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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. (4-5-00)

002. WRITTEN INTERPRETATIONS.

Written interpretations to these rules in the form of the explanatory comments accompanying the notice of proposed rulemaking are available from the Idaho Division of Vocational Rehabilitation, 650 W. State Street, Boise, Idaho 83720. Other agency guidance documents, as well as agency policy statements or interpretations not rising to the legal effect of a rule, if any, are available for inspection and replication at the agency Central Office during regular business hours. (2-17-09)

003. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by Section 100 of these rules in accordance with 34 CFR Part 361.57. (2-17-09)

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 Manual, 2008, available for review on the website. (2-17-09)
- c.** Federal State Plan for Vocational Rehabilitation 2008 - 2010, available for review on the website. (2-17-09)
- d.** Workforce Investment Act, Public Law 105-220. (5-3-03)
- e.** Federal Register, Department of Education, 34 CFR Part 361- 363. (2-17-09)
- f.** 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 004.03 below. (2-17-09)

005. -- 009. (RESERVED).

010. DEFINITIONS.

- 01. Authorization to Purchase.** A purchase order issued on behalf of the Division. (5-3-03)
- 02. CFR.** Code of Federal Regulations. (7-1-93)
- 03. Client/Participant.** Any individual who has applied for or is eligible for Vocational Rehabilitation services. (5-3-03)
- 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 two (2) 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 (5-3-03)
- 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, Impartial Due Process Hearing, shall be served to the client via the U.S. Postal Service by means of certified mail. Durational requirements for appeals shall commence on the day received by the client as noted by the certified mail records. (5-3-03)
- 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. CLIENT/PARTICIPANT APPEALS.

In accordance with 34 CFR Part 361.57, the client/participant appeals process is governed by Section 100 of these rules and is outlined in the Division's agency Field Services Manual that is incorporated by reference into these rules in Subsection 004.01.b. (2-17-09)

01. Informal Appeals Process. The informal administrative review process is an option available to the individual as a proven means likely to result in a timely resolution of disagreements. An individual must request an informal administrative review within ten (10) calendar days of the agency notice regarding the provision or denial of services that are in question. The request must be in writing to the regional manager. The request must describe the

complaint. In holding an informal administrative review, the regional manager will function as the administrative review officer and will be responsible for: (3-29-10)

a. Conducting the review within fifteen (15) calendar days following written receipt of a request for such a hearing. (3-29-10)

b. Advising the individual of their right to have a representative present and encouraging the individual to use the services of CAP. (3-29-10)

c. Insuring that the review is conducted at a time mutually agreed to by the parties involved that ensures the entire appeals process can be completed within forty-five (45) calendar days, unless the parties agree to a specific extension of time. (3-29-10)

d. When undue delay is caused by the individual in scheduling an administrative review, the individual will be informed that if the review is not conducted within thirty (30) calendar days following the individual's request for an informal administrative review, the individual's request will be viewed by IDVR as invalid. (3-29-10)

e. When the individual makes a documented effort to utilize CAP or another selected advocate to resolve the dissatisfaction, the time allowed for conducting an administrative review will be extended accordingly. (3-29-10)

f. Holding the review at a time and place convenient to the individual, generally at the local IDVR branch office. (3-29-10)

g. Providing communication methods for those individuals who have a sensory impairment. An interpreter will be provided for those individuals who cannot communicate in English. (3-29-10)

h. Assuring that the individual is provided transportation to and from the review site, if needed. (3-29-10)

i. The administrative review officer (regional manager) will attempt to resolve the matter to the satisfaction of the individual, developing a written agreement with the individual at the conclusion of the appeal process. A copy will be sent to the Administrator, Chief of Field Services, the involved counselor(s) and the counselor's supervisor. The results are binding for the agency unless the decision is not permitted by law. The individual may reject the findings of the review and request a formal appeal known as an Impartial Due Process Hearing. (3-29-10)

02. Formal Appeals Process. The formal appeal process is an option available to any individual who is dissatisfied with any determination made by personnel of IDVR that affects the provisions of vocational rehabilitation services. An individual may request, or if appropriate may request through the individual's representative, a timely review of the determination. Such request must be made within sixty (60) days of the IDVR case management decision resulting in the initial disagreement. The formal appeal process shall include an impartial due process hearing by an impartial hearing officer (IHO). (3-29-10)

a. A formal hearing is a procedure whereby an individual who is dissatisfied with any determination concerning the provision or denial of IDVR services or the findings of the administrative review may seek a determination of agency action before an impartial hearing officer. (3-29-10)

b. The individual must request a hearing within ten (10) calendar days of the agency notice regarding the provision or denial of services based upon the conclusion of the administrative review or mediation. The individual may bypass the informal administrative review or mediation process entirely and go directly to the impartial due process hearing (fair hearing). That process will then commence immediately. (3-29-10)

c. A request for a hearing must be sent in writing to the Chief of Field Services and clearly state the individual's dissatisfaction. (3-29-10)

d. 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)

e. A hearing shall be conducted by an impartial hearing officer selected from the pool of qualified persons identified jointly by the Administrator of IDVR and the State Rehabilitation Council. (3-29-10)

f. The 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. (3-29-10)

g. The decision of the hearing officer shall be considered final by the agency. (3-29-10)

h. Any party who disagrees with the findings and decisions of an impartial 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. (3-29-10)

