

IDAPA 47 – DIVISION OF VOCATIONAL REHABILITATION

47.01.01 - RULES OF THE IDAHO DIVISION OF VOCATIONAL REHABILITATION

DOCKET NO. 47-0101-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 33-2211, and 33-2301, Idaho Code, and the Rehabilitation Act of 1973 and all subsequent amendments.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Division of Vocational Rehabilitation (IDVR) Field Services Policy Manual contains internal processes to IDVR as well as eligibility and program requirements for the people and agencies IDVR serves. Currently this manual is incorporated by reference into Idaho Administrative Code, IDAPA 47.01.01. When a document is incorporated by reference into administrative rule it has the force and effect of law and can only be changed through the rulemaking process. Proposed amendments update reference to governing federal regulation by replacing the Workforce Innovation Act with the Workforce Innovation and Opportunity Act, to update the Order of Selection Process to current standards in compliance with federal regulations, and updates the Field Services Policy Manual with the amendments approved by the State Board of Education on August 11, 2016. Amendments to the Field Services Policy Manual included technical corrections, removal of outdated references, updates of definitions or new definitions in compliance with federal regulations, clarification to review and assessment data used for eligibility determinations, determination of significance of disability, and the removal of process internal to the agency.

Additional amendments are being made to update references to the Workforce Innovation and Opportunity Act and update the Order of Selection procedures with federal guidelines and best practices.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, V16-6, pg. 57.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or tracie.bent@osbe.idaho.gov. Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26th, 2016.

DATED this 26th day of August, 2016

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education

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**IDAPA 47
TITLE 01
CHAPTER 01**

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.01 - RULES OF THE IDAHO DIVISION OF VOCATIONAL REHABILITATION

000. LEGAL AUTHORITY.

Section 33-2301, Idaho Code and the Rehabilitation Act of 1973 and all subsequent Amendments. (3-30-01)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 47.01.01, "Rules of the Idaho Division of Vocational Rehabilitation." (5-3-03)

02. Scope. The chapter has the following scope: To streamline the existing rules and to implement program changes necessitated by the ~~1998 Amendments of the~~ Rehabilitation Act of 1973, as amended. (4-5-00)

(Break in Continuity of Sections)

004. INCORPORATION BY REFERENCE.

01. General. Unless provided otherwise, any reference in these rules to any document identified in Subsection 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-30-01)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (3-30-01)

a. All federal publications through the Rehabilitation Services Administration. (2-17-09)

b. Idaho Division of Vocational Rehabilitation Field Services Policy Manual, ~~August 13, 2015,~~ approved August 11, 2016, available for review on the website at <http://www.vr.idaho.gov/>. (~~3-25-16~~) ()

c. ~~Workforce Innovation and Opportunity Act (WIOA), Public Law 113-128. Workforce Investment Act, Public Law 105-220.~~ (~~5-3-03~~) ()

d. Federal Register, Department of Education, 34 CFR Parts ~~361, -363,~~ and 397.

e. The Rehabilitation Act of 1973, as amended. (2-17-09)

03. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available at the Central Office, Idaho Division of Vocational Rehabilitation, 650 W. State Street, Room 150, Boise, Idaho 83720, (208) 334-3390 or through access to the internet URL addresses outlined in Subsection 004.02.

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. Authorization ~~for~~ Purchase. A purchase order issued on behalf of the Division. (5-3-03)

- 02. CFR.** Code of Federal Regulations. (7-1-93)
- 03. Customer.** Any individual who has applied for or is eligible for Vocational Rehabilitation services. (7-1-13)
- 04. Designated State Agency.** The Idaho State Board of Education. (5-3-03)
- 05. Designated State Unit.** The Idaho Division of Vocational Rehabilitation. (7-1-93)
- 06. IDVR.** The Idaho Division of Vocational Rehabilitation. (4-5-00)
- 07. IPE.** Individualized Plan for Employment. (4-5-00)
- 08. Most Significant Disability (MSD).** Meets the criteria as Significant Disability as found in the Rehabilitation Act of 1973, as amended, and defined in 34CFR Part 361.5 (b) 30 and is further defined as: (2-17-09)
- a.** Having a severe physical, mental, cognitive or sensory impairment which seriously limits three (3) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and (7-1-13)
- b.** Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (3-20-04)
- 09. Method of Written Notification.** The written notification of findings and conclusions arising from an Informal Dispute Resolution, Mediation, or Fair Hearing, shall be served to the customer via the U.S. Postal Service. ~~(7-1-13)~~ ()
- 10. PM.** Policy Memorandum. (5-3-03)
- 11. RSA.** Rehabilitation Services Administration, U.S. Department of Education. (5-3-03)
- 12. State Administrator.** The Chief Executive Officer of the Idaho Division of Vocational Rehabilitation. (4-5-00)
- 13. VRC.** Vocational Rehabilitation Counselor. (5-3-03)
- 011. -- 099. (RESERVED)**

