

**Chapter 105**  
**APPEALS PROCESS**

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## Section I. General Policy

Effective communication between the individuals seeking DVR services and DVR staff is essential. As necessary, all parties must be willing to use various means of communication to ensure that their ideas and intent are received and understood. Some people communicate best verbally, some prefer written communications, and others use sign language or need a translation from English to another language in order to clearly understand the message. DVR staff must be aware of and use the methods that best assures that our message is received and understood by the other party. Only through effective communication can we avoid misunderstandings that lead to disputes, and resolve those disputes that do arise. DVR staff is committed to finding and using the most effective communication with each applicant and eligible individual. We encourage those working with DVR staff to pay similar attention to effective communications.

Although most problems may be resolved through communication with the Rehabilitation Counselor, several options are available for those situations when resolution is not achieved. An individual may seek assistance from the Client Assistance Program (CAP) during any step of the appeals process. The individual may also request an Administrative Review, or a Fair Hearing before the Agency of Human Services Board, or pursue a civil (court) action. While we encourage resolution of disputes at the earliest possible stage, the individual is free to skip one or more steps in favor of a higher step. The individual may also request mediation at any step prior to entering a Fair Hearing. Because of the nature of mediation, participation in this option must be jointly agreed to by the individual and DVR.

The appeals process ensures that any applicant or eligible person (or, if appropriate, the person's representative) who is dissatisfied with any determination(s) made by anyone representing DVR concerning the furnishing or denial of services may request a timely review of the determination(s).

A written description of the appeals process and of the availability of the Client Assistance Program will be given to the person at various steps during the rehabilitation process:

- a. at the time of application for services;
- b. when an Individualized Plan for Employment (IPE) is written;
- c. when a person is determined ineligible for services;
- d. when a person under an IPE is no longer available for services;  
and
- e. whenever a disagreement between the individual and the counselor cannot be resolved to the individual's satisfaction.

To help insure understanding, the written description of the appeals process may be supplemented by other appropriate modes of communication depending on the person's disability or needs.

The service record must demonstrate that the individual received notice at each appropriate stage. If the individual was receiving services of any kind at the time of an appeal, the service record must document whether or not services continued pending the outcome of the appeals process.

Pending completion of an appeal (mediation, Administrative Review, or Fair Hearing), services may not be suspended, reduced, or terminated unless the individual so requests or the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

The person may use the services of the Client Assistance Program at any step during the appeals process. The Client Assistance Program may also be of assistance in selecting a mediator.

*GUIDANCE:* The Client Assistance Program (CAP) is an independent entity authorized under Title I, Section 112 of the Rehabilitation Act. CAP's purpose is to inform and advise all applicants and eligible individuals of available benefits under the Act and, upon request, to assist and advocate for them in their relationships with projects, programs and facilities providing services to them under the Act. Vermont's CAP is part of Vermont Legal Aid, Inc.

## Section II. Summary of Appeals Process

It is anticipated that almost all disagreements between the individual and the VR Counselor will be resolved through open communications. When a difference of opinion persists, the individual may use one or more of the following four appeals options:

- A. Mediation
- B. Administrative Review
- C. Fair Hearing
- D. Civil Action

The individual may start with any option, although some choices will eliminate other options. The following outlines the various choices available and those options that are left if the individual remains dissatisfied.

The individual chooses:

- Option A. Mediation: If the results are not satisfactory to the individual, options B, C, and D are still available.
- Option B. Administrative Review: Options C and D are still available if the individual is dissatisfied with the decision. If Option A was not used prior to Option B, it remains available for use prior to pursuing Options C or D.
- Option C. Fair Hearing: Only Option D remains if the individual is still dissatisfied with the decision.
- Option D. Civil Action: This is the final [step] option in the appeals process. Once entered, the individual cannot go back to any options previously skipped.

A detailed description of each Appeals option is outlined in the following sections.

## Section III. Administrative Review

### A. General Description

An administrative review is an informal hearing conducted by a DVR Supervisory Counselor or Manager designated by the DVR Director. The review officer should not have had any prior involvement in the case unless the consumer agrees to such a designation, and in no circumstance shall s/he have participated in the decision/issue under review unless the person agrees to such a designation.

