

**DEPARTMENT OF LABOR and EMPLOYMENT**

**Division of Vocational Rehabilitation**

**REHABILITATION SERVICES (STAFF MANUAL VOLUME 9)**

**12 CCR 2513-1**

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**Statement of Basis and Purpose, Fiscal Impact, and Specific Statutory Authority of Revisions Made to Rule Manual 9**

A rewrite of staff manual Volume 9 (Rehabilitation) was finally adopted at the 12/6/85 State Board meeting, with an effective date of 2/1/86 (Document 10). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to sections 9.103.2, 9.201.2, were finally adopted at the 6/6/86 State Board meeting, with an effective date of 8/1/86 (Document 1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Addition of sections 9.300 - 9.305.2 were finally adopted following publication at the 7/10/87 State Board meeting, with an effective date of 9/1/87 (Document 9). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Addition of sections 9.400 - 9.406.1 were finally adopted following publication at the 9/11/87 State Board meeting, with an effective date of 11/1/87 (Document 6). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to section 9.302 were finally adopted following publication at the 12/4/87 State Board meeting, with an effective date of 2/1/88 (Document 16). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to sections 9.400 - 9.406 were finally adopted following publication at the 3/4/88 State Board meeting (CSPR# 88 1 6 1), with an effective date of 5/1/88. Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to section 9.402 were finally adopted following publication at the 11/4/88 State Board meeting (CSPR# 88 8 25 1), with an effective date of 1/1/89. Statement of Basis and Purpose and specific

statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Addition of section 9.500 was adopted emergency at the 12/1/89 State Board meeting (CSPR# 89-11-7-2), with an effective date of 1/1/90. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Addition of section 9.500 was final adoption of emergency at the 1/5/90 State Board meeting (CSPR# 89-11-7-2), with an effective date of 1/1/90. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Reorganization and rewriting of Volume IX, sections 9.100 through 9.600, were finally adopted following publication at the 10/5/90 State Board meeting (CSPR# 90 5 1 1), with an effective date of 12/1/90. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Revisions to sections 9.500 and 9.900, were finally adopted following publication at the 3/8/91 State Board meeting (CSPR# 91-1-8-1), with an effective date of 5/1/91. This is a Rehabilitation Director rule. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Revisions to sections 9.104 through 9.108 were adopted emergency at the 2/5/93 State Board meeting (CSPR# 92-12-22-1), with an effective date of 3/1/93. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the State Board Office, Department of Social Services.

Revisions to sections 9.104 through 9.108 were final adoption of emergency at the 3/5/93 State Board meeting (CSPR# 92-12-22-1), with an effective date of 3/1/93. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the State Board Office, Department of Social Services.

Revisions to sections 9.101 through 9.109 were final adoption following publication at the 7/9/93 State Board meeting (CSPR# 93-4-19-2), with an effective date of 9/1/93. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the State Board Office, Department of Social Services.

Rewrite of section 9.200 was final adoption following publication at the 8/6/99 State Board meeting (CSPR# 99-5-21-1), with an effective date of 10/1/99. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Department of Human Services, Office of External Affairs.

Revisions to sections 9.200 through 9.252 were final adoption following publication at the 5/5/2000 State Board meeting (CSPR# 00-3-14-1), with an effective date of 7/1/2000. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Department of Human Services, Office of Public Affairs.

Revisions to section 9.600 - 9.640 were final adoption following publication at the 12/7/2001 State Board meeting (CSPR# 01-5-22-1), with an effective date of 2/1/2002. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.

Revisions to section 9.218 - 9.218.5 were final adoption following publication at the 2/7/2003 State Board meeting (Rule-making# 02-11-25-2), with an effective date of 4/1/2003. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.

Revision to Section 9.200 "Table of Contents", deletion of Section 9.217.4, and revision to sections 9.218.2 and 9.218.3 were final adoption following publication at the 5/6/2005 State Board meeting (Rule-making# 05-1-21-1), with an effective date of 7/1/2005. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.

Deletion of Sections 9.600 - 9.640 were final adoption following publication at the 9/7/2007 State Board meeting (Rule-making# 07-6-21-1), with an effective date of 11/1/2007. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.

