

NC DIVISION OF SERVICES FOR THE BLIND POLICIES AND PROCEDURES VOCATIONAL REHABILITATION

Section:	A
Title:	Appeals Process
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An applicant for, or eligible individual of the Division of Services for the Blind's (DSB) Vocational Rehabilitation Services (VR) who is dissatisfied with any decision made by DSB concerning the furnishing or denial of services, has the right for a timely review of the decision through an administrative review, mediation, or an impartial due process hearing. This Section defines the procedures to be followed by the applicant or individual and by the Agency.

I. REQUIRED WRITTEN INFORMATION FOR ALL APPLICANTS AND ELIGIBLE INDIVIDUALS

The Agency will provide all applicants and eligible individuals written notice of:

1. The right to an impartial due process hearing if dissatisfied with any determination made by the Agency that affects the provision of Vocational Rehabilitation Services to an applicant or eligible individual;
2. The right to seek resolution of the issue through an administrative review and mediation prior to an impartial due process hearing;
3. The name and address of the Area Vocational Rehabilitation Supervisor to whom the request for review of a decision may be filed;
4. The manner in which a Qualified and Impartial Mediator or Impartial Hearing Officer will be selected; and
5. The availability of the Client Assistance Program (CAP) to assist the applicant or eligible individual during the administrative review, mediation or impartial due process hearing.

The notice must be provided to all applicants and eligible individuals:

1. At the time the individual applies for VR services;
2. At the time the individual is assigned to a category in the State's Order of Selection, if established (order of selection);
3. At the time of the Individual Plan for Employment (IPE) (On-Line DSB-4005b-VR Individual Plan for Employment with instructions) is developed; and
4. Whenever VR services for an individual are reduced, suspended, or terminated.

II. REQUEST FOR ADMINISTRATION REVIEW, MEDIATION, AND IMPARTIAL DUE PROCESS HEARING

To request an administrative review, mediation, or impartial due process hearing, the applicant or eligible individual must submit a written request to the appropriate Area Vocational Rehabilitation Supervisor. The request must clearly state if the individual is requesting:

1. An administrative review, mediation, and impartial due process hearing to be scheduled concurrently; **or**
2. An administrative review and impartial due process hearing to be scheduled concurrently; **or**

3. Mediation and impartial due process hearing to be scheduled concurrently; **or**
4. An impartial due process hearing only.

The request must contain the following information:

1. The name, address, and telephone number of the applicant or eligible individual (and the individual representative if one is designated), and
2. A concise statement about the determination made by the VR staff for which an administrative review, mediation, and impartial due process hearing is being requested and the manner in which the determination has affected the individual's rights, duties or privileges.

The Agency cannot suspend, reduce or terminate VR services being provided an applicant or eligible individual at the time of and during the Appeal Process. These services include those being provided for evaluation and Assessment, for the development of an IPE, and as planned under an existing IPE. These services will continue until the final resolution of the issue has been reached, unless the individual (or the individual's representative if one is designated) requests that services be suspended, reduced, or terminated, or the Agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

III. AGENCY ACTIONS IN RESPONSE TO REQUEST

Upon receiving a request for a review of a decision from an applicant or eligible individual, the Area Vocational Rehabilitation Supervisor will immediately:

1. Forward the original request to the Agency Director;
2. Respond to the applicant or eligible individual by sending a written notice that acknowledges the receipt of the request and informs the individual that additional information will be sent regarding the impartial due process hearing, and if requested, an administrative review and/or mediation; and
3. Send a copy of the request and the Agency's response to the request to CAP.

The Agency has sixty (60) days to complete the impartial due process hearing unless both parties agree to an extension of this time frame. Upon receipt of the request from the Area Vocational Rehabilitation Supervisor, the Agency Director will immediately initiate the procedures for scheduling and notice of the impartial due process hearing to insure adherence to this specified time. If the grievance is resolved through an administrative review, mediation or other negotiations, the appointment of the Impartial Hearing Officer will be cancelled. If requested, the procedures for an administrative review and/or mediation must be initiated immediately, as an administrative review and mediation cannot be used to delay or to deny an applicant or eligible individual an impartial due process hearing.

