



<b>Policy No.</b> 705	<b>Subject:</b> Hearings and Appeals
<b>Section:</b> Other Policies and Procedures	<b>Revised:</b> 01/2021
<b>Signature:</b> Eric Evans, Bureau Chief	<b>Version:</b> FINAL

## 1. PURPOSE

The purpose of an appeal is to provide vocational rehabilitation recipients and applicants a means to seek a satisfactory resolution in a timely manner for a dissatisfaction or disagreement with some aspect of agency services. This is not a punitive process and is not a criminal proceeding that might take place in the community, but is a specific VR process only addressing the impact of IVRS decisions on service delivery. It is to help ensure the job candidate is receiving services consistent with state and federal regulations when they might be questioning if the VR process is valid. There are no repercussions to the job candidate beyond what has already occurred through VR service delivery.

## 2. DEFINITIONS

Mediation or appeal results from the dissatisfaction or disagreement of applicants and recipients of vocational rehabilitation with some aspect of agency services. An appeal must be filed within 90 calendar days of the date of the action being appealed. The individual may initiate the appeal process either by calling a Counselor or Supervisor or by completing the appeal form, available from any IVRS Counselor or Supervisor. If the appeal process is initiated by telephone, the Counselor or Supervisor who received the call completes the appeal form to the best of that individual's ability with information provided by the job candidate. The request for mediation or appeal is submitted to the next higher level of authority when the request is accepted by a staff person. The next higher authority will consult with administration on next steps to include: reversal of the staff person's decision, support of the staff person's decision or moving forward with the request made by the individual. The following definitions are of particular importance to this process.



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- a. Applicant: A person who has applied for services of the VR agency, but for whom eligibility has not yet been certified.
- b. Appeal: A request by the applicant or recipient for remedy from a current decision or situation.
- c. Job candidate: A person who has applied for the services, is a recipient of services, or is receiving services under an IPE of vocational rehabilitation as it pertains to the provisions concerning an appeal or mediation.
- d. Impartial Hearing Officer: An individual who:
  - i. Is not an employee of a public agency;
  - ii. Is not a member of the State Rehabilitation Advisory Council;
  - iii. Has not been involved in previous decisions regarding the vocational rehabilitation applicant or job candidate;
  - iv. Has knowledge of the delivery of vocational rehabilitation services, the Title I State Plan and the Federal and State rules governing the provision of VR services;
  - v. Has training in the performance of the duties of a hearing officer; and
  - vi. Has no personal or financial interest that would be in conflict with the individual's objectivity.
- e. [Client Assistance Program](#) provides assistance in informing and advising all recipients and job candidates of the available benefits under the Act and to assist them in legal, administrative, or other appropriate remedies to ensure the protection of their rights.
- f. Mediation: A jointly agreed-to act or process of intervention between conflicting parties to promote reconciliation, settlement, or compromise on the issue(s) under appeal.
- g. Mediator: An individual who:
  - i. Is impartial;

IOWA VOCATIONAL REHABILITATION SERVICES

510 E. 12<sup>TH</sup> STREET

DES MOINES, IA 50319



## IOWA VOCATIONAL REHABILITATION SERVICES

- ii. Is trained in effective mediation techniques; and
  - iii. Is under contract for said service with the State of Iowa.
- h. Recipient of Service: A student who is potentially eligible or any job candidate who has applied for or is receiving services.
- i. Supervisor or Agency Review: A review conducted by the Supervisor or Bureau Chief of the office where the individual is contesting an action taken by the Counselor.
- j. Parent/Guardian/Other Representative: This may be anyone the job candidate designates. This is referenced as PGR throughout this section.
- k. Administrative Review: An administrative review of a hearing officer's decision is conducted by the Iowa Department of Education Director or by an official from the Governor's Office. Both parties have an opportunity to submit additional evidence and information not previously provided during the appeal or obtained following the Hearing Officer's decision. The administrative review is the final decision of the agency unless either party brings a civil action in Iowa District Court. This request for a review may be made either by the recipient or by IVRS. Federal regulations indicate neither reviewing official may delegate the responsibility for making the final decision; therefore, when this occurs, the Governor's Office will be contacted for determination regarding administrative review (34 CFR § 361.57(g)(2)(i)).
- l. Time Allowed: From the initiation of any appeal by the recipient, the hearing must be held within 60 calendar days before an Impartial Hearing Officer. The time allowance is considered to begin on the date the appeal form is received from the recipient or completed by the Supervisor, or on the date the individual orally appealed. The time may be extended by mutual agreement or the showing of good cause for the extension by one of the parties.
- m. Remote Hearings: Recipients who wish to proceed to an appeal hearing shall be given the option of meeting face-to-face with the hearing officer and VR staff or having the hearing conducted via video conferencing. A face-to-face hearing shall be

