

Notice of Decisions and Appeals Procedures

Chapter 3

3.00 Area Complaint Resolution. When disputes arise, the counselor and supervisor are encouraged to negotiate resolution with the individual. If their attempts fail, the individual may be provided information regarding the availability of the Ombudsman to discuss the questions and concerns. The Ombudsman service is an information alternative included in the resolution process provided by the Ombudsman Unit in the DVR state office. The toll free number is 1-866-515-3692 or 1-800-451-4327.

3.01 Continuation of Services through Appeal. Services being provided for the individual shall not be suspended, reduced, or terminated pending a mediation agreement, a decision by a hearing officer, or reviewing official. This includes evaluation, assessment, plan development and IPE services.

1. Services may be suspended, reduced or terminated if such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct or so requested by the individual with a disability or in an appropriate case, the individual's representative.
2. Support services, such as maintenance, transportation, personal assistance services, childcare or other services to family members, provided to enable an individual to participate in a service that is reduced, suspended or terminated, shall also be reduced, suspended, or terminated.

3.02 Determinations and Review Procedures

1. A determination is any decision made by DVR that affects the provision of vocational rehabilitation services to an applicant or eligible individual.
2. A determination shall be in writing and shall include notification of a right of review.
3. Notification of Right of Review
 - a. The notification shall include information on the procedures for filing a request for an administrative review or administrative hearing and the availability of Mediation.
 - b. The notification shall include a description of the individual's right to contact the Disability Rights Florida's CAP for assistance and advocacy in pursuing appropriate remedies.

3.03 Administrative Review

1. An individual may request an administrative review when he/she is dissatisfied with and wishes to dispute DVR's determination. The Area Director, or his or her designee shall, upon request by

the individual, conduct the administrative review to facilitate the speedy resolution of the dispute.

2. The individual or his or her authorized representative shall have 21 calendar days from the date of receipt of the notification of determination to inform DVR in writing of his or her desire for an administrative review. If DVR provides the notification to the individual or authorized representative by mail, 5 days shall be added to the prescribed period. The individual may elect to bypass the administrative review and file a petition for an administrative hearing. The individual, the individual's representative or CAP, if representing the individual, may initiate a timely request to extend the 21 days.
3. The individual or authorized representative may attend the administrative review in person or by teleconference and shall have the right to present information relevant to the determination.
4. DVR Area Director or his or her designee shall render a decision based upon the individual's case record, any information presented by the individual or by DVR at the administrative review, any other pertinent information, and applicable laws, regulations, and DVR policy. The Area Director or his or her designee shall render a decision in writing consisting of findings and conclusions within five (5) working days of the administrative review. A copy shall be placed in the individual's records.
5. The individual shall have the right to challenge the administrative review decision by timely filing with the Director of DVR a request for mediation or a petition for an administrative hearing within 21 days of receipt of the decision.

3.04 **Mediation.** Mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute between DVR and the individual and/or the individual's representative. It is an informal and non-adversarial process with the objective of helping those in disputes reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties, not the mediator. [FL Statutes 44.1011]

1. If an individual files a petition for an administrative hearing, and upon the agreement of the individual and DVR, the dispute shall be mediated by a family, county court or civil court mediator certified by the Florida Supreme Court. Such mediation shall be paid for by DVR.
2. DVR shall propose three (3) certified mediators from the judicial circuit in which the individual resides. The individual shall select from such list one (1) of the three (3) to mediate the dispute. The mediator may not have been previously involved in the individual's vocational rehabilitation or have a personal, professional, or financial interest that would impair the mediator's objectivity.
3. Counselors will review the option of mediation with individuals at the time of application and at IPE development. Detailed information regarding mediation will be contained in all decision letters.