Re-write of Sections 9.400 through 9.414 and deletion of Sections 9.900 - 9.900.3 were adopted as final following publication at the 5/2/2008 State Board meeting, with an effective date of 7/1/2008 (Rule-making# 06-11-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rules. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Boards and Commissions Division, State Board Administration.

Re-write of Sections 9.100 through 9.110.3 were adopted as final following publication at the 10/3/2008 State Board meeting, with an effective date of 12/1/2008 (Rule-making#08-5-30-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rules. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Boards and Commissions Division, State Board Administration.

Revisions and repeals of Sections 9.100 through 9.110.3 were final adoption following publication at the 4/6/2012 State Board meeting, with an effective date of 6/1/2012 (Rule-making# 11-9-7-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference

into the rules. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.

Revisions and repeals in Sections 9.200 through 9.221.3 were adopted as final following publication at the 5/4/2012 State Board meeting, with an effective date of 7/1/2012 (Rule-making# 11-9-7-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rules. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.

Revisions to Sections 9.102 through 9.108.1 and 9.203 through 9.209.2 were final adoption following publication at the 2/1/2013 State Board meeting (Rule-making# 12-12-2-1), with an effective date of 4/1/2013. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.

Revisions and additions to Sections 9.100 through 9.108.3 were final adoption following publication at the 8/8/2014 State Board meeting (Rule-making# 14-3-10-1), with an effective date of 10/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration.

## **9.100 VOCATIONAL REHABILITATION PROGRAM**

### **9.101 LEGAL AND OPERATIONAL BASIS**

The Department of Labor and Employment is the sole designated State agency that administers the vocational rehabilitation services program in Colorado, and the Division of Vocational Rehabilitation (DVR) is the sole designated State unit primarily concerned with the vocational rehabilitation of individuals with disabilities. Individuals with disabilities who receive services from DVR are referred to in general as “recipients” of services and include:

- A. Students with disabilities who are potentially eligible for vocational rehabilitation (VR) services for the purposes of Pre-Employment Transition Services
- B. Individuals who have applied to DVR
- C. Individuals who have been determined to be eligible for DVR services

### **9.102 PERSONNEL STANDARDS [Rev. eff. 8/1/15]**

Federal law requires state vocational rehabilitation agencies to establish qualified personnel standards and education and experience requirements for rehabilitation personnel, including rehabilitation counselors. DVR has established minimum qualifications through the Department of Personnel and Administration that are consistent with the minimum educational requirements established by the Commission on Rehabilitation Counselor Certification. Other positions within the rehabilitation counselor series such as orientation and mobility (O&M) specialists and vision rehabilitation therapists

are also required to meet the minimum educational standards of appropriate national level certifying bodies.

DVR shall take reasonable steps to ensure the safety of recipients of services and safeguard individuals from abuse or exploitation while participating in the VR program. As demonstrated by other state programs serving children, youth, and adults with disabilities, such steps may include the requirement of criminal background checks for personnel engaged in direct care and services to, or accessing the confidential information of, this population.

## **9.103 PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION [Eff. 4/1/13]**

### **9.103.1 Confidential Information [Eff. 4/1/13]**

All ~~potentially eligible students and applicants~~ recipients of services (or their authorized representatives) shall be informed about DVR's need to collect personal information and the principal purposes for which DVR will use that information. Any information secured by or made available to DVR and/or its employees or representatives concerning referrals or recipients of the vocational rehabilitation program is considered confidential. Use of such information, current or stored, is limited to purposes directly connected to the administration of the Vocational Rehabilitation Program as identified in Sections 9.103.2 and 9.103.3 and is not to be otherwise disclosed, directly or indirectly. Individuals shall be notified of the confidential nature of their case records and the conditions for release of such information at the time of application or program involvement for a potentially eligible student with a disability.

### **9.103.2 Release to Recipients [Rev. eff. 10/1/14]**

Information acquired or maintained by the Division of Vocational Rehabilitation (DVR) will be available upon written request, for inspecting and copying by a recipient or, as appropriate, the individual's representative, in accordance with the Colorado Open Records Act (Section 24 72-201, et. seq., C.R.S.), unless release of such information is prohibited by state or federal statutes, case law, or rules and regulations.