IOWA VOCATIONAL REHABILITATION SERVICES

510 E. 12<sup>TH</sup> STREET

DES MOINES, IA 50319



held in a location convenient to the job candidate. A copy of the case file will be made available to the appeal officer. The hearing will be recorded.

### **3. APPEAL PROCESS DESCRIPTION**

Once a request for appeal or mediation is received, the recipient or PGR is first given the opportunity to review the decision with the Supervisor of the office where the case is assigned. The recipient is to be informed that while they may bypass the Supervisory review and go directly to the impartial hearing, many appeals are quickly and equitably resolved at the Supervisory level. The recipient must also be informed that whether they agree to a Supervisory review or not they will be offered the opportunity to attempt to resolve the dispute through a mediation process. The recipient or PGR 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.

If a Supervisory or agency review was agreed to, but the recipient or PGR is not satisfied with that decision, an appeal of the decision or request for mediation may be filed with the Administrator of IVRS.

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

### **4. NOTIFICATION OF RIGHTS**

All recipients will be informed of their right to appeal as well as the procedures by which they file an appeal. The right to appeal is listed on the Pre-ETS Agreement for Potentially Eligible students. Rights are also identified in the Rights and Responsibilities for anyone applying for IVRS services. Rights are also discussed at other times throughout the rehabilitation process.

### **5. PROCEDURES**

#### **Supervisor/Agency Review:**

At the first level, the dissatisfied recipient is advised that a Supervisory review of the Counselor's decision may be requested by notifying the Counselor or Supervisor in person, by phone, or by letter of the decision to appeal or mediate.



## IOWA VOCATIONAL REHABILITATION SERVICES

- a. If the Supervisor has been involved in decisions in the case to the degree they do not believe they can render a fair decision, or if the Supervisor is not going to be available to complete the review in a timely manner, the request for review and the case file will be forwarded to the Bureau Chief for resolution. The recipient may also involve CAP.
- b. When receiving a request for a Supervisory review, the Supervisor will notify all appropriate parties of the date and nature of the review; examine case file documentation; discuss the issues and reasons for the decision with the immediate Counselor and other parties who may have been previously involved with the case/issue; and, if necessary, meet with any or all parties to discuss the disagreement.
- c. The Supervisor will have ten working days from receipt of the request for review to decide the issue and notify the recipient in writing. A copy is sent to all appropriate parties.
- d. The recipient or PGR will be informed of the decision by letter/email. If the decision is not in accordance with the recipient or PGR wishes, the letter/email will detail further appeal or mediation procedures. The letter/email will also detail the availability of the CAP to discuss the recipient's appeal and, if CAP determines it appropriate, to assist in the preparation and presentation of the individual's case. The letter/email will include a request that the recipient notify the IVRS State Office within 10 working days of the date of the letter/email if they desire to appeal further.
- e. The outcome of the Supervisory review will be recorded in a case note entry in the recipient's case file along with a letter/email advising the recipient of the decision.
- f. After this process the recipient may request an agency review and submit that request, which is completed by the Bureau Chief. The Supervisor may also request that the Bureau Chief review the case. Anytime the decision is handed from the Bureau Chief to the requesting party, and the recipient does not agree with the

IOWA VOCATIONAL REHABILITATION SERVICES

510 E. 12<sup>TH</sup> STREET

DES MOINES, IA 50319



decision the recipient may request an impartial hearing or mediation. Nothing in a Supervisory or agency review negates the recipient's opportunity to exercise the appeal or mediation rights.

