is consistent with s. HA 1.12 (3). When a consumer appeals DVR's decision, DVR bears the burden of proof and should present its evidence first.</p>
	<ul style="list-style-type: none"> The appeal deadline should not be shortened. If the deadline is shortened, the deadline should pause during the period between a consumer's request for records and DVR's provision of the records and during the period between a consumer's request for informal review or mediation and the conclusion of the review or mediation. 	<p>See the Department's response to Deb Henderson-Guenther. In addition, the Department is exploring options for improving timeliness of record request responses.</p>