Medical, psychological, or other information which the counselor determines may be harmful to the individual shall not be released directly to the individual, rather such information shall be provided through a third party chosen by the individual. Any employee of DVR shall not disclose the information listed below to the recipient and/or his or her authorized representative.

A. Social Security Administration (SSA) information except when requested by the Client Assistance Program on behalf of the recipient;

B. Information from the U.S. Department of Veterans Affairs;

C. Medical or psychological information, when the service provider states in writing that disclosure to the individual is prohibited. Applicants and eligible individuals requesting such information shall be referred to the originating source of the information.

### **9.103.3 Release to Other Programs or Authorities [Rev. eff. 10/1/14]**

A. Confidential information may be released to other agencies or organizations when necessary for their programs only after receiving informed written consent from the subject of the information and under assurances that the agency or organization shall manage the information in a manner to safeguard its confidentiality in accordance with the confidentiality regulations governing vocational rehabilitation programs.

B. Information may be released to other programs or authorities without a recipient's written authorization when:

1. The information is directly connected with the administration of the Vocational Rehabilitation Program used only by persons officially connected with an audit or evaluation, and the final report contains no identifying information;
2. Sharing of the information, including pertinent medical and other data received from SSA, is necessary to establish an individual's eligibility for rehabilitation services and/or for the provision of such services under an Individualized Plan for Employment (IPE);
3. The information is required by federal law;
4. The information is necessary to respond to a request from law enforcement, an investigation of fraud, or abuse (except where expressly prohibited by federal regulations or state statutes or rules), and in response to judicial order;
5. The information is necessary in order to protect the individual or others when the individual poses a threat to his or her own safety or to the safety of others;
6. The information is requested by the Social Security Administration (SSA); or,
7. The Director of the Division of Vocational Rehabilitation approves release to an organization or individual engaged in research.

#### **9.104 RIGHTS TO REVIEW AND APPEAL**

##### **9.104.1 Review of DVR Determinations [Rev. eff. 10/1/14]**

- A. A recipient who is dissatisfied with any determination made by the Division of Vocational Rehabilitation (DVR) that affects the provision of vocational rehabilitation services may request a review of that decision through an informal or formal process. The individual may also utilize the mediation process to resolve disputes. If appropriate, any request for review or mediation may be made through the individual's authorized representative.
- B. A recipient shall be notified, in writing, of his/her appeal rights, established procedures for review of determinations, and the availability of the Client Assistance Program each time the following occur:
1. At the time of program involvement for a potentially eligible student with a disability;
  2. At the time of application for services;
  3. At the time of placement into an Order of Selection (OOS) priority for services category;
  4. At the time of Individualized Plan for Employment (IPE) development and any time the IPE is amended;
  5. Any time that DVR makes a decision to reduce, suspend or terminate planned services;
  6. At the time a case is closed for reasons of ineligibility; and,
  7. At the time a case is closed from a deferred services wait list.

C. A recipient shall be responsible for his/her personal costs (including, but not limited to, legal representation and copying fees) associated with his/her review, appeal or mediation unless otherwise ordered.

D. An applicant's or eligible individual's appeal shall not result in suspension, reduction or termination of vocational rehabilitation services pending resolution of his/her appeal unless:

1. A recipient or, if appropriate, the individual's representative requests a suspension, reduction or termination of services; or,

2. There is evidence that fraud has occurred or that the vocational rehabilitation services were obtained through misrepresentation, collusion or criminal conduct ~~by the individual on the part of a recipient or the individual's representative.~~

#### **9.104.2 Mediation of Disputes [Eff. 10/1/14]**

A. An applicant or eligible individual may seek mediation by a qualified and impartial mediator as a means to resolve a dispute with the Division of Vocational Rehabilitation (DVR). The goal of mediation is to achieve consensus between the individual and DVR. The individual may bring an authorized representative to assist him/her during the mediation process.