IV. ADMINISTRATIVE REVIEW PROCEDURES

4. Scheduling and Notice of Administrative Review

If requested, an administrative review will be scheduled and conducted by the Area Vocational Rehabilitation Supervisor. If the Area Vocational Rehabilitation Supervisor has been involved in decisions related to the case, a designee can be appointed with the concurrence of the Agency

Director to conduct the administrative review. The designee must have had no previous involvement in the issues that are related to the contested decision(s), can conduct the administrative review in an unbiased way, and has a broad working knowledge of the Agency's policies and procedures and the State Plan for VR services.

The administrative review must be held within 15 days of the original request. The Area Vocational Rehabilitation Supervisor or the designee will set a date, time and place for the administrative review, then send the applicant or eligible individual, the individual's parent or guardian if a minor, and his/her representative if one is designated, written notice (by certified mail) that includes:

- a. The date, time and place for the administrative review; and
- b. Notification that an Impartial Hearing Officer will be appointed by the Agency Director, and if the matter is not resolved in the administrative review (or mediation if scheduled), and if appointed, the Impartial Hearing Officer will send information about the impartial due process hearing which will be held after the administrative review (and mediation if scheduled).

Notice of the date, time and place for the administrative review will be given to the Director of CAP and to other parties involved in the request either in writing or by phone.

An administrative review cannot be used to delay or deny the right of the applicant for mediation or impartial due process hearing. The Area Vocational Rehabilitation Supervisor may grant an extension of the deadline for conducting the administrative review for good cause. If an extension is granted, the effect of the extension will have on deadlines for other steps in the administrative review process must be considered.

In situations where the issue currently in controversy involves action taken by the State Office of the Agency, the Director, or a designee of the Director, shall perform the duties prescribed for the Area Vocational Rehabilitation Supervisor in these Procedures.

2. Conducting an Administrative Review

Prior to the date of the administrative review, the Area Vocational Rehabilitation Supervisor or designee will review all previous decisions and casework relating to the applicant or eligible individual, and seek whatever consultation, explanation, documentation, or other information necessary. The CAP Director may be consulted if needed.

The Area Vocational Rehabilitation Supervisor or his designee will hold the administrative review on the date scheduled. Participants will be the applicant or eligible individual, the individual's parent or guardian if the individual is a minor, the representative, if one has been designated, the CAP Director, if participating, and other individuals deemed necessary by the Area Vocational Rehabilitation Supervisor or his designee.

An opportunity will be made available to the applicant or eligible individual (or representative, if one has been designated) for oral and written presentations in an informal setting.

3. Decisions from an Administrative Review

Within five working days of the administrative review, the Area Vocational Rehabilitation Supervisor or designee will:

- a. Make a decision and compile a written report of the proceedings that includes the purpose of the administrative review, the participants, the decision reached, and the rationale for the decision;
- b. Send the applicant or eligible individual by certified mail, with return receipt requested, the following information:
 - (1.) the written report containing the decision;
 - (2.) instructions about the necessary steps to be taken in response to the decision and the deadline for the response; and
 - (3.) a form for the applicant's or eligible individual's signature that indicates the applicant's or individual's agreement with the decision and requests that the impartial due process hearing be cancelled; and
- c. Place a copy of the written report in the individual's official case record; and send a copy of the written report to the Agency Director and CAP.

If the applicant or eligible individual is satisfied with the decision resulting from the administrative review, the form that was sent with the written report must be signed by the applicant or eligible individual, then return to the Area Vocational Rehabilitation Supervisor within five days of receipt of the decision. The Area Vocational Rehabilitation Supervisor will immediately inform the Agency Director of the request to cancel the impartial due process hearing, and forward the signed form to the Agency Director. The Agency Director will submit the signed form to the Impartial Hearing Officer. The Impartial Hearing Officer will send the applicant or eligible individual and the Agency written notice of cancellation of the impartial due process hearing which must be delivered at least ten days prior to the date of the impartial due process hearing. It can be delivered personally or by certified mail. If delivered by certified mail, the date on the return receipt will be considered the date delivered.

If, after the administrative review, the Impartial Hearing Officer does not receive a written request for cancellation of the hearing from the applicant or eligible individual, it will be assumed that the applicant or eligible individual is not satisfied with the decision. Therefore, the impartial due process hearing will be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the impartial due process hearing.

V. PROCEDURES FOR MEDIATION

4. Scheduling and Notice of Mediation

If the applicant or eligible individual requests mediation, the Agency Director will consider the request and determine if the Agency will agree to participate, as participation in mediation is voluntary on the part of all parties.

