

# South Dakota’s WIOA Title I Non-Discrimination Plan



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## Element 9 – Corrective or Remedial Actions and Sanctions

*29 CFR 38.86 through 38.115*

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## Element 9 – Corrective or Remedial Actions and Sanctions

29 CFR 38.86 through 38.115

### I. Element 9 Criteria

The Governor of the State of South Dakota will comply with all requirements of 29 CFR 38 related to corrective actions and sanctions for violations of nondiscrimination and equal opportunity provisions of the WIOA and 29 CFR 38. Both the DLR Discrimination Complaint Policy and Procedures and Equal Opportunity Monitoring Policy and Procedure include a process for corrective or remedial actions and sanctions (See Element 8 Exhibit A and Element 9 Exhibit A).

Corrective actions and sanctions are intended to guarantee equal access to programs, activities, and employment opportunities provided by WIOA financially assisted programs and services. Corrective actions must be appropriate for the violation identified and serve to end the discrimination or redress specific violation(s).

A violation is a failure to comply with WIOA regulations. A violation may range in seriousness from an infraction, or a technical violation, to a more significant discrimination violation.

The violation may be identified as a result of a:

- a. Monitoring review;
- b. Discrimination complaint

Job service office EO Coordinators must notify the DLR EO Officer if they are contacted directly by the U.S. DOL CRC regarding an alleged violation. All corrective actions, if necessary, will be reported to the U.S. DOL CRC.

### A. Initial Determination

DLR determines at the conclusion of an investigation of a discrimination complaint or on conclusion of a monitoring review whether there is reasonable cause to believe a violation of the nondiscrimination and equal opportunity provisions has occurred. A violation may range in seriousness from a technical violation to discrimination:

- Technical violations may include but are not limited to: failure to designate an EO Officer, failure to collect data, failure to include required language in assurances, and failure to post EO notices.
- Discrimination violations include but are not limited to: findings of disparate treatment, disparate impact, and failure to provide a reasonable accommodation.

#### 1. Initial Determination Requirements

DLR issues an initial determination or notice of findings informing the parties or entities involved in writing of:

- a. The specific findings of the investigation or review;
- b. The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
- c. The time by which the respondent must complete the corrective or remedial action;
- d. Whether it will be necessary for the parties or entities involved to enter into a written agreement; and
- e. The opportunity to engage in voluntary compliance negotiations.

#### 2. No Determination Made

Where a no cause determination is made, DLR will issue a Final Determination. The Final Determination represents final action by DLR.

### B. Corrective or Remedial Actions Imposed

DLR strives to attain voluntary compliance with the nondiscrimination and equal opportunity provisions of the Act. A letter of Findings, Notice to Show Cause, or an initial Determination shall include specific steps that must be taken within a set time period to achieve voluntary compliance. Such steps include but are not limited to:

1. Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR 38;
2. Correcting technical violations where identified include, as appropriate;
  - a. Ensuring the violation is corrected, and
  - b. Educating individuals responsible for implementing the violated requirement.
3. Make whole relief where discrimination violations have been identified, including, as appropriate:
  - a. Retroactive relief (e.g. back pay, front pay, retroactive benefits or other services discriminatorily denied, etc.); and
  - b. Prospective relief (e.g. change of policy, training, development of new policy, training on policy communication, etc.).
4. Provisions for follow-up monitoring to ensure commitments are fulfilled;
5. Provisions for reports from the violating recipient regarding the actions to be taken;
6. Provisions for the execution of a written agreement or assurance to document the correction of the violation; and
7. Such other remedial or affirmative relief as deemed necessary by DLR.
8. Monetary relief may not be paid from Federal funds.

### **C. Assurances and Conciliation Agreements**

Where a compliance review or complaint investigation results in a finding of noncompliance DLR must require written assurances, conciliation agreements or both to bring compliance with the nondiscrimination and equal opportunity provisions of the Act.