1. The request for mediation shall be submitted, in writing, to the DVR administrative office at any time during the review process and no later than the 60th day from the date the formal hearing is requested. The request shall identify the decision or action that is being disputed, why it is being disputed and what solution is requested. A qualified and impartial mediator arranged through the state shall be provided at no cost to the individual.

2. If the recipient requests mediation, DVR shall participate unless:

a. It is not possible to resolve the dispute without placing the Department in clear violation of state or federal law, rules, policy or the approved State Plan;

b. A mediated outcome is not possible based on documented evidence from previous experience with the individual concerning the issue under dispute;

c. The individual has committed acts of violence, has threatened acts of violence or has engaged in other forms of harassment against Department staff or any other individuals involved in the provision of vocational rehabilitation services; or,

d. The individual has failed to fulfill his or her responsibilities under a previous mediation agreement with DVR concerning the issue under dispute.

B. DVR may seek mediation by a qualified and impartial mediator as a means to resolve a dispute with a recipient before he/she requests an informal review or a formal appeal if the individual agrees to participate.

C. Mediation shall commence within twenty-one (21) days of the request for mediation and shall not delay conduct of the formal appeal unless both parties agree additional time is necessary.

Mediation is limited to a maximum of six (6) hours of mediation session(s) unless both parties and the mediator agree that additional hours may provide a resolution. Mediation shall be completed within one (1) calendar month of the initial request unless both parties and the impartial mediator agree that additional time is necessary.

D. If mediation is successful, the consensus reached by both parties shall be documented in writing by the mediator and provided to both parties within seven (7) calendar days. Each party shall sign the agreement, which indicates agreement with its terms and a commitment to fulfill each party's respective responsibilities. If agreement on all issues is reached, the parties shall withdraw any pending informal review or formal appeal request. DVR shall not agree to any provision that it believes is contrary to state and federal law, rules, and policy or the approved State Plan.

E. If mediation is not successful, the individual may initiate, or proceed with, an informal review or a formal appeal of the issue under dispute.

F. Failure of the individual to honor his /her commitment under the terms of the mediation agreement shall void the mediation agreement.

#### **9.104.3 Informal Review [Eff. 10/1/14]**

The recipient may request an informal review to resolve the issue(s) under dispute without mediation or conduct of a formal appeal. The informal resolution process will result in a decision by DVR regarding the issue under dispute. An individual shall not be required to go through an informal review prior to or instead of a formal appeal. An informal review shall be conducted within thirty (30) calendar days of the initial request unless both parties agree that additional time is necessary. Informal review shall not delay a formal appeal if one has been requested. If the informal review does not resolve the issue(s), and the formal appeal process has not been requested, the individual may request a formal appeal.

A. Informal review begins with a request for the applicable DVR Supervisor to review a decision concerning the provision of vocational rehabilitation services.

B. If the applicant or eligible individual is not satisfied with the decision made by the Supervisor, the applicant or eligible individual may take the next step and submit a written request for review to the Deputy of Field Services (or designee) to review the decision.

#### **9.104.4 Formal Appeal Process [Rev. eff. 10/1/14]**

An applicant or eligible individual may initiate a formal appeal regarding a determination to resolve the issue(s) under dispute without mediation or conduct of an informal review.

A. A written request for a formal appeal must be submitted to the Colorado Department of Personnel and Administration, Office of Administrative Courts (OAC), within ninety (90) calendar days of the subject determination made by the DVR counselor or other DVR staff that affects a provision of pre-employment transition services or vocational rehabilitation services.

B. The written request must be a statement detailing the basis of appeal, including a description of the determination made by DVR staff that the individual is appealing. The statement should include a description of what the individual wants from the appeal.

C. A recipient and DVR may voluntarily participate in mediation through the OAC. Mediation may not be used to deny or delay an individual's right to pursue resolution of the dispute through the formal appeal process unless both parties agree that additional time is necessary for mediation.

#### **9.104.5 Formal Appeal before the Office of Administrative Courts [Rev. eff. 10/1/14]**

A. When the Office of Administrative Courts (OAC) receives a request for a formal appeal, the OAC shall notify DVR and the Attorney General's Office, Labor and Employment Unit, that the request has been docketed and send a copy of the formal appeal request to DVR and the Attorney General's Office.

