

Chapter 105: Appeals Process

Vermont Division of Vocational Rehabilitation
Policy and Procedures Manual

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Section I. General Policy

- A. Effective communication between consumers seeking DVR services and DVR staff is essential. DVR staff must be aware of and use the methods that best assure that our message is received and understood by the other party.
- B. Although most problems may be resolved through communication with the Rehabilitation Counselor, and/or Regional Manager, the following options are available for those situations when resolution is not achieved:
 - 1. Administrative review by Vocational Rehabilitation Manager;
 - 2. Mediation (must be agreed to by the consumer and DVR);
 - 3. Fair Hearing before the Agency of Human Services Board;
 - 4. Civil court action.

Any level of appeal may be skipped in favor of a higher level of appeal.

A consumer may seek assistance from the Client Assistance Program (CAP) at any level of the appeals process.

Guidance – Using the Client Assistance Program.

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 consumers 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.

VR strongly encourages VR Counselors to inform consumers about CAP services at any time in the VR process. CAP has been instrumental in resolving issues or providing information that assists consumers in understanding the VR process. It is VR's goal to resolve issues as early as possible in the appeals process.

End Guidance.

- C. Written notice of appeal rights shall be provided to any consumer or that consumer's representative or guardian:
 - 1. At the time of application for VR services;
 - 2. When a consumer is determined ineligible for VR services;
 - 3. At the time when the IPE is being developed;
 - 4. At the time of placement in an order of selection;
 - 5. Whenever VR services are reduced, suspended or terminated;
 - 6. Whenever an applicant or eligible consumer is dissatisfied with any determination made by VR that affects the provision of VR services;
 - 7. Whenever a disagreement between consumer and the counselor cannot be resolved to the consumer's satisfaction.

- D. Notice must include a description of the appeals process including:
 - 1. The name and address of where the appeal should be filed;
 - 2. The manner in which a mediator or impartial hearing officer may be selected;
 - 3. An explanation of how to contact CAP for no-cost assistance during the appeals process.
- E. To help ensure understanding, the written description of the appeals process may be supplemented by other appropriate modes of communication depending on the consumer's disability or needs.
- F. The service record must demonstrate that the consumer received notice at each appropriate stage. If the consumer 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.
- G. Pending completion of an appeal (mediation, administrative review, or fair hearing), services may not be suspended, reduced, or terminated unless the consumer so requests or the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the consumer or the consumer's representative.
- H. A detailed description of each appeals option is outlined in Sections II – IV.

Section II. Administrative Review

General Description

- A. An administrative review is an informal hearing conducted by a DVR Regional Manager designated by the DVR Director. The review officer should not have had any prior involvement in the case or issue unless the consumer agrees to the designation.
- B. 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 consumer'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 sixty (60) calendar days of the date of the action or decision being appealed.
- C. 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 consumer of the identity of the review officer within ten (10) working days of receiving the request.
- D. The review shall involve the consumer, the counselor, and the Regional Manager and/or Field Services Manager. The review also may include:

1. Any other person the consumer desires to have present (including her/his representative or advocate);
2. Any other DVR personnel who may have been involved in the decision or action in dispute;
3. Anyone the review officer wishes to be present for informational or facilitative purposes.

If the consumer is a minor or under a guardianship the review must also include the presence of the legal guardian.

Either the Regional or Field Services Manager shall have the authority to settle the issue in dispute.

- E. 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")
- F. 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 consumer.
- G. An administrative review will be completed (including a written recommendation by the review officer) within forty-five (45) calendar days of DVR's receipt of the request, unless the parties agree to a specific extension of time.
- H. DVR may assist the consumer 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 consumer's legal representation, if any.

Role of Administrative Review Officer

- I. 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 consumer to participate in the review. The consumer will receive confirmation by certified mail.
 3. The site of an administrative review will be within the consumer's district unless she/he agrees to a different location.
 4. The review officer will chair the review and is responsible for taping the proceedings. She/he shall explain her/his 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. The review officer shall summarize the review in writing. If no solution was reached, the review officer shall consider the information provided or available and the policy and procedural implications, and include her/his recommendations for action in the report. Copies shall be sent to the parties involved within ten (10) working days of the review. If the consumer disagrees with the decision in the administrative review, she/he has ten (10) working days from the date of the decision to request mediation, if that option has not been used, or thirty (30) days from the date of the decision to request a fair hearing. At the same time, s/he will also receive instructions for requesting a fair hearing.

Section III. Mediation

General Description

- A. Mediation is a process using an impartial third party (a mediator) to help the two parties in a dispute reach a mutually-acceptable agreement to resolve the dispute. 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.

