

Part	Name	Effective Date
421	Due Process – Applicant/Consumer Appeal Rights	*July 2, 2012**

Authorization

Federal Register, Volume 66, Department of Education, 34 CFR 361, Part VI, State Vocational Rehabilitation Services Program, §361.47, §361.48, §361.52 and §361.57.

The Rehabilitation Act requires that procedures be established for reviewing determinations made by agency personnel that affect the provision of vocational rehabilitation services to applicants or eligible individuals.

I. LEVELS OF APPEAL**A. Consumer’s Levels of Appeal**

The applicant or consumer (or as appropriate, the applicant’s/consumer's representative) has four levels of appeal that can be pursued within Office of Workforce Development (OWD)/Louisiana Rehabilitation Services:

- 1) Administrative Review
- 2) Mediation Session
- 3) Fair Hearing
- 4) Review of a Fair Hearing Decision

The three (3) levels of appeal available within Louisiana Rehabilitation Services are Administrative Review, Mediation Session, and the Fair Hearing. The final and fourth (4th) level of appeal within the Office of Workforce Development/ Louisiana Rehabilitation Services is the Review of a Fair Hearing Decision.

The applicant/consumer is not required to pursue all four (4) levels of appeal; each level is optional. However, the applicant/consumer is required to use the available levels of appeal in succeeding order for each separate request i.e., meaning, once one level is selected, the applicant/consumer can move forward in the process but not backwards.

B. Definition for Each Level of Appeal

Below is a brief definition for each level of appeal. Refer to *Applicant/Consumer Appeal Rights* in the policy manual for more detailed information.

1. Administrative Review - The administrative review will allow the applicant/consumer 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. Requests for exceptions to policy are excluded from administrative review by Regional Managers.
2. Mediation - This is a voluntary process that may be terminated at any time. In this process a neutral party, an Impartial Mediator, assists the applicant/consumer and LRS reach their own agreement, if possible. The Impartial Mediator does not have any authority to make a binding decision. If an agreement is reached by the

parties in dispute, this agreement is set forth in a written mediation agreement, which, when signed, shall be binding upon all parties.

3. Fair Hearing - The fair hearing is the last level of appeal available through Louisiana Rehabilitation Services. Any decision made as a result of the hearing, by the Impartial Hearing Officer, shall be final unless the applicant/consumer (or as appropriate, the applicant's/consumer's representative) 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.
4. Review of a Fair Hearing Decision - The impartial review for decisions rendered by Impartial Hearing Officers is the final level of appeal within the 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 any further pursuit of the issue by the applicant/consumer or the Agency must be by civil action through the public court system.

II. PROCESSING REQUESTS FOR APPEALS

Applicants/consumers, who are dissatisfied with services that are furnished or denied to them, or any decision affecting their vocational rehabilitation program, have the right to request either an Administrative Review or Fair Hearing by writing to the Regional Manager within 15 calendar days of the date the Agency mails the letter notifying them of the action taken. Requests for exceptions to policy are excluded from administrative review by Regional Managers; however, the consumer retains the right to request a fair hearing.

A. Administrative Review

1. Applicant/Consumer Responsibility:

The applicant/consumer must make a written request for an administrative review and submit it to the Regional Manager.

2. Regional Manager Responsibility:

Upon receipt of this written request the Regional Manager will contact the applicant/consumer to schedule a date and time to conduct the review.

3. Timeline:

The Regional Manager will conduct the administrative review and rendered a decision within fifteen (15) calendar days from the receipt of the initial written request.

B. Fair Hearing

1. Applicant/Consumer Responsibility

The applicant/consumer must make a written request for a fair hearing and submit it to the Regional Manager.

2. Regional Manager Responsibility

Upon receipt of this written request the Regional Manager will:

- a. Immediately mail the applicant/consumer the Mediation Notification Letter (RS-38) with the Mediation Fact Sheet (RS-39) attached, offering the option of a mediation session, in lieu of the fair hearing. Mail out to the applicant/consumer should not exceed two (2) working days from the date the request for a fair hearing was made. The fair hearing option can still be exercised at a later date if mediation is opted for and doesn't resolve the appeal.
- b. The applicant/consumer will have seven (7) calendar days from the date the letter is postmarked to respond back to the Regional Manager to either continue with the fair hearing requested, or to pursue mediation. If the applicant/consumer doesn't respond within this time period, the agency will proceed with the fair hearing process.
- c. If the applicant/consumer opts for mediation, the Regional Manager will notify the Program Coordinator for Appeals in State Office immediately via e-mail or fax.
- d. If mediation is selected, the Regional Manager will follow the guidelines for processing a mediation request under Part 421 (II) C.
- e. At the same time the Regional Manager is completing a-d above he/she shall simultaneously overnight the applicant's/consumer's request for a fair hearing to State Office through the mail system (not to exceed 3-5 working days from date the request was made). Packet shall include a cover letter from Regional Manager stating:
 - Why the applicant/consumer is requesting a fair hearing.
 - Applicant's/consumer's full name, current address, telephone number, SSN, and counselor number.
 - Copy of applicant's/consumer's written request for the fair hearing and a copy of the RS-38 and RS-39 attached to the cover letter.
 - Complete copy of the hard-copy case record setup in a standard case record folder. The word "copy" is to be written across front of case record folder.