B. A representative from the Attorney General's office, on behalf of DVR, shall serve a notice to set an informal pre-hearing conference within ten (10) calendar days of receipt of the formal appeal request from the OAC. The purpose of the informal pre-hearing conference shall be to:

1. Identify the issues for appeal.
2. Set a date for DVR to provide a written statement summarizing the background and history of services for the appeal.
3. Set a date for a response from the appellant to respond to the summary and identify specific issues for the appeal. The appellant should identify specific remedies being sought, if known.
4. Set the date for hearing within sixty (60) days, unless both parties agree that more time is needed and agree to extend beyond the sixty days.
5. Set dates for an exchange of witness and exhibit list, as well as exchanging exhibits or other evidence.

C. The Administrative Law Judge shall conduct the hearing within sixty (60) calendar days of an individual's request for formal appeal unless both parties agree additional time is necessary.

D. The Administrative Law Judge shall conduct the hearing on formal appeal in accordance with the Administrative Procedure Act, Section 24-4-105, C.R.S. The rights of the parties include:

1. Each party shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination.
2. Subject to these rights and requirements, where a hearing will be expedited and the interest of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations.
3. Hearings will be conducted at a site convenient to the appellant. A telephonic hearing may be conducted as an alternative to a face-to-face hearing if requested by either party. If either party requests a face-to-face hearing, the written request for a face-to-face hearing must be filed with the OAC and the other party at least ten (10) calendar days before the scheduled hearing.

E. At the conclusion of the hearing, unless the Administrative Law Judge allows additional time to submit documentation, the Administrative Law Judge shall take the matter under advisement. After considering all the relevant evidence presented by the parties, the Administrative Law Judge shall render an initial decision.

F. The initial decision shall uphold, modify or reverse DVR's determination affecting the provision of pre-employment transition services or vocational rehabilitation services to a recipient or the decision regarding eligibility for services.

G. The initial decision shall be rendered within thirty (30) calendar days of the completion of the hearing.

H. When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the Administrative Law Judge of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and the Administrative Law Judge shall enter an initial decision dismissing appeal.

#### **9.104.6 Further Appeal**

A. The initial decision rendered by the Administrative Law Judge shall become the final decision of the agency in absence of an exception filed by either party within thirty days after service of the initial decision, unless extended by the agency.

B. If a timely exception to the initial decision is filed by the appellant, the agency shall issue a final decision and advise the individual of his/her right to seek judicial review in the State District Court, City and County of Denver.

C. Any recipient who wishes to challenge the final agency decision may also bring a civil action for review of such decision (i.e. judicial review per CRS 24-4-105). The final agency decision shall be implemented pending the results of the review under a civil action. The civil action may be brought in any State court or in a district court of the United States, regardless of the amount in controversy. All records relating to the hearing shall be provided to the court in which the civil action shall be heard. Additional evidence may be provided upon request of the individual or the Director of DVR. The decision of the court and any relief granted as a result of the civil action shall be deemed final and binding.

#### **9.104.7 Disability Discrimination Grievance Procedure**

An individual who believes he or she has experienced discrimination in violation of the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act of 1973, as amended, is entitled to due process and may file a grievance.

A. Informal Resolution: An individual who believes he or she has experienced discrimination on the basis of his or her disability may seek informal resolution by contacting the Deputy for Field Services, or his or her designee, as soon as possible to explain the concern and propose a solution. Informal review shall be conducted in a timely manner that shall not delay a formal grievance. If the informal review does not resolve the issue(s), and the formal grievance has not already been filed, the individual may seek resolution through the formal grievance procedures.

B. Formal Grievance Procedures: An individual, or his or her authorized representative, may initiate a formal grievance in lieu of seeking an informal resolution or if the informal resolution process did not satisfactorily resolve the concern.

1. Formal Written Complaint: A written complaint shall be considered when submitted to the ADA and Section 504 Coordinator of the Colorado Department of Labor and Employment within thirty (30) calendar days of the alleged offense or incident. The complaint shall include the name, address, and telephone number of the person filing the complaint; a description of the incident or alleged offense with as much information as possible; the date and location of the incident or alleged offense; and a proposed agency response that would resolve the issue(s) to the satisfaction of the complainant.

