

Education and Workforce Development Cabinet
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)

781 KAR 1:010. Office of Vocational Rehabilitation appeal procedures.

RELATES TO: KRS 151B.190, 151B.200, 34 C.F.R. Part 361, 29 U.S.C. 722

STATUTORY AUTHORITY: KRS 13B.170, 151B.195(1), 29 U.S.C. 722(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. 29 U.S.C. 722(c) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation services. Pursuant to KRS 151B.200, the Commonwealth of Kentucky, agreed to comply with all provisions relating to Federal Vocational Rehabilitation Acts. KRS 151B.195(1) authorizes the commissioner to promulgate administrative regulations for the department. This administrative regulation establishes hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

Section 1. Definitions.

- (1) "Administrative hearing" has the same meaning as KRS 13B.010(2).
- (2) "Administrative review" means an informal process through which the office conducts a review of an office decision to ensure the decision complies with office policy. The review shall be conducted by office personnel not involved in the initial decision.
- (3) "Appellant" means an applicant, potentially eligible, or eligible individual who requests an appeal of an office decision in accordance with this section.
- (4) "Applicant" means an individual who submits an application for vocational rehabilitation services.
- (5) "Branch manager" means the office staff who is responsible for the operations of an office branch.
- (6) "Case Record" means the official written record of the vocational rehabilitation case of an applicant, potentially eligible, or eligible individual.
- (7) "Competitive integrated employment" has the same meaning as 34 C.F.R. 361.5(c)(9).
- (8) "Eligible individual" means an applicant for vocational rehabilitation services who the office determines is an individual with a disability who requires vocational rehabilitation services to prepare for, secure, retain or regain employment.
- (9) "Executive director" means the Executive Director of the Office of Vocational Rehabilitation.
- (10) "Hearing officer" is an individual who meets the qualifications set forth in KRS 13B.010(7) and who has knowledge of the laws applicable to the office.
- (11) "Office" means the Office of Vocational Rehabilitation.
- (12) "Office Appeal Form" is the office form used by an applicant, potentially eligible, or eligible individual to request an appeal of an office decision.
- (13) "Potentially eligible individual" means an individual who may be eligible for vocational rehabilitation services, but whose eligibility has not yet been determined.
- (14) "Secretary" means the Secretary of the Education and Workforce Development Cabinet.

Section 2. Right to Appeal. (1) The office shall notify every applicant, potentially eligible individual, or eligible individual that the individual has the right to appeal any determination made by the office that affects the provision, denial, reduction, suspension, or cessation of that individual's vocational rehabilitation services.[]

- (2) The office shall provide to every applicant, potentially eligible individual, or eligible individual:
 - (a) The procedure for requesting an appeal, including the name and address of office staff to whom a request for appeal shall be submitted; and
 - (b) The Office Appeal Form.
- (3) A request for appeal shall be submitted using the Office Appeal Form and shall be submitted to the office within fourteen (14) days of receipt of written notice of an office decision, or receipt of verbal notice of an office decision, as determined by the date in the case record.
- (4) An appellant shall have the right to be represented by an advocate or attorney at all appellate proceedings, and the appellant shall bear all cost for such representation.
- (5) Upon receipt of a request for an administrative hearing, the office shall:
 - (a) Conduct an administrative review of the decision on appeal prior to the administrative hearing; and
 - (b) Convene an administrative hearing within sixty (60) days, except that a time extension, not to exceed one year, shall be granted upon agreement by both parties.
- (6) During an appeal, the office shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:
 - (a) It has evidence that the service was obtained through:
 1. Misrepresentation;
 2. Fraud;
 3. Collusion;
 4. Criminal conduct; or
 - (b) The appellant requests the action.

Section 3. Administrative Review.

- (1) Upon receipt of a notice of appeal, the office shall conduct an informal administrative review of the decision.
- (2) The director or designee shall select a branch manager not involved in the action in question who shall conduct the administrative review of the decision within ten (10) days.
- (3) The administrative review shall be conducted either in person or by teleconference, and the appellant shall be invited to participate.
- (4) The branch manager shall issue a written determination within five (5) business days and notify the appellant via electronic mail or U.S. Mail.[]

Section 4. Mediation.

- (1) The appellant shall have the right to participate in mediation before an administrative hearing is convened.
- (2) The office shall maintain a list of qualified mediators.
- (3) If mediation is requested, the office shall:
 - (a) Choose a mediator from the list and schedule the mediation for a date prior to an administrative hearing;
 - (b) Convene the mediation in a location convenient to the office and the appellant, and provide reasonable accommodations if requested;
 - (c) Bear the cost of mediation; and
 - (d) Send a representative of the office to the mediation who is authorized to bind the office to an agreement.
- (4) [()] The appellant shall attend the mediation.
- (5) Discussions or agreements arising from the mediation shall be confidential and shall not be used as evidence in any subsequent administrative hearing or civil proceeding.
- (6) An agreement reached by the parties through mediation shall be documented in writing, signed by both parties prior to the conclusion of the mediation, and a copy shall be issued to both parties.

Section 5. Administrative Hearing. The office shall conduct an administrative hearing in accordance with KRS 13B and Section 2 when the appellant elects not to participate in mediation, or the mediation did not result in an agreement.

Section 6. Client Assistance Program. The office shall advise an applicant, potentially eligible individual, or eligible individual of:

- (1) The existence of the Client Assistance Program;
- (2) The services provided by the program; and
- (3) How to contact a program representative.

Section 8. Findings and Decision.

- (1) The hearing officer shall issue a recommended order in accordance with KRS 13B.110..
- (2) Either party shall have the right to submit exceptions to the recommended order to the Secretary as set forth in KRS 13B.110.
- (3) The Secretary or designee shall Issue the final order in accordance with KRS 13B.120.[]

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend at least five workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.