

IVRS Decision Reviews, Hearings and Appeals		
Manual: RSB Policy & Procedures	Document Number: 705	Section: Other Policies and Procedures
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PURPOSE

Iowa Vocational Rehabilitation Services (IVRS) has developed a process to ensure that an applicant or recipient of services who is dissatisfied with any determination made by IVRS personnel that affects the provision of vocational rehabilitation services may request a timely review of that determination (34 CFR 361.57).

This process provides the applicant or recipient, or as appropriate, the individual's representative, notice of:

- The right to obtain review of IVRS determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing;
- The right to pursue mediation with respect to determinations made by IVRS personnel that affect the provision of vocational rehabilitation services to an applicant or recipient;
- The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;
- The manner in which a mediator or impartial hearing officer may be selected; and
- The availability of the [Client Assistance Program \(CAP\)](#) to assist the applicant or recipient during mediation sessions or impartial due process hearings.

DEFINITIONS

Impartial Hearing Officer means an individual who:

- Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);
- Is not a member of the State Rehabilitation Council;
- Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;
- Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services of the Unified State Plan and the Federal and State regulations governing the provision of vocational rehabilitation services;
- Has received training in the performance of the duties of a hearing officer; and
- Has no personal, professional, or financial interest that could affect the objectivity of the individual ([34 CFR 361.5\(c\)\(24\)\(i\)](#)).

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies ([34 CFR 361.5\(c\)\(35\)](#)).

Mediator means an individual who:

- Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institute of higher education);
- Is not a member of the State Rehabilitation Council;
- Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;
- Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;
- Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements;
- Has no personal, professional, or financial interest that could affect the individual's objectivity during the mediation proceedings; and
- Is not considered to be an employee of Iowa Workforce Development or IVRS because the individual is paid by IVRS to serve as a mediator ([34 CFR 361.5\(c\)\(43\)](#)).

AGENCY EXPECTATIONS

IVRS must provide information to individuals regarding the decision review process at the following times:

- At the time the individual applies for IVRS services (IVRS Pre-Employment Transition Services Agreement; IVRS Rights and Responsibilities);
- At the time of eligibility decision (eligibility letter);
- At the time of plan development (IPE-2); and
- At the time services are reduced, suspended, or terminated (IPE-2, IPE-3).

IVRS may not suspend, reduce, or terminate IVRS services being provided to an applicant or recipient, including evaluation and assessment services and individualized plan for employment (IPE) development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official, or pending information resolution, unless:

- The individual, or when appropriate, the individual's representative, request a suspension, reduction, or termination of services; or
- IVRS has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

Applicants who are found ineligible for IVRS services and previously eligible individuals who are determined to be no longer eligible for IVRS services (no longer seeking competitive integrated employment) are permitted to challenge the determinations of ineligibility.

If an IVRS applicant or recipient is dissatisfied with a decision IVRS personnel make, the individual must submit a written request using the Request for Decision Review form within 90 calendar days of the date of the IVRS decision. Individuals requiring assistance in completion of the form should be referred to CAP.

Resolution of the issue includes the following options:

- **Informal Review:** an RSB Bureau Chief will review the issue and make a determination. If the RSB Bureau Chief has previously reviewed the decision through the Exception to Policy process, the informal review will go to the IVRS Administrator for determination. If the informal review is not successful, the individual may choose to participate in mediation or request a fair hearing.
- **Mediation:** A qualified and impartial mediator will meet with the applicant or recipient and IVRS representatives and attempt to reach an agreement. If mediation is not successful, a formal hearing must be conducted within the same time period, unless the parties agree to a specific extension of time. Participation in the mediation process is voluntary on the part of the applicant or recipient, as appropriate, and on the part of IVRS. Use of the mediation process is not used to deny or delay the applicant's or recipient's right to pursue resolution of the dispute through an impartial hearing held within the time period specified. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing.
- **Fair Hearing:** A formal review by an impartial hearing officer who makes a decision based on facts and laws.

PROCEDURES

RSB Bureau Chief/IVRS Administrator Review

Once a request for appeal or mediation is received, the applicant or recipient, or as appropriate, the individual's representative is first given the opportunity to review the decision with the RSB Bureau Chief assigned to the area office where the case is assigned. If the request for appeal or mediation is related to an Exception to Policy, the IVRS Administrator reviews the decision. The applicant or recipient, or as appropriate, the individual's representative will be notified of the decision in writing.

The applicant or recipient is informed that while they may bypass the RSB Bureau Chief/Administrator review and go directly to the impartial hearing, many appeals are quickly and equitably resolved at the RSB Bureau Chief/Administrator level. The recipient must also be informed that whether they agree to a RSB Bureau Chief/Administrator review or not they will be offered the opportunity to attempt to resolve the dispute through a mediation process. The recipient or parent/guardian (as applicable) may request assistance from CAP for help with the mediation or appeal. Either party may refuse to proceed to mediation, but it must be offered.