Within thirty (30) calendar days of receipt of the complaint, the ADA and Section 504 Coordinator shall conduct an investigation of the circumstances involved. At the conclusion of the investigation, the ADA and Section 504 Coordinator shall respond in writing or, as appropriate, in a format accessible to the complainant, explaining the position of the Department.

2. Additional Action: if the response of the written complaint by the ADA and Section 504 Coordinator does not satisfactorily resolve the concern, the complainant, or his or her authorized representative, may contact the United States Department of Education's Office of Civil Rights (OCR) within sixty (60) days of the Department's decision. An individual does not need to seek resolution through DVR's

information resolution or written complaint processes prior to filing a discrimination complaint with OCR. A complaint directly to OCR must be filed within 180 days of the alleged incident of discrimination.

## **9.105 APPLICATION AND ELIGIBILITY**

### **9.105.1 Application**

A. An applicant is an individual who has applied for DVR services. Authorized representatives shall be involved in pertinent issues in the same manner as the applicant or client. DVR shall provide assistance and/or accommodations throughout the application process.

Application criteria for vocational rehabilitation services:

1. An individual or, as appropriate, the individual's authorized representative, signs and dates DVR's application for services; and
2. The individual is available to complete the assessment process; and
3. Information necessary to initiate the eligibility determination process is provided.

### **9.105.2 Eligibility [Rev. eff. 10/1/14]**

A. DVR will work with each applicant to obtain existing records and documents, and when necessary, conduct additional assessments needed to determine eligibility. The length of time between application and eligibility shall not exceed sixty (60) calendar days unless a period of trial work experience is required or exceptional and unforeseen circumstances beyond the agency's control preclude determining eligibility within sixty calendar days and the counselor and applicant agree to a specific extension of time.

Eligibility criteria for vocational rehabilitation services requires that:

1. The individual has a physical or mental impairment documented by qualified personnel. For purposes of this eligibility criteria, DVR considers "qualified personnel" to be individuals or practitioners that are licensed and regulated by the Colorado Department of Regulatory Agencies to determine the existence of an impairment for their specific area of medical or psychological practice, or who otherwise meet established state or national licensing and certification requirements for that area of practice. In addition, the Social Security Administration and education officials responsible for the public education of students with disabilities are considered by DVR to be qualified personnel for this eligibility criterion;
2. The impairment constitutes or results in a substantial impediment to employment that is consistent with the individual's abilities and capabilities;
3. The individual requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment consistent with his/her unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice; and,
4. The Division of Vocational Rehabilitation (DVR) presumes that an applicant who meets all other eligibility criteria can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. If DVR questions whether the individual's disability is too severe for him/her to benefit from services in terms of an employment outcome, clear and convincing evidence shall be obtained through the provision of trial work experiences.

### **B. Presumptive Eligibility**

An applicant who is determined to be eligible for Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI) benefits (based on his/her own disability including blindness) is presumed to meet the eligibility requirements. Verification of eligibility for SSI/SSDI benefits is sufficient to establish that DVR eligibility criteria are met unless the presumption of benefit in terms of an employment outcome is questionable due to the severity of the disability(ies), which may require trial work experiences.

#### **9.106 SEVERITY OF DISABILITY [Rev. eff. 10/1/14]**

The assessment for determining eligibility and identifying vocational rehabilitation needs shall establish an individual's priority for services, based upon whether the individual's disability is most significant, significant, or an individual with a disability.

A. An individual with a most significant disability is defined as an eligible individual (including presumptively eligible) who has a severe physical or mental impairment that seriously limits three or more functional capacities (communication, interpersonal skills, mobility, motor skills, self-care, self-direction, work skills, or work tolerance) in terms of an employment outcome; and, whose vocational rehabilitation can be expected to require the provision of two or more vocational rehabilitation services for at least five months.

B. An individual with a significant disability is defined as an eligible individual who has been verified to be presumptively eligible or who has a severe physical or mental impairment that seriously limits one or two functional capacity areas (communication, interpersonal skills, mobility, motor skills, self-care, self-direction, work skills, or work tolerance) in terms of an employment outcome; and, whose vocational rehabilitation can be expected to require the provision of two or more vocational rehabilitation services for at least five months.