If the Agency agrees to mediation, the Agency Director will arrange for the appointment of a Qualified and Impartial mediator from an Agency-maintained pool of Qualified and Impartial Mediators. A mutual agreement between the Agency Director and the individual (and individual's representative, if one is designated) on the appointed Mediator is required. A Qualified and Impartial Mediator is

defined as one who is certified by the North Carolina Resolution Dispute Commission or approved by the Mediation Network of North Carolina, and who is knowledgeable of federal and State law and policies governing VR programs. The Agency will bear the costs for the mediation. The mediation process shall not be used to deny or to delay an impartial due process hearing.

5. Conducting Mediation

The Qualified and Impartial Mediator will conduct the mediation session with the parties and their representatives. All mediation discussions are confidential and the content may not be used as evidence in subsequent impartial due process hearing or civil proceedings. At any point in the mediation process, either party or the Qualified and Impartial Mediator may elect to terminate the mediation process. Should this occur, resolution through an impartial due process hearing would continue unless cancelled by the applicant or eligible individual.

6. Decisions Reached in Mediation

If an agreement is reached during the mediation session, the parties must develop a written mediation agreement with the assistance of the Qualified and Impartial Mediator. The agreement must contain a clear statement from the applicant or eligible individual that he/she is satisfied with the agreement, a request from the individual to cancel the impartial due process hearing, and the signatures of both parties. The Qualified and Impartial Mediator will provide a copy of the signed mediation agreement to the applicant or eligible individual and to the Agency representative, and forward a copy of the signed agreement to the Agency Director.

The Agency Director will submit the signed agreement containing the request to cancel the hearing to the Impartial Hearing Officer and to CAP. The Impartial Hearing Officer will send the applicant or eligible individual and the Agency written notice of the cancellation which must be delivered in person or by certified mail at least ten days prior to the impartial due process hearing. If sent by certified mail, the delivery date on the return receipt will be considered the date given. A copy of this notice will also be sent to CAP.

If, after mediation, the Impartial Hearing Officer does not receive written request from the applicant or eligible individual to cancel the impartial due process hearing, the hearing will be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the Impartial due process hearing.

VI. PROCEDURES FOR IMPARTIAL DUE PROCESS HEARING

1. Scheduling and Notice of Impartial Due Process Hearing

Upon receipt of the request for an impartial due process hearing, the Agency Director will appoint an Impartial Hearing Officer from an Agency-maintained pool of qualified Impartial Hearing Officers. A mutual agreement between the Agency Director and the individual (and individual's representative if one is designated) on the selected Impartial Hearing Officer is required.

When appointed by the Agency Director, the Impartial Hearing Officer will schedule the **impartial due process hearing**, which must be held within 60 days of the original request by the applicant or eligible individual. The Impartial Hearing Officer can extend the time for the hearing for up to 30 days

if the parties jointly agree to a delay and submit a written statement to that effect to the Impartial Hearing Officer. At least ten days prior to the impartial due process hearing, the Impartial Hearing Officer will provide written notice to all parties that contain the following information:

- a. The date, time and place of the impartial due process hearing;
- b. The issues to be considered;
- c. The procedures to be followed in the impartial due process hearing;
- d. The sections of statutes, Federal regulations, State rules, and State Plan involved;
- e. The rights of the applicant or eligible individual;
- f. The procedures by which the hearing officer may grant an extension of time for the impartial due process hearing; and
- g. The impartial due process hearing will be cancelled if the matter is resolved in an administrative review or in mediation.

The written notice may be delivered personally or by certified mail. If sent by certified mail, the delivery date on the return receipt will be considered the date given. The Impartial Hearing Officer will also send a copy of the written notice to CAP.

The impartial due process hearing will be held in the county where the applicant or eligible individual resides unless the Impartial Hearing Officer grants a change of venue (location). If either party desires a change of venue, a written motion for the change must be filed with the Impartial Hearing Officer, with copies provided to all other parties, at least seven days prior to the date of the impartial due process hearing. The motion must include:

- a. The name, address, and phone number of the party requesting the move;
- b. Identification by the case name of the proceeding for which the change is sought;
- c. The date, time and place for which the impartial due process hearing is scheduled;
- d. The county where the party requests that the impartial due process hearing be held;
- e. statement of the reason for the requested change, including the names and addresses of any witnesses whose convenience represents the basis for this request, and
- f. Any other factors that should be considered in the ruling on the request to change the location of the impartial due process hearing.

Any party may object to a motion for change of venue by sending a written notice of objection to the Impartial Hearing Officer, with copies sent to all other parties, within three days of receipt of the motion for venue change. The notice of objection must clearly state the reason for the objection.