03. Impartial Due Process Hearing. An individual may request an impartial due process hearing immediately without having to go through other appeal steps. Even if an individual agrees to an informal hearings process, such individual is entitled to a due process hearing within sixty (60) days of the IDVR case management decision that initiated the disagreement, unless both parties agree to an extension. (3-29-10)

04. Mediation. Mediation is an alternate dispute resolution method available to applicants and eligible individuals who have initiated the formal appeals process. (3-29-10)

a. An individual must request mediation within ten (10) calendar days of the agency notice regarding the results of the administrative review. Mediation is available to an individual when an administrative review has not resolved the dispute to the satisfaction of the individual. (3-29-10)

b. A request for mediation must be made in writing to the Chief of Field Services and clearly state the reason for dissatisfaction with the results of the administrative review. The Chief of Field Services will represent IDVR or assign a member of the administrative or supervisory staff who has not participated in agency action that created the individual's dissatisfaction. (3-29-10)

c. Participation in the mediation process is voluntary on the part of the individual and on the part of IDVR. Either party may reject mediation as an alternate dispute resolution method. Either party, once accepting mediation as an alternate dispute resolution method, may terminate the mediation process. (3-29-10)

d. Mediation is not used to deny or delay the individual's right to pursue an impartial hearing. Should the individual or designated representatives select mediation in lieu of a formal hearing, the option for the formal hearing will be extended to allow the results of the mediation to be established. After the final results of the mediation are determined, the individual retains the right to request a formal hearing. (3-29-10)

e. Mediation is conducted by qualified and impartial mediators who are selected randomly from a list of mediators maintained by IDVR. (3-29-10)

f. Mediation discussions are confidential and may not be used as evidence in a subsequent due process hearing. (3-29-10)

g. The mediator will develop a written mediation agreement if agreement between the parties is reached, signed by the individual, the mediator and IDVR. (3-29-10)

h. Cost of mediation is paid by IDVR, although no costs are provided for representation for the individual. (3-29-10)

101. -- 199. (RESERVED).

200. ORDER OF SELECTION.

01. Order of Selection. The following order of selection will be used if the Idaho Division of Vocational Rehabilitation finds that it cannot serve all eligible clients/participants due to a lack of either personnel and/or financial resources. The priority listings progress downward with priority number one (1) being the most restrictive and priority number four (4) being the least restrictive. (5-3-03)

a. Priority Number 1: 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)

b. Priority Number 2: At the time that a decision to move to an order of selection is made, it is determined that only those consumers in Priority Number 1 above and current and future, otherwise eligible, clients/participants rated to this or a more restrictive priority can be served. Consumers meeting this priority rating are those individuals with most significant disabilities. (5-3-03)

c. Priority Number 3: At the time that a decision to move to an order of selection is made, it is determined that only those consumers in Priorities Numbers 1 and 2 above and current and future, otherwise eligible, clients/participants rated to this or a more restrictive priority can be served. Consumers meeting this priority rating are those individuals with significant disabilities. (5-3-03)

d. Priority Number 4: All eligible clients/participants for Vocational Rehabilitation services (no order of selection in place). (5-3-03)

201. -- 299. (RESERVED).

300. CLIENT/PARTICIPANT SERVICES.

01. Provision of Purchased Services Contingent upon Financial Need of the Client/Participant. 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. (5-3-03)

02. Authorization to 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 to purchase, the Division reserves the right to not honor the vendor's invoice. (5-3-03)

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. Non-Residents of the State. Financial participation will only be available to residents of Idaho. Citizenship is not a requisite for financial assistance; however, the individual must have legal resident status and be present in the state (i.e., illegal aliens will not be eligible for the Vocational Rehabilitation programs). (3-20-04)

05. Provision of CRP (Community Rehabilitation Program) Services. IDVR will purchase vocational services from CRPs that are accredited by either CARF, the Rehabilitation Accreditation Commission, or Rehabilitation Services Accreditation System (RSAS). In conjunction with the client/participant, the qualified professional Vocational Rehabilitation Counselor, will determine which CRP Services, if any, are required for the client/participant to achieve an employment outcome. (3-20-04)

301. -- 999. (RESERVED).

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