4. At the time of requesting an administrative hearing, information will be provided regarding the availability of voluntary mediation. An individual may request mediation by sending a letter to the DVR Director.
5. Requests for mediation shall be reviewed. DVR will first determine whether the matter can be resolved without the need for mediation. If it is determined that the applicant/eligible individual's issues can be resolved, DVR will notify the applicant/eligible individual and the counselor of this determination. If DVR determines that the case is appropriate for mediation, DVR will agree to participate in mediation.
6. DVR utilizes mediators who are certified by the Florida Supreme Court and knowledgeable in laws and regulations relating to the provision of vocational rehabilitation services. Qualified and impartial mediators may not have been previously involved in an individual's vocational rehabilitation or have personal professional or financial interests that would conflict with the mediator's objectivity.
7. The individual and/or authorized representative and DVR must agree upon the choice of mediator and his/her impartiality in the dispute. DVR shall pay the cost of the mediation process. Mediation will be scheduled in a timely manner and in a location convenient for individual's access. Participation in mediation will not deny or delay due process.
8. Individuals may have legal representation or request CAP representation during mediation. Individuals may freely present information and evidence during the mediation process. An agreement reached by the parties to the dispute in the mediation process will be contained in a written, signed mediation agreement.
9. Discussions during the mediation process will be confidential. Information disclosed only in mediation cannot be used as evidence in any due process hearing or civil proceeding. Parties involved in the mediation may be required to sign a confidentiality agreement prior to the commencement of the mediation process.

3.05 Administrative Hearing

1. If the individual is dissatisfied with any determination made by DVR and/or decision of the administrative review or the outcome of Mediation, or has elected to bypass the administrative review or mediation, the individual may file a written request for an administrative hearing before an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings (DOAH).
 - a. The request for an administrative hearing must be made within 21 days after the administrative review decision is received, or if the administrative review option is bypassed by the individual, within 21 days after the determination of DVR is received. If DVR provides the notification to the individual or authorized representative by mail, five (5) days shall be added to the prescribed period.

- b. The request for a hearing must be written to the Director of DVR.
- c. The individual may be represented at the administrative hearing by an attorney, or any person selected by the applicant or eligible individual competent to meet the requirements for a personal representative pursuant to Rule 28-106.106, F.A.C. During the administrative hearing, the individual, or as appropriate, the individual's representative may present witnesses and evidence and may examine all witnesses and other relevant sources of information and evidence.
- d. The administrative hearing shall be conducted in conformance with the requirements of Chapter 120, Florida Statutes, and Chapter 28-106, F.A.C.
- e. The ALJ shall issue a Recommended Order based on Federal and Florida law. The Florida Commissioner of Education shall review the Recommended Order and the parties' Exceptions to the Recommended Order, if any, and pursuant to Section 120.57, Florida Statutes, issue a final Order. The Commissioner may not overturn or modify the ALJ's Recommended Order except as provided in Section 120.57 (1) Florida Statutes.

2. As DVR enters into contracts and agreements to implement public private partnerships for the delivery of services, DVR will retain all authority and responsibility for determinations concerning the provision of vocational rehabilitation services. Contract providers will be required to cooperate as necessary to ensure the individual's ability to exercise his or her rights to mediation and an administrative hearing.

3.06 Commissioner's Final Review. An order or decision issued by the Commissioner of Education in the above process is Final. A party aggrieved by the final decision is entitled to judicial review pursuant to Section 120.68, Florida Statute.

3.07 Judicial Review

1. An individual who has exhausted all available and adequate administrative remedies and is aggrieved by the administrative disposition of the matter in dispute is entitled to judicial review.
2. An individual who has pursued judicial review as in 3.07(1) and disagrees with the decision of the judicial review, has a right to bring a civil action.

Stevens Amendment

The Florida Department of Education, Division of Vocational Rehabilitation (VR) is an equal opportunity employer. It is against the law for VR as a recipient of Federal financial assistance to discriminate against any individual in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief. The application process used by VR to determine eligibility for services, any subsequent services and the entire VR process are subject to these non-discrimination requirements. Auxiliary aids and services are available upon request to individuals with disabilities. VR program receives 78.7 percent of its funding through a grant from the U.S. Department of Education. For the 2021 Federal fiscal year, the total amount of grant funds awarded were \$176,836,896. The remaining

21.3 percent of the costs (\$47,860,557) were funded by Florida State Appropriations. Revised October 2021.