NOTE: State Office personnel will have the ability to print out any hard copy information needed from AWARE.

- f. The LRS Regional Manager is responsible for recording the fair hearing proceedings and sending the tape of the fair hearing to State Office within 7 working days after the hearing occurred. The tape is to be labeled: "fair hearing –name of consumer" and "date of hearing – name of LRS regional office".

- g. Requesting tapes – there is a charge for making a copy of the fair hearing tape. The consumer and/or representative can request a tape of the fair hearing by making the request in writing to the Regional Manager. The Regional Manager will forward the request for processing to the Program Coordinator for appeals in State Office.

3. State Office Responsibility

State Office is responsible for contacting the consumer and the Impartial Hearing Officer selected once the information is received from the Regional Manager. The Impartial Hearing Officer is responsible for contacting the applicant/consumer and the Regional Manager regarding a date and time for the fair hearing. The meeting will be held at the office location where the applicant/consumer is served.

4. Timelines

a. Fair Hearing

An Impartial Hearing Officer will conduct the fair hearing within sixty (60) calendar days of receipt of the initial written request from the applicant/consumer (inclusive of the administrative review and/or mediation, if conducted) unless both parties agree to an extension per 421(ii)h.

b. Fair Hearing Decision Report

The Impartial Hearing Officer must render a decision within thirty (30) calendar days following the fair hearing. Written notification of the decision must be provided to the applicant/consumer, LRS state and regional office, and any other appropriate parties. The LRS Director will advise the Regional Manager how to implement any directives given to the agency as a result of an Impartial Hearing Officer's decision pending expiration of the 20 day time period to request a review of the Impartial Hearing Officer's decision and the impartial review conducted by the Director of the Office of Workforce Development, if applicable.

C. Mediation

1. Applicant/Consumer Responsibility

Once the applicant/consumer has requested a fair hearing, mediation will be offered. The applicant/consumer must contact the Regional Manager within 7 calendar days to advise if he/she wants to exercise this option. The request should include a written summary from the applicant/consumer that states the reason for the request and should not exceed one (1) page. If a written summary is not provided, the written statement from the fair hearing request will be utilized for the applicant/consumer's statement.

Our agency is to provide assistance to the applicant/consumer in the preparation of the 1 page summary if such assistance is required as a result of the applicant's/consumer's disability.

2. Regional Manager Responsibility

The Regional Manager shall immediately forward this request to State Office through the mail system, not to exceed 3 working days from date the request was made, as follows:

- a. Send a memo to include:
 - (1) Applicant's/consumer's full name, current address, telephone number, SSN, and counselor number;
 - (2) The applicant's/consumer's 1 page summary which states the reason for the request, if provided;
 - (3) Brief statement why the applicant/consumer is requesting a mediation session; and
 - (4) Maximum of 1 page synopsis of agency's position regarding the situation.
- b. Exception Requests - only complete the first two bullets in 1 above and forward to State Office.

3. The Regional Manager shall also:

Ensure that the following forms will be available at all mediation sessions: Agreement to Mediate (RS-35), Mediation Confidentiality Agreement Pledge (RS-36), Mediation Settlement Agreement (RS-37), and the Mediation Fact Sheet (RS-39).

4. State Office Responsibility

If State Office opts to participate in mediation, State Office is responsible for contacting the consumer and the Impartial Mediator selected once the information is received from the Regional Manager. The Impartial Mediator is responsible for contacting the applicant/consumer and the Regional Manager regarding a date and time for the mediation session. The meeting will be held at the regional office where the applicant/consumer is served. However, if State Office opts to forgo mediation, the Regional Manager and the consumer will be notified and the Fair Hearing will be scheduled.

5. Timelines

a. Mediation Resulting from Fair Hearing Request

The Impartial Mediator will conduct the mediation session within fifteen (15) calendar days from his/her receipt of the request for mediation.

b. Mediation Settlement Agreement Reached

If a Mediation Settlement Agreement (RS-37) is reached the Impartial Mediator will prepare the agreement. The Regional Manager will assist by

ensuring the agreement is typed and all necessary corrections and copies are made at the mediation session. Then, the Impartial Mediator will distribute the final, typed, and signed agreement at the conclusion of the mediation session (Regional Office receives original, applicant/consumer and Impartial Mediator each receive a copy of the agreement).

D. Review of a Fair Hearing Decision

Either party (the applicant/consumer or Louisiana Rehabilitation Services) aggrieved by a decision of an Impartial Hearing Officer can request an impartial review of said decision through the Office of Workforce Development. The Director of the Office of Workforce Development will render a decision within 30 calendar days of receipt of the written request for review.