C. An individual with a disability is defined as an eligible individual who does not meet the criteria for most significant or significant.

#### **9.107 PROVISION OF VOCATIONAL REHABILITATION SERVICES [Rev. eff. 10/1/14]**

A. Pre-employment transition services must be made available statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

1. Pre-employment transition services are:

- a. Job exploration counseling;
- b. Work-based learning experiences that are provided in an integrated environment in the community to the maximum extent possible;
- c. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs and institutions of higher education;
- d. Workplace readiness training to develop social skills and independent living; and
- e. Instruction in self-advocacy, which may include peer mentoring.

B. All other vocational rehabilitation services shall be provided to:

1. Applicants to determine eligibility and severity of disability.

2. Eligible individuals to determine a vocational goal and identify the nature and scope of the services necessary to reach that vocational goal.

3. Under an Individualized Plan for Employment (IPE) to assist an individual in preparing for, securing, retaining, advancing in, or regaining an employment outcome.

Services shall be necessary, appropriate, and purchased at least possible cost. A service is considered necessary only if it is essential to assess an individual's eligibility and severity of disability, to establish his/her vocational rehabilitation needs, to overcome or circumvent an identified vocational impediment(s), and to attain the individual's chosen employment outcome. A service is considered appropriate if it is of sufficient quality to fully meet the individual's particular needs and circumstances. Least possible cost is considered only after the determination of necessary and appropriate. All services shall be provided in the most integrated settings possible.

#### **9.107.1 Engagement and Contact [Eff. 10/1/14]**

An effective vocational rehabilitation program requires the active participation of each eligible individual. A DVR staff member shall contact every eligible individual at least once every two months and document this in the client record.

#### **9.108 UTILIZATION OF REHABILITATION FUNDS**

##### **9.108.1 Expenditure of Rehabilitation Funds [Rev. eff. 10/1/14]**

###### **A. Payment for Services**

Necessary and appropriate services provided to applicants and eligible individuals shall be procured at the least possible cost to the Division of Vocational Rehabilitation (DVR). All services and goods shall be authorized prior to, or at the initiation of, the delivery of the service or good unless the service record documents that prior written authorization is not possible. All goods shall be procured in compliance with state purchasing procedures.

###### **B. Estimation of Costs**

All completed Individualized Plans for Employment (IPE) shall contain estimates of anticipated agency costs and contributions for goods and services listed.

C. Regardless of the vocation chosen, DVR excludes supporting a business that does not comply with all relevant state, federal, and local laws and regulations.

###### **D. Fee Schedule**

Services must be authorized and payments approved in accordance with current agency fee schedules. Fees exceeding the established maximum may be authorized and paid only when the specific service is not available at the established rate or when the service available at the established rate is not adequate to meet the individual's rehabilitation needs.

###### **E. Provider Standards**

Vocational goods and services are purchased only from providers who meet minimum standards and possess sufficient knowledge of disability and disability-related barriers to effectively meet the needs of recipients of DVR services. Minimum standards are identified in DVR's fee schedule.

1. DVR shall take reasonable steps to ensure the safety of recipients of services and safeguard individuals from abuse or exploitation while participating in the VR program and interacting with providers of services purchased by DVR. DVR shall establish and maintain policies and procedures specifying the manner in which criminal background checks will be utilized prior to registering providers or approving contracts which will require direct contact with recipients of services or access to confidential information.

#### F. Payment for Transportation

Transportation is provided to an individual if necessary to participate in DVR services. Public transportation is encouraged unless the individual's impairment-related limitations prevent use of public transportation. If the individual chooses to use his/her own vehicle when public transportation is available and accessible, reimbursement for mileage may be provided up to the cost of public transportation.

To receive reimbursement, the individual or his/her driver shall have a valid driver's license, possess an active insurance policy to drive the automobile, and use an automobile that is appropriately licensed and registered. Appropriate documentation shall be provided to DVR to support the reimbursement is related to services necessary for eligibility determination or in connection with the provision of services.