1. A written assurance certifies the deficiency has been corrected. The assurance should include:
  - a. Listing of the deficiency and the corrective actions required;
  - b. Description of the corrective actions taken and the dates the action was taken
  - c. Statement that steps have been taken and will continue to be taken to assure the deficiency does not recur; and
  - d. Must be signed by appropriate officials.
2. A conciliation agreement is a more formal document between the state and the service provider found in violation of the nondiscrimination and equal opportunity provisions of the Act. The conciliation agreement must:
  - a. Be in writing;
  - b. Address each cited violation;
  - c. Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
  - d. Provide for periodic reporting on the status of the corrective and remedial action;
  - e. Provide the violation(s) will not recur; and
  - f. Provide for enforcement for a breach of the agreement.

### **D. Sanctions**

Sanctions are judicial enforcement actions (i.e., suspension, termination, termination of funding, etc.) that are applied when appropriate corrective actions are not taken in compliance with WIOA regulations.

1. If DLR concludes that compliance cannot be secured by voluntary means, one of the following actions is taken:
  - a. Issue a Final Determination;
  - b. Refer the matter to a DLR staff attorney with a recommendation that an appropriate civil action be instituted;
  - c. Take such other action as may be provided by law (such as refer to CRC).
2. The Final Determination will contain the following information:

- a. A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
  - b. A statement of those matters upon which the parties continue to disagree;
  - c. A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause, or Letter of Findings;
  - d. A statement of the sub-recipients, contractors, and other service providers' (such as eligible training providers) liability, and, if appropriate, the extent of that liability;
  - e. A description of the corrective or remedial actions the grant applicant or recipient must take to come into compliance;
  - f. A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
  - g. After the sub-recipients, contractors, and other service providers (such as eligible training providers) are given the opportunity for a hearing, its WIOA funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;
  - h. DLR may refer the case to a DLR staff attorney with a request to file suit against the sub-recipients, contractors, and other service providers; or
  - i. DLR may take any other actions against the sub-recipients, contractors, and other service providers provided by law.
  - j. A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in 29 CFR 38.111; and
  - k. A determination of DLR, entity's authorized signatory, and the violating sub-recipient, contractors, and other service provider's liability, if any.
3. If DLR concludes compliance cannot be secured by voluntary means due to the breach of a Conciliation Agreement, DLR will issue a Notification of Breach of Conciliation Agreement. This Notification of Breach of Conciliation Agreement will be sent to entity's authorized signatory and the violating sub-recipients, contractors, and other service providers (such as eligible training providers), the grant-making agency, the DLR Staff Attorney, and/or other parties such as the CRC. The Notification of Breach of Conciliation Agreement will include the following:
- a. Specify any efforts made to achieve voluntary compliance, and indicate those efforts have been unsuccessful;
  - b. Identify the specific provisions of the Conciliation Agreement violated;
  - c. Determine liability for the violation and the extent of the liability;
  - d. Indicate failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the DLR Staff Attorney with a request to file suit;
  - e. Advise the violating party of the right to request a hearing, and reference the applicable procedures in; and
  - f. Include a determination as to of liability (if any).
4. If compliance has not been achieved after issuance of a Final Determination or a Notification of Breach of Conciliation Agreement, DLR may apply sanctions or judicial enforcement as follows:
- a. After opportunity for a hearing, suspend, terminate, deny or discontinue the WIOA financial assistance, in whole or in part;
  - b. Refer the matter to a DLR staff attorney or the CRC with a recommendation that an appropriate civil action be instituted; or
  - c. Take such action as may be provided by law.
5. In addition to sanctions and judicial enforcement, if there is no voluntary compliance there may be a deferral of new grants. When the applicable hearing procedures have been initiated against a particular recipient, DLR or the CRC may defer action on that recipient's applications for new WIOA financial assistance until a Final Decision

as required has been rendered. Deferral is not appropriate when WIOA financial assistance is due and payable under a previously approved application. The following criteria are applied to determine New WIOA financial assistance:

- a. New WIOA financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.
- b. New WIOA financial assistance does not include assistance approved before the beginning of proceedings, or increases in funding because of changed computations of formula awards.

## **II. Element 9 Documentation**

Exhibit A – DLR Equal Opportunity Monitoring Policy and Procedure

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