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**IDAPA 47
TITLE 01
Chapter 01**

**IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION
47.01.01 - GENERAL ADMINISTRATION**

000. -- 009. (RESERVED).

010. DEFINITIONS.

01. Applicant. Any individual who certifies to his/her intent to apply for Vocational Rehabilitation services by either signing an application form or by verbally or in other communicative modes, notes his/her intent to immediately apply. Ref: P.L. 102-569 Section 101(9)(D) (7-1-94)
02. CFR. Code of Federal Regulations. (7-1-93)
03. Client. Any individual who has applied for Vocational Rehabilitation services and has been found to meet the eligibility requirements as outlined by P.L. 102-569 Section 102(a)(1)(A) and (B) and Section 7 (8)(A). (6-1-94)
04. Designated State Unit. The Idaho Division of Vocational Rehabilitation. (7-1-93)
05. IDVR, Division. The Idaho Division of Vocational Rehabilitation. (7-1-93)
06. IWRP. Individual Written Rehabilitation Program. (7-1-93)
07. Method of Written Notification. The written notification of findings and conclusions arising from an Administrative Review, Fair Hearing, or as a result of the Administrator's review of the Fair Hearing shall be served to the applicant/client via the U.S. Postal Service by means of certified mail. Durational requirements for appeals shall commence on the day received by the applicant/client as noted by the certified mail records. (7-1-94)
08. P.L. Public Law. (7-1-93)
09. RCR. Running Case Record. (7-1-93)
10. RSA. Rehabilitation Services Administration. (7-1-93)
11. State Administrator, State Director, Administrator. The Chief Executive Officer of the Idaho Division of Vocational Rehabilitation. (7-1-93)
12. Impartial Hearing Officer. Shall: (7-1-94)
- a. Not be an employee of a public agency (other than administrative law judge, hearing examiner, or employee of an institution of higher learning) or a member of the State Vocational Rehabilitation Advisory Council; (7-1-94)
- b. Not have been involved in previous decisions regarding the vocational rehabilitation of the client; (7-1-94)
- c. Have knowledge of the delivery of the Rehabilitation Services, the Title I State Plan and State rules governing the provision of services; (7-1-94)
- d. Have no personal or financial conflicts of interest; and (7-1-94)
- e. Be trained regarding the performance of official duties. (7-1-94)

011. -- 099. (RESERVED).

100. CLIENT APPEALS.

01. Applicant or Client of Vocational Rehabilitation - Internal Appeals Procedure to Contest a Disputed Action, Failure to Act, or Decision of the Division. An applicant for Vocational Rehabilitation services, or a client of Vocational Rehabilitation services may file a request for an Administrative Review or Fair Hearing and a re-determination of any and all actions, or lack thereof, concerning determination of eligibility or the provision (or lack thereof) of services. (7-1-93)

02. Administrative Review. Within thirty (30) calendar days of notification of the contested action, lack of action or decision, the applicant/client may request that an Administrative Review or Fair Hearing be held. Failure to comply with the thirty (30) day time limit shall constitute forfeiture of any further rights to internal grievance (appeal) procedures. The request shall be made in writing to the Regional Manager who has direct supervisory authority over the involved Vocational Rehabilitation Counselor handling the applicant/client's case with the Division. The written request should state the reason for the requested review. (7-1-94)

a. The Regional Manager shall inform the applicant/client in writing as to the time, place, and date of the Administrative Review. The applicant/client may choose to represent himself/herself or may have a representative(s) speak on his/her behalf. The Regional Manager will insure complete familiarity of the case and will call for testimony from any and all parties to the case that he/she feels is relevant to the review. (7-1-94)

b. The Regional Manager will make a decision regarding the specifics of the Administrative Review. This decision will be in written form and it will be sent to the applicant/client. It will also be included in the pertinent case file. Since the Administrative Review is an informal problem resolution process, the form of the written decision may be in standard business letter format.

Ref: (1) 34 CFR 361.48 September 15, 1988
(2) P.L. 102-569
(3) State Plans for Vocational Rehabilitation (Section 10.7)
(4) Section 33-2301, Idaho Code

(7-1-94)

03. Fair Hearing. If the applicant/client is dissatisfied with the result of the Administrative Review, he/she may ask for a Fair Hearing. IDVR continues to encourage the use of the informal Administrative Review process since it is more likely to result in a timely resolution of disagreements. However, the Administrative Review process may not be used as a means to delay a more formal hearing before an impartial Hearing Officer unless the parties jointly agree to a delay. The Fair Hearing will deal with the issues involved in the original Administrative Review, if one took place. The request for a Fair Hearing will be made in writing to the Administrator of the Division. It must be made within thirty (30) calendar days subsequent to receipt of official notification of the Regional Manager's decision from the Administrative Review. A fair hearing can be held without an Administrative Review but must occur within thirty (30) calendar days from the disputed action, lack of action, or a decision of the Division. The hearing by an impartial Hearing Officer must be held within forty-five (45) days of a request by the applicant or client unless both parties agree to a specified delay. (7-1-94)