A request for an administrative review may be made verbally (either in person, by phone, or through an interpreter) or in writing to the local Regional Manager. If a request is made verbally, the request must be recorded and dated in the person's case record. A written request should state the request for an administrative review and the nature of the dissatisfaction; it should be signed, dated, and placed in the case record. An administrative review must be requested within ten (10) working days of the action or decision being appealed.

The Regional Manager will notify the DVR Director of the request within one (1) working day of receiving a request. The Regional Manager will notify the person of the identity of the review officer within ten (10) working days of receiving the request.

The review shall involve the person, the Counselor, and the Counselor's supervisor, who will have the authority to settle the issue in dispute within DVR guidelines. The review also may include any other interested party(s) the person arranges to have present (including legal representation), any other DVR personnel who may have been involved in the decision or action in dispute, and anyone the review officer wishes to be present for informational or facilitative purposes. If the person is a minor or under a guardianship, the review must also include the presence of the legal guardian.

Facts relevant to the issue will be discussed; documentary material may be submitted by any party. Direct access to the case record shall be in compliance with Federal and State laws on confidentiality. (See Chapter 101, "Confidentiality")

The review will be audio-recorded. Access to the recording by parties not directly involved in the administration of the vocational rehabilitation program requires written consent of the person.

An administrative review will be completed (including a written recommendation by the review officer) within forty-five (45) days of the request, unless the parties agree to a specific extension of time.

DVR may assist the person in paying reasonable costs associated with participating in the review (e.g., transportation, interpreter, attendant care services, etc.). DVR is not responsible for paying for the person's legal representation, if any.

### **B. Role of Administrative Review Officer**

The review officer's charge is to determine whether the issue under appeal is consistent with Federal law and DVR policy/procedures. The review officer will either support the decision or make recommendations for action to the Regional Manager to resolve the dispute.

1. The review officer will study the record of services and may research and review relevant State and Federal information and consult with legal staff. The review officer should not discuss the issues with any of the parties involved in the dispute prior to the scheduled review.
  2. The review officer must contact the parties involved, set the date, time and location for the review, and arrange for an interpreter, attendant, or other special service needed by the person to participate in the review. The individual will receive confirmation by certified mail.
  3. The site of an administrative review will be within the person's District unless s/he agrees to a different location.
  4. The review officer will chair the review and is responsible for taping the proceedings. S/he shall explain his/her role and the objective(s) of the meeting, and will establish ground rules for the conduct of the meeting. During the meeting, the review officer shall allow all parties a reasonable opportunity to be heard, ask for clarification when necessary, and facilitate the flow of communication.
  5. A solution may be negotiated and the issue resolved in this meeting. The review officer shall summarize the review in writing. If no solution was
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reached, the review officer shall consider the information provided or available and the policy and procedural implications, and include his/her recommendations for action in the report.

Copies shall be sent to the parties involved within ten (10) working days of the review. If the recommendation is adverse to the person's wishes, s/he has ten (10) working days from receipt of the decision to request mediation, if that option has not been used, or thirty (30) days to request a Fair Hearing. At the same time, s/he will also receive instructions for requesting a fair hearing.

## **Section IV. Mediation**

Mediation is a process using an impartial third party (a mediator) to help the two parties in a dispute reach a mutually-acceptable agreement. Mediators help define the problem, evaluate possible solutions, and form agreements. Mediators do not decide who is right or wrong but guide people toward productive communication in informal and confidential settings. Their goal is to resolve the dispute. If a conflict cannot be resolved in mediation, the person may then use other dispute resolution procedures such as administrative review and/or fair hearing.

### **A. Requirements**

1. Mediation can be used only when the individual and DVR voluntarily agree to do so. If DVR refuses to participate in mediation and the individual has not yet used the Administrative Review option, then the dispute will automatically be referred for an Administrative Review unless the individual refuses this option within 5 work days of receiving notification that mediation has been refused. The notification letter stating DVR refusal to participate in mediation must state the remaining appeals options available to the individual.
2. Mediation shall not be used to deny or delay the right of the person to a fair hearing under this Chapter or to deny any other right afforded under Title I of the Rehabilitation Act.

3. Mediation shall be conducted by a qualified and impartial mediator. This person must be trained in effective mediation techniques and be familiar with the laws and regulations relating to the provision of vocational rehabilitation services. DVR shall maintain a statewide list of such mediators and shall furnish the list to individuals seeking mediation and to CAP.
4. DVR shall bear the reasonable costs of the mediation process including the mediator's fee, the individual's cost for transportation, attendant services, interpreter, etc. DVR will not pay for the individual's legal representation, if any.
5. Mediation can be terminated at any point by either party.