General Requirements

- B. Mediation can be used only when the consumer and DVR agree to participate.
- C. Mediation shall not be used to deny or delay the right of the consumer to a fair hearing under this Chapter or to deny any other right afforded under Title I of the Rehabilitation Act.
- D. Mediation shall be conducted by a qualified and impartial mediator.
 1. The mediator must be trained in effective mediation techniques and be familiar with the laws and regulations relating to the provision of vocational rehabilitation services.
 2. DVR shall maintain a statewide list of such mediators and shall furnish the list to consumers seeking mediation and to CAP.

Guidance – Mediator Qualifications.

Preference may be 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.

End Guidance.

- E. 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 will be required to sign a confidentiality agreement prior to beginning of mediation.
- F. Mediation can be terminated at any point by DVR or the consumer.
- G. DVR shall bear the reasonable costs of the mediation process including the mediator's fee, the consumer's cost for transportation, attendant services, interpreter services, etc. DVR will not pay for the consumer's legal representation, if any.

Procedural Requirements

- H. A request for mediation must be made to the Regional Manager within sixty (60) calendar days of the date of the action or decision with which the consumer is dissatisfied. A request may be made verbally or in writing. Verbal requests (either in person, by phone or through an interpreter) must be put into written form by the counselor or Regional Manager then dated and placed in his/her case record. A written request should state that mediation is requested and include a statement about why the consumer disagrees with DVR's decision. It must be signed and dated by the consumer, then placed in his/her case record.
- I. The Regional Manager, in consultation with the counselor and Division Director (or designee), shall decide whether to agree to the consumer's request for mediation. The Regional Manager shall inform the consumer in writing of DVR's decision within ten (10) working days of DVR's receipt of the mediation request. If DVR decides not to participate in mediation, the written notice to the consumer must state that decision and describe the remaining appeals options available to the consumer.
- J. If DVR refuses mediation and the consumer has not used the administrative review option, the dispute will automatically be referred for administrative review. If the consumer decides that she/he does not want to participate in an administrative review, the consumer must notify DVR of this decision within ten (10) working days following the date of the written notice of DVR's decision not to use mediation.

Guidance – Appeals and CAP Participation.

It is good practice for the counselor to strongly encourage the consumer 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 consumer 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.

End Guidance.

- K. If DVR agrees to use mediation, a mediator will be selected by mutual agreement between DVR and the consumer or, as appropriate, the consumer's representative, within ten (10) working days of the agreement to use mediation. Upon selection of the

mediator, dates to begin the mediation process shall be set as soon as possible with the goal of completing the mediation process within forty-five (45) calendar days from the date of the agreement to use mediation. DVR and the consumer may agree to a specific extension of this timeline.

- L. An agreement reached by the consumer and DVR through the mediation process shall be put in writing and signed by DVR and the consumer. A copy of the agreement must be placed in the case record.

Documentation Requirements

- M. When a dispute between DVR and the consumer is not resolved through an informal process, the counselor must document in his/her case record whether or not mediation was offered.
- N. When mediation is offered but rejected by either party, the case record must indicate who rejected mediation and the reason for rejection, if known.
- O. If mediation occurred, the record must indicate whether or not:
 - 1. The consumer was given the opportunity to present evidence during the mediation session;
 - 2. The consumer was given the opportunity to have representation during the mediation session;
 - 3. CAP was involved during the mediation process;
 - 4. An agreement was reached during the mediation; and
 - 5. The consumer decided to request a fair hearing or file a civil action in court.

Section IV. Fair Hearing

- A. A fair hearing is a formal review conducted by the Agency of Human Services' Human Services Board (HSB). If an administrative review has been held, a request for a fair hearing must be made within thirty (30) calendar days from the date of the administrative review decision. If a mediation has been held and was not successful, a request for fair hearing must be made within thirty (30) calendar days following completion of the mediation. If an administrative review or mediation has not been held, a request for fair hearing must be made within ninety (90) calendar days from the date of the decision being appealed.
- B. Requests for fair hearing may be made to the DVR Director who must document the request in writing and forward it to the AHS Human Services Board, or directly to the Human Services Board.
- C. In accordance with the rules of the HSB, the consumer (or the consumer's representative) shall have the opportunity to be represented by an advocate and to present evidence, information, and witnesses, and to examine all witnesses and other relevant sources of information and evidence.

- D. 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.
- E. A consumer dissatisfied with the decision of the Human Services Board may appeal to the Vermont Supreme Court.

Section V. Civil Action

- A. If a civil (court) action is pursued, the case record must so indicate and include information on whether the consumer or DVR filed the action and the date of the filing. Answers to the following questions must be in the case record:
 - 1. Is CAP representing, or paying for legal representation, for the consumer?
 - 2. Has the court heard the case yet?
 - 3. If the court has issued a decision, did it favor the consumer or DVR?
- B. If the court decides in favor of the consumer, or if the parties reach an agreement prior to the court issuing a decision, the case record must indicate how the agreement or court decision was implemented.