

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

781 KAR 1:010. Office of Vocational Rehabilitation ~~{Department 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) ~~{(2)}~~ "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) ~~{(3)}~~ "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) ~~{(4)}~~ "Office" means the Office of Vocational Rehabilitation ~~[and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement].~~
- (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 ~~[Hearing Officer]~~. (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.[

~~[(1)] [To conduct a hearing under this administrative regulation, a hearing officer shall not:]~~

~~[(a)] [Be an employee of a public agency, other than an administrative law judge, hearing examiner, or employee of an institution of higher education;]~~

~~[(b)] [Be a member of the Vocational Rehabilitation Council;]~~

~~[(c)] [Have been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; or]~~

~~[(d)] [Have personal or financial interest that would be in conflict with the objectivity of the individual.]~~

(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. ~~[To conduct a hearing under this administrative regulation, a hearing officer shall:]~~

~~[(a)] [Have knowledge of the delivery of vocational rehabilitation services, the federal and state laws and the administrative regulations governing the provision of vocational rehabilitation services; and]~~

~~[(b)] [Have training with respect to the performance of official duties.]~~

(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. ~~[An applicant or eligible individual may request an informal administrative review conducted by an office staff member from the director of program services or a designee.]~~

(2) The director or designee shall select ~~a[an] branch manager[administrator from a district]~~ not involved in the action in question who shall conduct the administrative review of the decision within ten (10) days.

(3) The ~~{administrator shall conduct the}~~ administrative review shall be conducted either in person or by teleconference, and the appellant shall be invited to participate.

(4) The branch manager~~{administrator}~~ shall issue a written a determination within five
(5) business days~~{make a determination}~~ and notify~~{forward a copy to}~~ the appellant via
electronic mail or U.S. Mail~~{individual and the office within five (5) days of the~~
administrative review}.~~{}~~

~~{(5)} {The applicant or eligible individual shall attend the administrative review and may be represented by an advocate or counsel.}~~

Section 4. Mediation.

(1) The ~~{office and the}~~ appellant shall have the right to participate in mediation before an administrative hearing is convened~~{office and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation}~~.

(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. ~~{The Director of Program Services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.}~~

~~{(4)} {A representative of the office who is authorized to bind the office to an agreement shall attend the mediation.}~~

(4) [(5)] The appellant~~{applicant or eligible individual}~~ shall attend the mediation.

(5) [(6)] Discussions or agreements arising from the mediation~~{process}~~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 ~~{Right of Appeal and Information}~~. ~~{}~~

~~{(1)}~~ 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. ~~{An applicant or eligible individual may appeal to the Director of Program Services determinations made by the office affecting:}~~

~~{(a)} {Furnishing of vocational rehabilitation benefits; or}~~

~~{(b)} {Denial, reduction, suspension, or cessation of vocational rehabilitation services.}~~

~~{(2)} {An applicant or eligible individual shall:}~~

~~{(a)} {Be informed of the:}~~

~~{1.} {Entitlements available under this administrative regulation;}~~

~~{2.} {Right to appeal;}~~

~~{3.} {Right to be represented by an advocate or counsel; and}~~

~~{4.} {Names and addresses of office individuals with whom an appeal shall be filed.}~~

~~{(b)} {Request an appeal:}~~

~~{1.} {In writing;}~~

~~{2.} {By telephone through direct contact with the Director of Program Services or a designee; or}~~

~~{3.} [On tape, except that a voice mail message shall not constitute a request for a hearing.]~~

~~{(3)} [The director of program services or a designee shall convene a hearing within sixty (60) days of a request made pursuant to subsection (1) of this section. Reasonable time extensions, not to exceed one (1) year, may be granted for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:]~~

~~{(a)} [KRS Chapter 13B; and]~~

~~{(b)} [This administrative regulation.]~~

~~{(4)} [Pending a final determination of a hearing or other final resolution, 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 by an applicant or eligible individual through:]~~

~~{1.} [Misrepresentation;]~~

~~{2.} [Fraud;]~~

~~{3.} [Collusion; or]~~

~~{4.} [Criminal conduct; or]~~

~~{(b)} [The applicant or eligible individual, or an authorized representative, requests this action.]~~

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~~[, created by KRS 151B.225];~~
- (2) The services provided by the program; and
- (3) How to contact a program representative.

~~{Section 7.} [Appeal Time and Hearing Procedures.]~~

~~{(1)} [An applicant or eligible individual shall file an appeal:]~~

~~{(a)} [Within sixty (60) days of becoming aware, through the exercise of due diligence, of an office determination affecting the provision or denial of vocational rehabilitation services.]~~

~~{(b)} [By contacting the Director of Program Services.]~~

~~{(2)} [An applicant or eligible individual shall, at the time of requesting a hearing:]~~

~~{(a)} [Identify accommodations required; and]~~

~~{(b)} [Submit an issue statement for the hearing.]~~

~~{(3)} [A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the office and Statewide Council for Vocational Rehabilitation.]~~

Section 8. Findings and Decision.

(1) The hearing officer shall issue a recommended order in accordance with KRS 13B.110~~[complete and submit to both parties and the Secretary of the Education Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing, unless both parties agree to a time extension].~~

(2) Either party shall have the right to submit exceptions to the recommended order to the Secretary as set forth in KRS 13B.110~~[twenty (20) days from the date the recommended order is mailed within which to file exceptions to the Secretary of the Education Cabinet.]~~

(3) The Secretary or designee~~[of the Education Cabinet]~~ shall ~~[consider the record, including the recommended order and any timely exceptions filed to the recommended order.]~~Issue the final order in accordance with KRS 13B.120.

~~{(4)} [The Secretary of the Education Cabinet shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions.]~~

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets forth the appeal rights guaranteed to vocational rehabilitation applicants and consumers as required by 34 C.F.R. § 361.57.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to implement the appeal rights required by 34 C.F.R. § 361.57. (c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for vocational rehabilitation applicants and consumers to know their appeal rights and how to exercise those rights. It also provides guidance to OVR staff on how to respond to requests for appeal.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

No answer provided.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation provides specific administrative guidance for the implementation of the appeal procedures required by federal law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The proposed amendment is made to ensure the regulation strictly complies with federal law, to clarify the agency's use of the administrative hearing process set forth in KRS 13B, and to bring clarity to the multiple options for review of an agency decision.

(b) The necessity of the amendment to this administrative regulation:

The changes made to the regulation were needed to comply with federal law and to more clearly define the appeal process. (c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the appeals process.

(c) How the amendment conforms to the content of the authorizing statutes:

No answer provided.

(d) How the amendment will assist in the effective administration of the statutes:

This provides clarification for staff on the agencies obligations during the process, including the specific timelines as required in federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Any individual with a disability that applies for or receives vocational services, and all vocational rehabilitation staff statewide.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Vocational rehabilitation applicants or consumers who wish to appeal an agency decision will be required to follow the procedures set forth in the regulation. The agency staff will also be required to follow the procedures set forth when a request for appeal is received.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There are no new costs to staff or individuals with disabilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Applicants and vocational rehabilitation consumers will have a better understanding of their rights to appeal and the process for asserting those rights. Agency staff will have better guidance on their responsibilities during the appeal process.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

No additional costs are expected.

(b) On a continuing basis:

The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There is no increase in fees or funding necessary to implement this amendment to the existing regulation. (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No answer provided.

(9) TIERING: Is tiering applied?

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. § 701 et seq., 29 U.S.C. § 721(a)(5), 34 C.F.R. §§ 361.36, 361.54.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated.

(c) How much will it cost to administer this program for the first year?

There shall be no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years?

There shall be no cost associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: