

Chapter 434-263 WAC

ADMINISTRATIVE COMPLAINT PROCEDURE

WAC

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WAC 434-263-005 Purpose. The purpose of these rules is to adopt an administrative complaint procedure mandated by 42 U.S.C. § 15512(a), relating only to state implementation of Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), for both state and federal elections. This process may not be used for the purpose of contesting the results of any primary or election. Election contests are governed by chapter 29A.68 RCW.

[Statutory Authority: RCW 29A.04.610. WSR 04-16-037, § 434-263-005, filed 7/27/04, effective 8/27/04.]

WAC 434-263-010 Definitions. For purposes of this chapter, the following terms shall have the following meanings:

- (1) "Complainant" means the person who files a complaint under this chapter.
- (2) "Election" means a special, primary or general election.
- (3) "Respondent" means any state or local election official whose actions are asserted, in a complaint under this chapter, to be in violation of Title III.
- (4) "Secretary" means the secretary of state or his or her designee.
- (5) "State or local election official" means the secretary of state, any county auditor, or any person employed by either the secretary or an auditor whose responsibilities include or directly relate to the administration of any election.
- (6) "Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code §§ 15481-15485. Violations include, but are not limited to, voting system standards, provisional voting, accessibility for individuals with disabilities, and voter registration.

[Statutory Authority: RCW 29A.04.610. WSR 04-16-037, § 434-263-010, filed 7/27/04, effective 8/27/04.]

WAC 434-263-020 Complaints. Any person who believes that there is a violation of any provision of Title III, including a violation which has occurred, is occurring, or is about to occur, by any state or local election official may file a complaint with the secretary under this chapter. All complaints must:

(2/19/08)

(1) Be in writing, sworn under oath, signed and notarized. A form is optional if it contains all the required elements;

(2) Include the complainant's name, telephone number and mailing address;

(3) Include a clear and concise description of the alleged violation of Title III that is detailed enough to let both the respondent and the secretary know what the complaint is about;

(4) Be filed with the secretary, with proof of mailing or delivery of a copy to each respondent, no later than thirty days after the certification of the election at issue.

(5) If a form is provided by the office of the secretary of state, the form shall be available in all languages required by the department of justice.

[Statutory Authority: RCW 29A.04.610. WSR 04-16-037, § 434-263-020, filed 7/27/04, effective 8/27/04.]

WAC 434-263-030 Adoption of brief adjudicative proceedings. All complaints filed pursuant to this chapter shall be treated as brief adjudicative proceedings, and the secretary adopts RCW 34.05.482 through 34.05.494 to govern such proceedings. The secretary has determined that the interests involved in such complaints do not warrant the procedures of RCW 34.05.413 through 34.05.479. If a complaint is written in a language as provided in the Voting Rights Act of 1965, the office of the secretary of state shall obtain a translator to facilitate processing the complaint.

[Statutory Authority: RCW 29A.04.610. WSR 04-16-037, § 434-263-030, filed 7/27/04, effective 8/27/04.]

WAC 434-263-040 Processing of complaint. (1) The secretary may process the complaint in any of the following ways:

(a) The secretary may dismiss the complaint, and issue a final determination, if it:

- (i) Does not comply with WAC 434-263-020;
- (ii) Does not, on its face, allege a violation of Title III; or
- (iii) Alleges a claim for which relief cannot be granted, or for which a remedy is not available;

(b) The secretary may, with the agreement of the parties, resolve the matter informally, and issue a determination without formal proceedings;

(c) The secretary may resolve the matter informally by agreeing to implement a remedy or corrective action; or

(d) The secretary may schedule the matter for a brief adjudicative proceeding. The secretary shall do so if the complaint is not dismissed pursuant to (a) of this subsection and a party so requests.

(2) The secretary must respond within thirty days of the filing of the complaint to acknowledge receipt and explain how the complaint will be processed consistent with subsection (1) of this section.

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(3) The secretary may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.

[Statutory Authority: RCW 29A.04.611, WSR 08-05-120, § 434-263-040, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.610, WSR 04-16-037, § 434-263-040, filed 7/27/04, effective 8/27/04.]

WAC 434-263-050 Brief adjudicative proceeding. (1)

The secretary shall designate a person to act as a presiding officer of a brief adjudicative hearing. A presiding officer may be:

- (a) The assistant or deputy secretary;
- (b) The director of elections;
- (c) An assistant director of the elections division;
- (d) Any county auditor; or
- (e) An administrative law judge.

The presiding officer shall not be from an office named in the complaint.

(2) Before issuing a determination on the complaint, the presiding officer shall give each party an opportunity to explain the party's view of the matter, including an opportunity to be informed of the secretary's view of the matter if applicable. A determination may be based upon written submissions and documents, unless a party or the presiding officer requests a hearing on the record within ten days after the filing of the complaint.

(3) The presiding officer may schedule a hearing on the record:

- (a) In person at a convenient location;
- (b) By conference telephone call; or
- (c) By such other method that permits the parties to hear and participate in the proceeding simultaneously.

Witnesses at a hearing shall be sworn upon oath. A party who requests a hearing but fails to make himself or herself available for hearing within the time available for initial determination shall be deemed to have waived the hearing.

(4) The presiding officer may permit or solicit the submission of written materials or oral presentations by persons who are not parties if the presiding officer determines that such submissions would be helpful in evaluating the complaint.

(5) The secretary shall establish and maintain the record of the proceedings as required by RCW 34.05.494. If a hearing on the record is conducted, the record shall include a transcript or audio recording of the hearing.

[Statutory Authority: RCW 29A.04.611, WSR 08-05-120, § 434-263-050, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.610, WSR 04-16-037, § 434-263-050, filed 7/27/04, effective 8/27/04.]

WAC 434-263-060 Initial determination and remedies. (1)

The presiding officer shall render a written initial decision within seventy days after the complaint is filed, unless the complainant consents to a longer period. The determination shall include a statement as to whether, based upon a preponderance of the evidence, a violation of Title III has been established with regard to an election. If the presiding officer determines that a violation has occurred, the determination shall specify the appropriate remedy, if one exists. If the presiding officer determines that no violation has been established, the complaint shall be dismissed.

(2) The remedy awarded under this section shall be directed to the improvement of processes or procedures governed by Title III and must be consistent with state law. Remedies may include written findings that a violation of Title III has occurred and strategies for insuring that the violation does not occur again, as well as any other remedy available to the secretary under law. The remedy may not include any award of monetary damages, costs, penalties or attorney fees, and may not include the invalidation of any vote or ballot, or the invalidation, cancellation, or delay of any primary or election. Remedies addressing the validity of any primary or election or of any ballot or vote may be obtained only as otherwise provided by law.

(3) The initial determination shall include a summary of the process for obtaining an administrative review and shall include notice that judicial review may be available.

[Statutory Authority: RCW 29A.04.611, WSR 08-05-120, § 434-263-060, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.610, WSR 04-16-037, § 434-263-060, filed 7/27/04, effective 8/27/04.]

WAC 434-263-070 Administrative review. (1) Any aggrieved party may request an administrative review of the initial determination. If the secretary does not receive a request, in writing, for an administrative review within twenty-one days of service of the initial determination then the initial determination automatically becomes a final determination. If the parties have not requested an administrative review, the secretary may review the presiding officer's adjudication on his or her own motion as provided by RCW 34.05.491.

(2) The reviewing officer may be the secretary, the assistant or deputy secretary, or the director of elections, except that the same person may not serve as both the presiding officer and reviewing officer. The reviewing officer shall give each party an opportunity to explain the party's view of the matter, but must render a final determination within ninety days after the original filing of the complaint unless the complainant consents to a longer period. The determination of the reviewing officer is final and no further administrative review is available. The final determination shall include notice that judicial review may be available.

[Statutory Authority: RCW 29A.04.610, WSR 04-16-037, § 434-263-070, filed 7/27/04, effective 8/27/04.]

WAC 434-263-080 Alternative dispute resolution. (1)

If a final determination is not rendered within ninety days after the filing of the complaint, or within such additional time to which the complainant may consent, then the complaint shall be transferred to a board of arbitration, which must resolve the complaint within sixty additional days, which may not be extended. The board of arbitration shall be composed of three members, designated by the secretary, at least two of whom must be county auditors or election managers. No two members of the panel may be employed by the same office, agency or other employer.

(2) The arbitrators shall review the record compiled in proceedings prior to the transfer, including the tape or transcript of any hearing, but may not conduct any further hearing or receive any additional testimony, evidence, or other submissions. The arbitrators shall determine the appropriate resolution of the complaint by majority vote. No further

administrative review is available, but the arbitrator's final determination shall include notice that judicial review may be available.

[Statutory Authority: RCW 29A.04.611. WSR 08-05-120, § 434-263-080, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.610. WSR 04-16-037, § 434-263-080, filed 7/27/04, effective 8/27/04.]

WAC 434-263-090 Publication. All final determinations pursuant to WAC 434-263-070 shall be posted on the secretary's web site for at least ninety days.

[Statutory Authority: RCW 29A.04.611. WSR 08-05-120, § 434-263-090, filed 2/19/08, effective 3/21/08. Statutory Authority: RCW 29A.04.610. WSR 04-16-037, § 434-263-090, filed 7/27/04, effective 8/27/04.]

WAC 434-263-100 No necessity to exhaust administrative remedies. It is not necessary to exhaust any administrative remedies available under this chapter in order to pursue any other legal action provided by law.

[Statutory Authority: RCW 29A.04.610. WSR 04-16-037, § 434-263-100, filed 7/27/04, effective 8/27/04.]