100. CUSTOMER APPEALS.

In accordance with 34 CFR Part 361.57, the customer appeals process is governed by Section 100 through 103 of these rules and is outlined in the Division's ~~agency~~ Field Services Policy Manual on the website at <http://www.vr.idaho.gov/> that is incorporated by reference into these rules in Subsection 004.02.b. ~~(7-1-13)~~

(Break in Continuity of Sections)

102. MEDIATION.

Mediation is an alternate dispute resolution method available to applicants and eligible customers who have initiated the formal appeals process. (7-1-13)

01. Time ~~L~~ine. A customer must request mediation within twenty (20) calendar days of the original decision or ten (10) calendar days following the written proposal from the informal review. Mediation is available to a customer when and informal review has not resolved the dispute to the satisfaction of the customer. ~~(7-1-13)~~

02. Written Request. Requests for mediation must be made in writing to the chief of field services and must clearly state the reason for dissatisfaction with the decision or results of the informal review. The chief of field

services will represent IDVR or assign a member of the administrative or supervisory staff who has not participated in the agency action that created the customer's dissatisfaction. (7-1-13)

03. Participation. Participation in the mediation process is voluntary on the part of the customer and on the part of IDVR. Either party may reject mediation as an alternate dispute resolution method. Once mediation has been accepted as an alternate dispute resolution method, either party may terminate the mediation process. (7-1-13)

04. Fair Hearing. Mediation may not be used to deny or delay the customer's right to pursue a fair hearing. Should the customer and/or designated representative select mediation in lieu of a fair hearing the option for a fair hearing will be extended to allow the results of the mediation to be established. Once the final results of the mediation are determined, the customer retains the right to request a fair hearing. (7-1-13)

05. Mediator. All mediation is conducted by a qualified and impartial mediator who is selected randomly from a list of mediators maintained by IDVR. (7-1-13)

06. Confidentiality. Mediation discussions are confidential and may not be used as evidence in a fair hearing. A confidentiality agreement will be signed by both parties at the beginning of the mediation process. (7-1-13)

07. Mediation Agreement. The mediator will develop a written mediation agreement if an agreement between the parties is reached. The agreement must be signed by the customer, the mediator, and the IDVR designated representative. (7-1-13)

08. Cost. Cost of mediation is paid by IDVR. IDVR is not required to pay for any cost related to the representation of a customer. (7-1-13)

103. FAIR HEARING PROCESS.

The fair hearing process is an option available to any customer who is dissatisfied with any determination made by personnel of IDVR that affects the provisions of vocational rehabilitation services. A customer may request a fair hearing immediately without having to go through any other appeal steps. A customer may request, or if appropriate may request through the customer's representative, a timely review of the determination. Such request must be made within sixty (60) days of the IDVR decision resulting in the initial disagreement or within ten (10) calendar days of the conclusion of the informal review or mediation process, whichever is later. The fair hearing process shall include a fair hearing conducted by a fair hearing officer (FHO). (7-1-13)

01. Procedure. A fair hearing is a procedure whereby a customer who is dissatisfied with any determination concerning the provision or denial of IDVR services or the findings of the informal review or mediation may seek a determination of agency action before a fair hearing officer. (7-1-13)

02. Written Request. ~~A~~ Requests for a fair hearing must be sent in writing to the chief of field services and clearly state the customer's dissatisfaction with the agency's decision. ~~(7-1-13)~~ ()

03. Timeline. The hearing shall be conducted within sixty (60) calendar days of receipt of the individual's request for review, unless informal resolution is achieved prior to the 60th day, or the parties agree to a specific extension of time. (3-29-10)

04. Fair Hearing Officers. A list of fair hearing officers shall be identified jointly by the Administrator of IDVR and the State Rehabilitation Council. The fair hearing officer shall be selected from the list by the administrator of IDVR and the customer. (7-1-13)