The Impartial Hearing Officer will determine if a change of venue is appropriate, issue an order to be served to all parties that grants or denies the motion and states the reasons for the decision. Upon notice to all parties, the Impartial Hearing Officer may instruct the parties to participate in a pre-hearing conference, which will be informal in nature. The purpose of the pre-hearing conference will be to discuss the possibility of simplification of issues, stipulation of facts or findings, identification of areas where evidence will be needed, indication of discovery or subpoenas needed, and any other matters that will reduce costs, save time or otherwise expedite the disposition of the case.

The parties to the impartial due process hearing may agree in advance to the simplification of issues. Simplification of issues can be done by eliminating issues to be contested at the impartial due process hearing, accepting the validity of certain proposed evidence, accepting the findings in other

cases that may have relevance to the case at hand, and/or agreeing to other matters that may expedite the impartial due process hearing.

2. Conducting the Impartial Due Process Hearing

The Agency has established and implemented a formal procedure for impartial due process hearings in accordance with the Vocational Rehabilitation Act of 1973 as amended. All parties must adhere to and cooperate with this procedure.

a. Discovery

Parties in impartial due process hearings will exchange information, seek access to public documents as provided by law, and exhaust other informal sources of obtaining discoverable material. Any dispute regarding discovery will be referred to the Impartial Hearing Officer for resolution. The Impartial Hearing Officer will base the resolution on the interest of justice then issue an order that resolves the dispute and includes the reasons for the ruling. Copies of the order will be served on all parties.

b. Evidence

Evidence to be admitted in the impartial due process hearing is according to North Carolina General Statutes 150B-29, 150B-30, and 150B-31. A copy of the statutes will be available from the Agency at no cost.

c. Disqualification of the Impartial Hearing Officer

If at any time the Impartial Hearing Officer believes he/she cannot conduct the impartial due process hearing in a fair and impartial manner, the Impartial Hearing Officer will send the Agency Director a written statement indicating why he/she should be disqualified from the case. Submission of the statement will disqualify the Impartial Hearing Officer. The Agency Director shall inform all parties of the disqualification and the reasons for the disqualification.

If at any time during the impartial due process hearing, any party believes that the Impartial Hearing Officer cannot conduct the hearing in a fair and impartial manner, the party will submit an affidavit to the Impartial Hearing Officer for consideration. The Impartial Hearing Officer will determine the matter as part of the record, and this determination shall be subject to judicial review at the conclusion of the proceeding.

When a Hearing Officer is disqualified, or if it is impractical for the Impartial Hearing Officer to proceed, the Agency Director will arrange for the appointment of another Impartial Hearing Officer who is in the Agency-maintained pool of qualified Impartial Hearing Officers and who is mutually agreed upon by the Agency Director and the applicant or eligible individual (and individual's representative if one has been designated) to proceed with the case.

If it is shown to the Agency Director or to the newly assigned Impartial Hearing Officer that substantial prejudice to any party will result from continuation of the case, all or part of the case will be repeated as necessary to substantially prevent or remove the prejudice, or the case will be dismissed without prejudice.

The Agency Director will be responsible for promptly notifying all parties of the decision to assign new Impartial Hearing Officer and to repeat all or part of the case or dismiss the case without prejudice. The notification will include a statement of the reasons for the decision.

d. Ex Parte Communications

Ex parte communication occurs when there is communication between a party and the Impartial Hearing Officer, or the Impartial Hearing Officer and one party, without the presence or knowledge of the other parties. Ex parte communication in the impartial due process hearing is governed by North Carolina General Statutes (G.S.150B-35). A copy of this statute may be obtained from the Agency at no cost.

e. Oath

No person may testify or present views or data orally at the impartial due process hearing before being put under oath or affirmation.

f. Conduct of Impartial Due Process Hearing

The Impartial Hearing Officer will have complete control over the impartial due process hearing. Control of the impartial due process hearing is defined as the responsibility of:

- (1.) having a record made of the impartial due process hearing;
- (2.) administering the oaths and affirmations,
- (3.) recognizing the speakers;
- (4.) prevention of repetitious presentations, and
- (5.) general management of the impartial due process hearing.

The Impartial Hearing Officer will conduct the impartial due process hearing in a manner that will provide the applicant or eligible individual the rights as required by the Vocational Rehabilitation Act of 1973, as amended, which are documented at 34 C.F.R. 361.57(e)(2).