a. The Fair Hearing will be conducted by an impartial Hearing Officer selected to hear a particular case, on the following basis: (7-1-94)

i. On a random basis; or (7-1-94)

ii. By agreement between the administrator and the individual with a disability; or (7-1-94)

iii. In an appropriate case the administrator and a parent, a family member, a guardian, an advocate, or an authorized representative of such individual; (7-1-94)

iv. The impartial Hearing Officer shall be selected from a pool of qualified persons identified jointly by the Division and members of the State Vocational Rehabilitation Advisory Council. The impartial Hearing Officer shall inform all relevant parties, in writing, as to the time, date, and place of the fair hearing. The applicant/client may represent himself/herself or may choose to be represented by any person(s) of his/her choice. (7-1-94)

b. The hearing is a more formal proceeding than the Administrative Review. Upon its completion, the impartial Hearing Officer shall make a decision based on the provisions under Section 101-103(a) of P.L. 102-569 and the State Plan. This decision shall be rendered into writing and provided to all parties involved in the Fair Hearing. The decision shall be the final internal action, unless the State Administrator of the Division decides to review such decision in whole or in part. Within twenty (20) calendar days of the mailing of the decision to the applicant/client (or in appropriate cases, such individual's parent or guardian), the State Administrator shall notify such individual of the intent to review the decision. (7-1-94)

i. If the State Administrator decides to review the decision, the applicant/client shall be provided an opportunity for the submission of additional evidence and information relevant to a final decision. The State Administrator may not delegate responsibility to make such final decision to any other officer or employee of the designated state unit. (7-1-94)

ii. A final decision shall be made in writing by the Administrator and shall include a full report of the findings and the grounds for such decision. (7-1-94)

iii. Upon making a final decision, the State Administrator shall provide a copy of such decision to all parties involved in the Fair Hearing. (7-1-94)

c. The State Administrator may not overturn or modify a decision of an impartial Hearing Officer or part of such a decision that supports the position of the individual unless the Administrator concludes, based on clear and convincing evidence, that the decision of the impartial Hearing Officer is clearly erroneous on the basis of being contrary to federal or state law, including policy. (7-1-94)

Ref: (1) P.L. 102-569 Section 102(c)(d), (2)(A),(B),(C) and (D)
(2) State Plan for Vocational Rehabilitation Section 10.7(b)
(3) CFR 361.48(c)

(7-1-94)

101. -- 199. (RESERVED).

200. EXPEDITED REVIEW.

01. Forms. Each client will be notified at least ten (10) working days prior to the effective date of change to the IWRP through a procedure which is verifiable (for example: Certified Mail with Return Receipt Requested or client's signature on the Amended Plan which documents knowledge of impending change at least ten (10) working days prior to actual changes). In those rare situations where an immediate change to the IWRP would benefit the client and the client concurs, the counselor shall record the inability to meet the ten (10) working days notification requirement in the client's Running Case Record. This procedure (ten (10) day notification) will also be followed in all cases where a case is being closed and a closure plan is required. In all of these instances, the client will be informed of their rights to an "expedited review" (see at Expedited Review) if they wish to appeal the decision. (7-1-94)

02. Expedited Review. In cases where a disputed service is already underway (excluded from this are services planned or authorized but not commenced), the Division will continue to provide for the continuation of the disputed service(s) set forth in the IWRP for a period not to exceed thirty (30) calendar days from the proposed effective date of change. This relates only to those services which IDVR is a direct provider of - i.e., is providing or paying for. Exceptions to this requirement for an Expedited Review include: (7-1-93)

a. Services which are being provided which are contraindicated on the basis of medical/psychological information evidenced in the individual's case file and therefore, Federal financial participation is not available; and (7-1-93)

b. Services which are being provided due to fraudulent or other misrepresentation by the client (for example: maintenance assistance to support the client's involvement in other service areas in which the client is no longer participating). (7-1-93)

03. Notification of Expedited Review Rights. Ten (10) working days prior to the planned termination of the subject service(s), the client must be informed (in a verifiable manner) of the planned cessation, and they must be notified of their appeal rights under the Expedited Review process. They must be informed that they have thirty (30) calendar days from the proposed cessation date to discharge those rights. Every effort should be made to expedite this process so that resolution of the dispute is accomplished in as short a time span as possible. In no case shall the process extend for more than thirty (30) days past the proposed date of termination of the disputed service(s).

Ref: (1) 34 CFR 361.48, 361.35(c)(2), 361.40(a)(d)
(2) P.L. 102-569, Section 101
(3) Title 33-2301, Idaho Code
(4) IDAPA 47.01.01.100
(5) RSA-PI-81-02 Dated December 18, 1980

(7-1-94)

201. -- 999. (RESERVED).