

111—8.1(216D) Steps in appeals process. There are four steps in the appeals process of the Iowa department for the blind's business enterprises program:

1. Informal conciliation,
2. Hearing before the commission,
3. Full evidentiary hearing, and
4. Arbitration.

These steps must occur in the order in which they are listed and are more fully described herein, except that step 2 is optional.

8.1(1) Step 1: Informal conciliation. This is the necessary first step in the process to resolve any grievance. Either the vendor or the staff can commence informal conciliation. Informal conciliation must occur before any other steps in the grievance process can be used.

Informal conciliation occurs all the time and is not usually given a name by the participants, but is sometimes called administrative review. It can, but does not necessarily, involve a personal meeting between the vendor and the staff. Informal conciliation occurs when either the vendor or the staff is dissatisfied with the action of the other and contacts the other to try to work out the dissatisfaction. This contact can be by phone, by letter, or in person and usually involves discussion and negotiation of the point over a period of time. Both vendor and staff have an interest in working out grievances informally since this is the least costly, least time-consuming, and least disruptive way of resolving differences. However, both the vendor and the staff have the right to stick to their opinion and to move to the next step in the grievance process if informal conciliation does not resolve the grievance in a manner satisfactory to them. If either the vendor or the staff remains dissatisfied after a good faith effort by both to resolve the grievance, then either vendor or staff can move to the next step.

8.1(2) Step 2: Hearing before the commission. This step is only available to the vendor. The staff cannot initiate a hearing before its own policy-making entity. This step is simply an option for the vendor. The vendor may choose to skip this step completely and move directly from step 1 to step 3. If the vendor chooses to skip step 2, the vendor has used all administrative remedies available to the vendor, including the option to skip a remedy.

a. The commission makes its own rules concerning procedure case-by-case at the hearing itself. If either the vendor or the staff is unsure about the procedure, the commission members should be asked to explain the procedure before the hearing starts. These hearings are generally informal, conducted by the commission so that both sides have an opportunity to present to the commission whatever the commission believes is relevant to the decision it is being asked to make.

b. It is possible that, under certain circumstances, a hearing before the commission would be a closed hearing. Unless all the proper circumstances exist to close the hearing, the hearing must be held as a part of an open, publicized meeting of the commission and listed on its agenda. One set of circumstances which could close such a hearing will arise when the vendor is seeking, as a part of the commission's decision, that the commission "evaluate the professional competency" of a department staff member concerning that staff member's "appointment, hiring performance, or discharge" and when that staff member asks the commission to go into closed session as provided in the Iowa open meetings law, Iowa Code chapter 21.

c. Another set of circumstances which could close the commission hearing may arise if the vendor or the staff wishes to raise during the hearing matters which are considered confidential. The documents which are confidential are likely to be very limited and the decision to close the hearing or to leave it open will have to be made on a case-by-case basis.

d. The Iowa open meetings law, Iowa Code chapter 21, insists that only those meetings or parts of meetings specifically exempted by a precise section of the law may be legally closed; therefore, if an exemption is not specifically met, the meeting of the commission under this subrule shall be open.

e. A vendor who has used this step in the appeals process and is dissatisfied with the result then moves to step 3.

8.1(3) Step 3: Full evidentiary hearing. Either a vendor or the staff can commence the full evidentiary hearing process, which is a required step in the appeals process. A full evidentiary hearing is part of the appeals process guaranteed to the vendor by the federal Randolph-Sheppard Act.

- a. The full evidentiary hearing process is governed by rule 8.2(216D).
- b. If the vendor is dissatisfied with the decision after a full evidentiary hearing, then the vendor may move to step 4.

8.1(4) Step 4: Arbitration. A vendor can commence arbitration if dissatisfied with the ruling after a full evidentiary hearing. Arbitration is a required step in the appeals process. Arbitration is a part of the appeals process guaranteed to the vendor by the federal Randolph-Sheppard Act. Essentially, arbitration occurs by the vendor's filing a complaint with the United States Secretary of Education, who then convenes a three-member arbitration panel. The vendor chooses one member of the three-member arbitration panel, the department chooses the second member, and those two persons choose a third person agreeable to both who serves as chair of the arbitration panel.

At the full evidentiary hearing and the arbitration stages of the appeals process, proceedings shall be conducted much like proceedings in a court of law. Both these proceedings are open to the public. The department is normally represented at both by an assistant attorney general. The vendor may be represented by an attorney or by a knowledgeable friend at the commission hearing, the full evidentiary hearing, and the arbitration hearing. The court-reported record of testimony and the documents admitted into evidence at the arbitration step shall serve as the complete record of proceedings for any further appeals. No more evidence can be added if the vendor or the department appeals the arbitration panel's decision into the federal courts. Appeal from the arbitration decision goes to the federal district court and can go as far as the supreme court of the United States.