#### G. State Property

Goods purchased for use by an eligible individual in a training program, trade, or business remain the property of the State of Colorado until successful closure from DVR occurs. DVR may choose to recover purchased equipment per established policy and/or procedure.

#### **9.108.2 Applicant or Eligible Individual Financial Participation [Rev. eff. 10/1/14]**

Payment for most services or goods for individuals other than SSI/SSDI recipients is based upon the economic need of the individual and the finances of the family unit. DVR shall conduct a determination of the individual's economic need prior to the preparation and approval of an Individualized Plan for Employment, ~~or a Business Exploration Agreement, or Trial Work Experience Plan~~ whenever the plan contains a vocational rehabilitation service that is not specifically exempted from financial participation. An individual who receives Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) is exempt from the determination of economic need and from participating financially in his/her rehabilitation plan.

A. Re-determinations of the individual's economic need shall be conducted ~~at least annually and~~ within forty-five (45) days ~~after any other time when the~~ of a change to the individual's financial circumstances ~~change.~~

B. All economic need determinations shall be documented and require an individual's proof of financial status. Documentation accepted as proof of financial status shall be defined in writing by DVR. The applicant or eligible individual shall provide proof of financial status unless the service record documents that there is no proof of financial status available and/or it cannot be obtained. If proof of financial status cannot be obtained, the statement of the applicant or eligible individual and/or member of his/her family shall establish data used to complete economic need determinations.

C. The family unit consists of the applicant or eligible individual, the spouse of the individual, and any other persons whom the individual claims as a dependent for income tax purposes. When the individual is dependent upon his/her parents, the parents and persons for whom the parents are financially responsible shall be considered part of the family unit. An individual who is living with his/her parents is

considered a dependent unless the parents have not claimed the individual as a dependent for income tax purposes for the tax year previous to the financial need determination and do not intend to claim the individual as a dependent in current and future years.

Exception to the family unit may occur if the service record documents a clear indication that the individual is not receiving financial support from the family unit. When this occurs, he/she may be considered his/her own family unit regardless of dependent status for income tax purposes.

D. The financial need analysis shall determine economic need and consider income and net resources as well as the allowable monthly deductions of the entire family unit. Standardized allowances for normal living costs are determined by the size of the family unit.

E. Financial participation of the individual or completion of a financial need analysis is not required for the following vocational rehabilitation services:

1. Diagnostic and related assessment services that are required to determine eligibility and vocational rehabilitation needs, including transportation necessary to obtain the assessment.
2. Vocational rehabilitation counseling and guidance;
3. Referral services;
4. Professional fees to providers of vocational adjustment and personal adjustment training, independent living skills training, job coaching, on-the-job training, ~~and~~ job seeking skills training, and business consultation services provided through a Business Exploration Agreement;
5. Interpreter services and note-taking services for individuals who are deaf;
6. Reader services and note-taking services for individuals who are blind;
7. Personal assistance services;
8. Auxiliary aids needed for an individual with a disability to participate in the vocational rehabilitation program;
9. Job-related services;
10. Any service or good furnished to an individual for whom the DVR counselor has evidence of current eligibility for SSI and/or SSDI benefits for disability or blindness.
11. Pre-employment transition services; and
12. Any of the services identified above when provided through Post-Employment Services to retain, regain, or advance in employment.

#### **9.109 CASE CLOSURE [Rev. eff. 10/1/14]**

The DVR counselor may close a case record for an applicant or eligible individual when it is determined vocational rehabilitation services are no longer necessary or appropriate for the individual to achieve an employment outcome. The case record of an individual who receives services that lead to an employment outcome shall be closed when the individual achieves the criteria for successful closure. If it is determined that an applicant is ineligible for services or the individual receiving services is no longer eligible for services, the case record shall be closed.

#### **9.110 REGULATORY CITATION**

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9.100 is developed in accordance with 34 CFR 361 (August 2016). No amendments or later editions are incorporated. Copies are available for purchase at the Government Bookstore, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294. A copy is available for inspection during regular business hours at the Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of the Director, 633 17<sup>th</sup> Street, Suite 1501, Denver, Colorado 80205; or any state publications depository library.

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