**Mediation:**

If mediation is the recipient's choice, the mediation:

- a. Shall be voluntary on the part of both parties;
- b. Is not to be used to delay the right of an individual to a hearing;
- c. Shall be conducted in a timely manner at a location convenient to both parties;
- d. Is conducted by a qualified and impartial mediator trained in effective mediation techniques, selected from a list maintained by the State agency;
- e. Is paid for by IVRS; and
- f. Should be held confidential as to discussions that occur during the mediation process (34 CFR § 361.57(d)(1) – (5)).

**Impartial Hearing Officer Review:**

- a. Appointment: As rapidly as possible after the receipt of an appeal, the parties shall agree to the selection of an impartial hearing officer from a list maintained by the State agency. If the parties do not agree on a hearing officer, the hearing officer shall be selected on a random basis (34 CFR § 361.57(f)).
- b. Time Frame and Extensions: Within 60 calendar days of the receipt of the appeal in the State Office, the hearing must be held. Parties to the hearing must be notified of the decision within 30 calendar days after the completion of the hearing. The time frames cited in this section may be extended by a reasonable amount by the showing of good cause on the part of one party or mutual agreement of both parties.



## IOWA VOCATIONAL REHABILITATION SERVICES

- c. **Case File Availability:** The recipient shall be informed that the filing of an appeal implies consent for the release of the case file information to the impartial hearing officer. The hearing officer shall have access to the case file or a copy thereof at any time following acceptance of the appointment to hear the case.
- d. **Hearing:** Within five working days after appointment, the impartial hearing officer will notify the individual of:
  - i. The role of the hearing officer;
  - ii. The individual's right to select either a face-to-face or ICN hearing;
  - iii. The individual's understanding of the reasons the recipient is appealing and the requested resolution;
  - iv. The date the recipient and/or PGR 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);
  - v. The availability of the recipient's case file for review and copying in a VR office prior to the hearing. If the recipient chooses to have a hearing by ICN a complete copy of the case file will be provided to local staff for use at the hearing. Arrangements for the file to be in any particular office may require several days' notice. If the case record contains potentially harmful information, the hearing officer should refer to the containing Confidentiality Release of Information;
  - vi. 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 ICN hearing. In situations where this is a problem, the needs of the recipient shall prevail;
  - vii. 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;
  - viii. 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;

IOWA VOCATIONAL REHABILITATION SERVICES

510 E. 12<sup>TH</sup> STREET

DES MOINES, IA 50319



## IOWA VOCATIONAL REHABILITATION SERVICES

- ix. 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;
  - x. Information about the amount of time it will take to complete the hearing process;
  - xi. The possibility of reimbursement of necessary travel and related expenses; and
  - xii. 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.
- e. Decision: The Impartial Hearing Officer makes a decision based on the provisions of agency policy, the approved State Plan and the Rehabilitation Act of 1973, WIOA, and all applicable State and Federal law, and provides a full written report of the findings and grounds for the decision within 30 calendar days of the completion of the hearing.

### **6. PROVISION OF SERVICES**

Unless the individual with a disability or the individual's representative requests it, pending a decision by a mediator or hearing officer, the Counselor shall not institute a suspension, reduction, or termination of services being provided to the individual.

### **7. FINALITY OF REVIEW**

Unless either party chooses to seek Administrative or judicial review under the Iowa Administrative Procedures Act, the decision is final when received from the Impartial Hearing Officer. Even if there is a request for an Administrative or judicial review, the Hearing Officer's decision will be implemented pending the outcome of that review.

### **8. EXCEPTIONS**

- a. None

IOWA VOCATIONAL REHABILITATION SERVICES

510 E. 12<sup>TH</sup> STREET

DES MOINES, IA 50319





**9. APPLICABLE FORMS/DOCUMENTS**

- a. [Appeal Request](#)
- b. [Client Assistance Program Policy](#)

**10. TRAINING**

- a. [Hearings and Appeals Policy Training](#)