*GUIDANCE:* Preference maybe given to mediators who are familiar not only with laws relating to vocational rehabilitation, but also with disability issues. The list shall include information about CAP—not as a provider of mediation but as a reference for assistance in resolving the dispute, in understanding mediation, choosing a mediator, etc.

## **B. Process**

1. A request for mediation must be made to the Regional Office Manager. A written notice should state that mediation is being requested and the nature of the dissatisfaction; it should be signed, dated, and placed in the case record. A request received verbally or through a sign language interpreter, either in person or by phone, must be put in written form by the Counselor or the Regional Office Manager. The Counselor must record the date of the action in the individual's case record.
2. Within 10 working days of the receipt of the request for mediation, the Regional Office Manager must notify the person of DVR's decision to pursue or not pursue mediation. The Regional Office Manager, in consultation with the Counselor and Division Director (or designee), shall determine if mediation may assist in resolving the dispute. If so, a list of mediators will be furnished to the person and a mediator will be selected by mutual agreement between DVR and the person or, as appropriate, the person's representative. The mediator is to be selected within ten (10) working days of the agreement to pursue mediation.

If DVR chooses not to participate in mediation, the reason for such decision shall be furnished in writing accompanied by information on CAP, a postcard response for CAP services, and other steps available in the appeals process.

*GUIDANCE:* It is good practice for the counselor to strongly encourage the person to contact CAP if she/he has not already done so. CAP may be able to help resolve the issue without using the appeals process or may be helpful to the person in choosing the most appropriate mediator for the issue at hand. It is often in both the counselor's and the consumer's interest to have CAP involved early in the process.

3. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient and accessible to the parties to the dispute.
4. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent appeal or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.
5. The Division of Vocational Rehabilitation will cover the reasonable costs associated with mediation. These costs do not include those related to the representation of an applicant or eligible individual.
6. An agreement reached by the parties to the dispute in the mediation process shall be put in writing and signed by both parties within forty-five (45) days of the date of agreement to pursue mediation, unless the parties agree to a specific extension of time. A copy of the agreement must be placed in the case record.

*GUIDANCE:* After mediation, the parties to the dispute may be given the opportunity to evaluate the mediator; the information may be useful for choosing appropriate mediators for similar issues in the future.

The individual's case service record must indicate whether or not mediation was offered when a dispute is not resolved through an informal process. When mediation is offered but rejected by either party, the record must indicate who rejected mediation and the reason for rejection, if known.

If mediation occurred, the record must indicate whether or not:

- a. the individual was given the opportunity to present evidence during the mediation session;
- b. the individual was given the opportunity to have representation during the mediation session;
- c. CAP was involved during the mediation process; and
- d. an agreement was reached during the mediation.

The outcome of the mediation, either the agreement or the decision to pursue a Fair Hearing or civil action, must be documented in the case record.

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## **Section V. Fair Hearing**

- A. A fair hearing is a formal review conducted by the Agency of Human Services' (AHS) Human Services Board according to its rules. If an administrative review has been held, a request for a fair hearing must be made within thirty (30) days of receipt of the administrative review decision. Individuals dissatisfied with the decision of the Human Services Board may appeal to the Vermont Supreme Court.
- B. The person (or the person's representative) shall have the opportunity to present evidence, information, and witnesses to the Human Services Board, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence.
- C. Persons who do not want to have an administrative review or who remain dissatisfied as the result of an administrative review may request a fair hearing to the DVR Director who must document the request in writing and forward it to the AHS Human Services Board.

If a fair hearing occurred, the case record must contain information regarding the date(s) of any hearing(s) and the result of the fair hearing process. As in the mediation process, the record must address the issues of evidence, representation, and CAP involvement. (See Section III. Guidance.)

## **Section VI. Civil Action**

If a civil (court) action is pursued, the case record must so indicate and include information on which party, the individual or DVR, filed the action and the date of the filing. Answers to the following questions must be in the service record:

- a. Is CAP representing, or paying for legal representation, for the individual?
- b. Has the court heard the case yet?
- c. If the court has issued a decision, did it favor the individual or DVR?

If the court ruled in favor of the individual or if the parties resolved the dispute prior to getting to court, the case record must indicate how the decision was implemented.