Within 20 days of the mailing of the RSB Bureau Chief/Administrator decision, the recipient may respond in writing requesting to move to the next level in the IVRS decision review process.

Mediation

The mediation process is conducted by a qualified and impartial mediator who must be selected from a list of mediators maintained by the state. The mediator is selected by agreement between the IVRS Administrator and the applicant or recipient or, as appropriate the recipient's representative.

Mediation sessions are scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute. The following must be met:

- Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to

the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

- An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement must be sent to both parties.
- The costs of the mediation process must be paid by IVRS. IVRS must allow an applicant or recipient to be represented during mediation sessions by counsel or other advocate selected by the applicant or recipient; however, IVRS is not required to pay for any costs related to the representation of an applicant or recipient.
- The applicant or recipient or, as appropriate, the individual's representative with an opportunity to submit during mediation sessions evidence and other information that supports the applicant's or recipient's position.

If mediation is attempted but not successful, the recipient can proceed to a hearing before an impartial hearing officer.

Fair Hearing/Impartial Hearing Officer Review

Within five working days after appointment, the impartial hearing officer will notify the individual of:

- The role of the hearing officer;
- The individual's right to select either a face-to-face or virtual hearing;
- The individual's understanding of the reasons the recipient is appealing and the requested resolution;
- The date the recipient and/or parent/guardian (as applicable) is to appear before the hearing officer to present evidence in support of the appeal (must be within 60 calendar days of when the appeal was received unless good cause for delay can be shown or both parties agree to an extension);
- The fact that a copy of the recipient's case file will be provided by the State VR agency to the officer prior to the hearing.
- The site at which the hearing will take place will be accessible and located as advantageously as possible for both parties, regardless of whether it is a face-to face or virtual hearing. In situations where this is a problem, the needs of the recipient shall prevail;
- The fact that under IVRS rules of confidentiality the hearing will be closed to the public, unless the job candidate specifically requests that it be open, at which time the job candidate must sign a release of information;
- The opportunity to present additional evidence and information, and call witnesses, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence;
- The availability of the CAP to discuss the recipient's appeal. The individual may request assistance from CAP, and together they determine if it is appropriate to assist in the preparation and presentation of the individual's case;
- Information about the amount of time it will take to complete the hearing process;
- The possibility of reimbursement of necessary travel and related expenses; and

- The availability of interpreter and reader services for recipients not familiar with the English language and those who are deaf. This may include transportation and attendant services for those requiring such assistance.

Hearings conducted by an impartial hearing officer must be held within 60 days of an applicant's or recipient's request for review of a determination made by IVRS personnel that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time.

The applicant or recipient or, if appropriate, the individual's representative must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence.

The impartial hearing officer for a particular case must be selected from a list of qualified impartial hearing officers maintained by IVRS. Impartial hearing officers included on the list must be identified by the State Rehabilitation Council (SRC) and be agreed upon by the applicant or recipient or, as appropriate, the individual's representative, as well as the IVRS Administrator. If all parties cannot agree on an impartial hearing officer, one will be selected at random.

The impartial hearing officer must:

- Make a decision based on the provisions of the approved vocational rehabilitation services portion of the Unified State Plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements; and
- Provide to the individual or, if appropriate, the individual's representative and to the State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing.

The impartial hearing officer's decision is final, except that a party may request an impartial administrative review, or a party involved in a hearing may bring a civil action.

Director Review

If a party is dissatisfied with the impartial hearing officer's review, an impartial administrative review may be requested. This request must be made within 20 days of the mailing of the impartial hearing officer's decision. Such reviews must be conducted by the Director of Iowa Workforce Development.

The reviewing official:

- Provides both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review.
- May not overturn or modify the impartial hearing officer's decision, or any part of that decision, that supports the position of the applicant or recipient unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved vocational rehabilitation services portion of the Unified State Plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements.
- Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, including a full report of the findings and the statutory,

regulatory, or policy grounds for the decision, to the applicant or recipient or, as appropriate, the individual's representative and to IVRS within 30 days of the request for administrative review.

- May not delegate the responsibility for making the final decision to any officer or employee of IVRS.

The reviewing official's decision is final unless either party brings a civil action. If a party brings a civil action to challenge the final decision of an impartial hearing officer or to challenge the final decision of a State reviewing official, the final decision of the impartial hearing officer or State reviewing official must be implemented pending review by the court.

Civil Action

Any party who disagrees with the findings and decisions described above has the right to bring a civil action with respect to the manner in dispute.

EXCEPTIONS

- None

APPLICABLE FORMS, DOCUMENTS, LINKS

- [IVRS Request for Decision Review](#)