

## CHAPTER 7: LRS Policy Manual

<b>Part</b> 107	<b>Name</b> Applicant/Client Appeals Rights	<b>Effective Date</b> *July 1, 2010**
<b>Director</b> Ken York	<b>Signature</b> on file	
<b>Appointing Authority</b> Johnny Riley	<b>Signature</b> on file	

### A. Administrative Review

1. The administrative review is a process which may be used by applicants/clients (or as appropriate the applicant's/client's representative) for a timely resolution of disagreements. However, this process may not be used as a means to delay a fair hearing conducted by an Impartial Hearing Officer. The administrative review will allow the applicant/client an opportunity for a face to face meeting in which a thorough discussion with the regional manager or designee can take place regarding the issue(s) of concern. All administrative reviews render a decision expeditiously after receipt of the initial written request from the applicant/client.

2. All applicants/clients must be provided written notification of appeal rights at the time of application, placement into a category in the order of selection, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services, including evaluations and assessment services and plan development (IPE), will continue during the administrative review appeal process unless the services being provided were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

3. In order to insure that an applicant/client is afforded the option of availing themselves of the opportunity to appeal agency decisions impacting their vocational rehabilitation case, written notification by the counselor and/or Regional Manager must include:

- a. the agency's decision;
- b. the basis for, and effective date of the decision;
- c. the specific means for appealing the decision;
- d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation;
- e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
- f. the name and address of the regional manager who should be contacted in order to schedule an administrative review, mediation session, or fair hearing.

*Note:* All administrative reviews must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

## **B. Mediation**

1. The mediation process will provide the applicant/client, (or as appropriate the applicant's/client's representative) an opportunity for dispute resolution proceedings which are fair, effective, and expeditious.

2. The mediation process will be offered to an applicant/client as an option at the time a formal request for a fair hearing is made. However, this process may not be used as a means to delay or supplant a Fair Hearing conducted by an Impartial Hearing Officer.

3. The mediation process will be conducted by a qualified and Impartial Mediator as expeditiously as possible upon notification of the initial request from the applicant/client. A list of qualified Impartial Mediators will be maintained by Louisiana Rehabilitation Services.

4. The mediation process must be entered into voluntarily by all parties. Discussions that occur during the mediation session will be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties involved in the mediation session will be required to sign a confidentiality pledge prior to the commencement of such process. The Impartial Mediator must ensure that if an agreement is reached by the parties in dispute, this agreement is set forth in a written mediation agreement prior to the conclusion of the session. This written agreement is the only information from the mediation session that may be presented at any subsequent due process hearing or civil proceeding.

5. All applicants/clients must be provided written notification of appeal rights at the time of application, placement into a category in the order of selection, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services, including evaluations and assessment services and plan development (IPE), will continue during the Mediation process unless the services being provided were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

6. In order to insure that an applicant/client is afforded the option of availing themselves the opportunity to appeal agency decisions impacting their vocational rehabilitation case, written notification by the Counselor and/or Regional Manager must include:

- a. The agency's decision (inclusive of an Administrative Review, if conducted);
- b. The basis for, and effective date of, the decision;
- c. The specific means for appealing the decision;
- d. The applicant's/client's right to submit additional evidence and information, including the client's right to representation at the Mediation session or Fair Hearing;

e. Advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and

f. The name and address of the Regional Manager who should be contacted in order to schedule a mediation session or fair hearing.

*Note:* All mediation sessions must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

### **C. Fair Hearing**

1. The fair hearing process may be requested by applicants/clients to appeal disputed findings of an administrative review, or as a direct avenue of appeal bypassing the administrative review or the mediation process option. The fair hearing must be conducted by an impartial hearing officer within 60 days of the initial written request. At the time the fair hearing is requested, the applicant/client shall be offered mediation as an option to resolve a dispute.

2. An Impartial Hearing Officer shall be selected on a random basis or by agreement between the Louisiana Rehabilitation Services Director and the applicant/client. This officer shall be selected from among a pool of qualified persons identified jointly by Louisiana Rehabilitation Services and members of the Louisiana Rehabilitation Council. The Impartial Hearing Officer shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services within 30 days of completion of the hearing.

3. All applicants/clients must be provided written notification of appeal rights at the time of application, placement into a category in the order of selection, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services, including evaluations and assessment services and plan development (IPE), will continue during the fair hearing process unless the services being provided were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

4. In order to insure that the applicant/client is afforded the option of availing themselves the opportunity to pursue a fair hearing, written notification by the counselor and/or Regional Manager must include:

a. the agency's decision (inclusive of an administrative review and/or mediation agreement, if conducted);

b. the basis for, and effective date of, that decision;

c. the specific means for appealing the decision;

d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation at the fair hearing;

e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and

f. the means through which a fair hearing may be requested, including the name and address of the regional manager.

*Note:* All fair hearings must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

#### **D. Review of Fair Hearing Decisions**

1. The impartial review for decisions rendered by Impartial Hearing Officer is the final level of appeal within the **\*Louisiana Workforce Commission/Office of Workforce Development\*\*** regarding disputes arising within Louisiana Rehabilitation Services. Subsequent to a decision being reached as a result of the impartial review by the **\*Office of Workforce Development\*\*** any further pursuit of the issue by the applicant/client (or, as appropriate, the applicant/client's representative) or the Agency must be by civil action through the public court system.

2. The decision of the Impartial Hearing Officer will be final unless the applicant/client or the Agency requests a review of the Impartial Hearing Officer's decision by making a written request to the **\*Director of the Office of Workforce Development,\*\*** within 20 days of mailing the decision. The **\*Office of Workforce Development's Director\*\*** cannot delegate the responsibility for making this final decision to any other officer or employee of Louisiana Rehabilitation Services. The applicant/client and the Agency shall be provided an opportunity to submit additional evidence and information relevant to the final decision.

3. The **\*Office of Workforce Development's Director\*\*** may not overturn or modify a decision of an Impartial Hearing Officer, or part of such a decision, that supports the position of the applicant/client unless the **\*Office of Workforce Development's Director\*\*** determines, 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 State Plan, the Rehabilitation Act (including regulations implementing the Act) or any State regulation or policy that is consistent with the federal requirements specified in the Act.

4. The **\*Office of Workforce Development's Director\*\*** shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services. This decision shall include a full report of the findings and grounds for the decision.

## **E. Civil Action**

Any party aggrieved by a final decision from an impartial review by the **\*Office of Workforce Development\*\*** may bring civil action for review of such decision. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. If a party brings a civil action, the final decision of the **\*Office of Workforce Development, \*\*** shall be implemented pending review by the court. In any action brought under this subsection, the court shall:

1. Receive the records relating to the hearing.
2. Hear additional evidence at the request of a party to the action; and
3. Base the decision of the court on the preponderance of the evidence, and shall grant such relief as the court determines to be appropriate.

### **\*AUTHORIZATION**

Federal Register, Volume 66, Department of Education, 34 CFR 361, Part VI, State Vocational Rehabilitation Services Program, §361.57

### **CONTACT**

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