1. How to Request an Impartial Review

The LRS applicant/consumer or LRS agency can request an impartial review of an Impartial Hearing Officer's decision by making a written request to the Director of the Office of Workforce Development. This written request for review must be made within 20 calendar days of the mailing of the Impartial Hearing Officer's decision. The party making the request must also enclose a copy of the Impartial Hearing Officer's decision in question.

2. Processing the Request for Impartial Review

Within ten (10) calendar days of receipt of the request for review, the Director of the Office of Workforce Development will inform both parties, via letter, an impartial review has been requested regarding the Impartial Hearing Officer's decision. Both parties will be advised they have fifteen (15) calendar days from the date of the mailing of the Secretary's notice to submit additional written information.

3. Impartial Review Decision

The Director of the Office of Workforce Development will review all information provided including any additional written information received from both parties, and, if applicable, any information requested by the Director of the Office of Workforce Development. Upon completion of the review, the Director of the Office of Workforce Development shall render a final decision in writing, including a full report of the findings and grounds for the decision. The Director of the Office of Workforce Development shall provide a copy of the final decision to all parties involved. The decision made by the Director of the Office of Workforce Development Impartial Review shall be final. Any further pursuit of this issue must be by civil action through the public court system.

E. Canceling Appeal Requests

If an applicant/consumer decides to withdraw the formal request for a mediation session or fair hearing for any reason, the request must be made to the Regional Manager. The Regional Manager shall then notify State Office of this request within 5 calendar days.

F. Abandonment of Appeal Requests

Should the applicant/consumer fail to appear for a scheduled administrative review, mediation session, or fair hearing without giving prior notice of his/her inability to be present, the proceeding will be considered abandoned.

G. Impact of Appeal Requests on Services

The agency shall not reduce, suspend, or terminate services being provided to an individual (including evaluation and assessment services and plan development) pending a decision by a Regional Manager, Impartial Mediator, Impartial Hearing Officer, or the Director of the Office of Workforce Development unless:

1. The individual, or the individual's representative, requests it; or
2. The services at issue were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

H. Extending Timelines for the Appeals Process

1. Sufficient Cause
2. The appeals process cannot exceed the established timelines unless the participating parties agree upon an extension jointly. Extensions to these timelines should only be made as a result of sufficient cause as agreed upon by the participants (i.e., the applicant/consumer [or as appropriate, applicant's/consumer's representative], the Regional Manager, the Impartial Mediator, or the Impartial Hearing Officer.)
3. Exception Regarding Services In Progress
4. If the fair hearing request is directly related to an agency decision to end or alter services in progress, the fair hearing must be conducted and a decision must be reached within sixty (60) calendar days of the initial written request. The consumer will not have the option of requesting delays past this time. The appeal will be dismissed if the consumer fails to participate in the fair hearing within the sixty (60)-calendar day requirement.

III. QUALIFICATIONS FOR IMPARTIAL MEDIATORS/HEARING OFFICERS

Qualified Impartial Mediators and Impartial Hearing Officers must meet the following requirements:

A. All applicants must meet the following criteria:

1. The individual must not be an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a state office of mediators, or an employee of an institution of higher education).
2. The individual must not be a member of the State Rehabilitation Council.
3. The individual *has not been involved previously in the vocational rehabilitation of the applicant or eligible consumer.**
4. The individual must have knowledge of or the ability to learn the delivery of vocational rehabilitation services, the vocational rehabilitation state plan, and the federal and state rules governing the provision of such services and training with respect to the performance of official duties.
5. The individual must have no personal or financial associations that would present a conflict of interest.
6. Must successfully complete any and all Impartial Mediator or Impartial Hearing Officer training presented by LRS, as applicable.
7. An individual is not considered to be an employee of LRS for purposes of this definition solely because the individual is paid by the agency to serve as a mediator or hearing officer.

B. Impartial Mediators

An Impartial Mediator shall be selected to hear a particular case on a random basis. Louisiana Rehabilitation Services shall maintain a list of qualified Impartial Mediators. Impartial Mediators must be trained and experienced in effective mediation techniques. Minimum qualifications shall include 30 hours of specialized training in mediation/conflict resolution training as an Impartial Mediator, and state approved or recognized mediation certification/license, if applicable.

C. Impartial Hearing Officers

An Impartial Hearing Officer shall be selected to hear a particular case on a random basis, or by agreement between the LRS Director and the applicant/consumer (or as appropriate, the applicant's/consumer's representative). The Impartial Hearing Officers shall be selected from among a pool of qualified persons jointly identified by Louisiana Rehabilitation Services and members of the Louisiana Rehabilitation Council.

Minimum Qualifications - A master's degree in counseling (any field), social work, education, sociology, psychology, human relations, nursing or personnel administration.

Substitutions:

1. A baccalaureate degree plus two years of experience in counseling, social services, teaching, nursing, physical therapy, occupational therapy, rehabilitation instruction, rehabilitation evaluation, worker's compensation dispute resolution or worker's compensation rehabilitation dispute resolution; or
2. Attorney-at-Law licensed by the State of Louisiana; or
3. Physician licensed by the State of Louisiana (in any field).