The impartial due process hearing will not be open to the public.

g. Failure to Appear

If the applicant or eligible individual fails to appear at the impartial due process hearing and does not have a representative present, the Impartial Hearing Officer will cancel the hearing. If this occurs, the applicant or eligible individual may submit a written request to reschedule the impartial due process hearing to the Agency Director. The request must include an explanation of the individual's failure to appear at the impartial due process hearing or to have a representative present. Upon the explanation of good cause by the individual, the Agency Director may instruct the Impartial Hearing Officer to reschedule the impartial due process hearing. Good cause includes Acts of God, illness, death in the family, or other reasons not in the control of the applicant or eligible individual.

3. Decisions from Impartial Due Process Hearings

Following the impartial due process hearing, the Impartial Hearing Officer shall make and issue a decision in accordance to the Vocational Rehabilitation Act of 1973 as amended; and provide the individual (and the individual's representative if one is designated) and the Agency a full written report of the findings and the grounds for the decision within 30 days of the completion of the impartial due process hearing. The decision will be given to the applicant or eligible individual in person or by certified mail. If given by certified mail, the delivery date on the return receipt will be considered the date given.

The Agency Director shall forward a copy of the final decision to the CAP Director, to the Area Vocational Rehabilitation Supervisor and to the applicant's or eligible individual's representative if one is designated. A copy of the decision will also be included in the individual's official case record.

The Impartial Hearing Officer's decision is final, except that a party may request a review of the decisions by the Secretary of the Department of Health and Human Services (DHHS).

The official records of the impartial due process hearings shall be maintained in the State Office of the Agency. Any person wishing to examine an impartial due process hearing record must submit a written request to the Agency Director in sufficient time to allow the record to be prepared for inspection, including the removal of any confidential material.

Any person desiring a transcript of all or part of the impartial due process hearing shall contact the office of the Agency Director. A fee to cover the costs of preparing the transcript shall be charged, and the party may be required to pay the fee in advance of receipt of the transcript. The transcript may be edited to remove confidential material.

VII. REVIEW OF IMPARTIAL HEARING OFFICER'S DECISION

Either party may request a review of the Impartial Hearing Officer's decision. The party must make the request within 20 days of the receipt of the decision to the Secretary of Department of Health and Human Services. The Secretary may delegate the responsibility for reviewing the decision and for making the final decision to another employee of DHHS, but shall not delegate the responsibility to any officer or employee of the Agency.

In conducting the review, the reviewer will send a written notice to both parties and allow the submission of additional evidence according to the Vocational Rehabilitation Act of 1973, as amended. The reviewing official will base the review on the following standards:

1. The Impartial Hearing Officer's decision is not arbitrary, capricious, abuse of discretion, or otherwise unreasonable;
2. The Impartial Hearing Officer's decision is supported by substantial evidence; i.e., consistent with facts and applicable federal and state policy.
3. In reaching the decision the Impartial Hearing Officer considered such factors as:
 - a. the federal statute and regulations as they apply to a specific issue in question;
 - b. the State Plan as it applies to a specific issue in question;
 - c. agency rules as they apply to a specific issue in question;

- d. key portions of conflicting testimony;
- e. agency options in the delivery of services that is permissible under federal statute, and
- f. restrictions in the federal statute with regard to supportive services as maintenance and transportation.

The reviewing official at DHHS will make the final decision and provide a copy of the decision in writing to both parties within 30 days from receipt of the request to review the Impartial Hearing Officer's decision. The decision will include a full report of the findings and the grounds for the decision. The reviewing official shall not overturn or modify a decision or part of a decision made by the Impartial Hearing Officer that supports the position of the applicant or individual except as allowed by the Vocational Rehabilitation Act of 1973 as amended.

The final decision will be given to both parties personally or by certified mail. If delivered by certified mail, the delivery date appearing on the return receipt will be considered the date given. The Agency Director will forward a copy of the final decision to the CAP Director, the Area Vocational Rehabilitation Supervisor, the applicant's or eligible individual's representative if one is designated. A copy of the decision will also be included in the individual's official case record.

VIII. CIVIL ACTION

Any party who disagrees with the findings and has exhausted all review opportunities outlined in this Procedure has the right to bring a civil action with respect to the matter in dispute. This will be done in accordance with the procedures as specified in the Vocational Rehabilitation Act of 1973 as amended. If the party brings a civil action, the final decision shall be implemented pending review by the court.