05. Written Report. The fair hearing officer shall issue a written report of the findings and decision of the hearing within thirty (30) calendar days of the completion of the hearing. (7-1-13)

06. Decision. The decision of the fair hearing officer shall be considered final by the agency. (7-1-13)

07. Dispute. Any party who disagrees with the findings and decisions of a fair hearing officer shall have

the right to bring a civil action with respect to the matter in dispute. 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. (7-1-13)

104. -- 199. (RESERVED)

200. ORDER OF SELECTION.

In the event that the Division of Vocational Rehabilitation lacks the personnel and/or financial resources to provide the full range of vocational rehabilitation services to all eligible individuals, the following Order of Selection (OOS) will be used to prioritize service provision. Students with disabilities (as defined by 34 CFR 361.5 (c) (51)) who received pre-employment transition services prior to eligibility determination and assignment to a priority category shall continue to receive such services. All customers who have an Individualized Plan for Employment (IPE) will continue to be served. ()

Priority will be given to eligible individuals with the most significant disabilities, followed by those eligible individuals with significant disabilities, and finally those eligible individuals with disabilities. All eligible customers will be assigned to one of the following priority categories: ()

The following order of selection will be used if the Idaho Division of Vocational Rehabilitation finds that it cannot serve all eligible customers due to a lack of either personnel and/or financial resources. The priority listings progress downward with priority one (Priority Number 1) being the most restrictive and priority four (Priority Number 4) being the least restrictive. (7-1-13) ()

01. Priority Number 1. Eligible individuals with the Most Significant Disabilities (MSD).

At the time that a decision to move to an order of selection is made, it is determined that only those consumers who already have an existing individualized plan for employment (IPE) will continue to be served. (5-3-03) ()

02. Priority Number 2. Eligible individuals with Significant Disabilities (SD)

At the time that a decision to move to an order of selection is made, it is determined that only those customers in Priority Number 1 above and current and future, otherwise eligible, customers rated to this or a more restrictive priority can be served. Customers meeting this priority rating are those customers with most significant disabilities. (7-1-13) ()

03. Priority Number 3. All other eligible individuals with Disabilities (D).

At the time that a decision to move to an order of selection is made, it is determined that only those customers in Priorities Numbers 1 and 2 above and current and future, otherwise eligible, customers rated to this or a more restrictive priority can be served. Customers meeting this priority rating are those customers with significant disabilities. (7-1-13)

04. Priority Number 4. All eligible customers for Vocational Rehabilitation services (no order of selection in place). (7-1-13) ()

If the Idaho Division of Vocational Rehabilitation cannot serve all eligible individuals within a given priority category, individuals will be released from the statewide waitlist based on priority category and date of application. ()

201. -- 299. (RESERVED)

300. CUSTOMER SERVICES.

01. Provision of Purchased Services Contingent Upon Financial Need of the Customer.

The Idaho Division of Vocational Rehabilitation will apply a financial needs assessment. Financial need will not be a consideration in the determination of eligibility for Vocational Rehabilitation, but will be a consideration in allocating the cost of VR services, with some exceptions. (7-1-13)

02. Authorization ~~for~~ Purchase.

The Division requires that when purchasing services from a vendor, an authorization must be issued prior to, or on, the beginning date of service. If services are provided without a Division approved authorization ~~for~~ purchase, the Division reserves the right to not honor the vendor's invoice.

03. General Provisions.

Idaho Division of Vocational Rehabilitation will only pay for services that contribute to the determination of eligibility or to achieve an employment outcome. (3-20-04)

04. **Residency Requirement.** There is no duration of residency requirement. The customer must be living in the state of Idaho and legally be able to work within the United States (i.e., non U.S. citizens must show they are legally able to work within the United States). (7-1-13) ()

05. **Provision of ~~CRP~~(Community Rehabilitation Program)(CRP) Services.** ~~IDVR~~[Idaho Division of Vocational Rehabilitation](#) will purchase vocational services from CRPs that are accredited by either Commission Accreditation Rehabilitation Facilities (CARF), the Rehabilitation Accreditation Commission, or Rehabilitation Services Accreditation System (RSAS). In conjunction with the customer, the qualified professional Vocational Rehabilitation Counselor, will determine which CRP Services, if any, are required for the customer to achieve an employment outcome. (7-1-13) ()

301. -- 999. (RESERVED)