




SUBJECT	<b>Vocational Rehabilitation Appeals</b>
Policy #:	<b>80-VR-12</b>
Legal Reference:	ORC 3304.15; 34 CFR 361.57; OAC 3304-2-62
Date:	January 21, 2019
Approved:	Kevin L. Miller, Executive Director 
Origin:	Division of Legal Services
Supersedes:	80-VR-12 (10/01/18)
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Review/Implementation	Begin Review – 03/17/2020 Implement Revisions By – 09/17/2020

## I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code §3304.15 which establishes the power and authority of the Opportunities for Ohioans with Disabilities (OOD) and its executive director to develop all necessary rules and policy in furtherance of its statutory duties.

This policy furthers the mandates contained in 34 CFR 361.57, section 102 (c) of the Rehabilitation Act, and Ohio Administrative Code Section 3304-2-62.

## II. PURPOSE

The purpose of this policy is to provide detailed guidelines for appeals when an applicant, eligible individual, former eligible individual, or if applicable, his/her parent or the legal guardian disagrees with eligibility determination or is dissatisfied with the provision or denial of vocational rehabilitation services. An appeal may be made by the an applicant, eligible individual, former eligible individual, or the legal guardian or authorized representative of an applicant, eligible individual, or former eligible individual to exercise their right to appeal through a simple process that complies with the Rehabilitation Act, EEO regulations and in accordance with appropriate federal (e.g. Code of Federal Regulations [CFR]) and state law (i.e. Ohio Revised Code, Ohio Administrative Code) governor directives and executive orders, other governing agency (e.g. DAS, OBM) policy or guidance, and/or executive director expectations.

## III. APPLICABILITY

This policy applies to all OOD employees and VR contractors.

## IV. DEFINITIONS

Refer to “Vocational Rehabilitation Definitions” (80-VR-99.A)

Aggrieved Party – for the purposes of this policy, an applicant, eligible individual, former eligible individual or if applicable, his/her parent or legal guardian who feels they have been unfairly treated.

## VI. POLICY

### A. General

1. OOD shall provide information to individuals and if applicable, their parent or legal guardian throughout the Vocational Rehabilitation (VR) process as required by law (e.g. rights and duties). This information shall be provided, in writing, and when appropriate, in the individual's native language or through an appropriate mode of communication.
2. AWARE shall be updated with pertinent conversations, recommendations, justifications, approvals and/or other actions taken in relation to this procedure.
  - a. VR Staff or VR Contractor shall obtain supervisory approval, if required, via use of an "Activity Due" in AWARE.
    - i. If supervisory or management approval is required during the VR process, the supervisor or manager shall document their approval in AWARE.
3. If any OOD Staff are a Certified Rehabilitation Counselor (CRC-certified) and will be directly involved with an individual's case, he/she shall complete the "Professional Disclosure Statement" (80-VR-01.E).
  - a. VR Staff or VR Contractors who are not a Certified Rehabilitation Counselor (CRC) are exempt from this requirement.
  - b. Once completed, the "Professional Disclosure Statement" shall be reviewed and signed by the individual and, if applicable, his/her parent or legal guardian, and the CRC-certified VR Staff or VR Contractor.
    - i. Once signed, the statement shall be scanned into the AWARE Participant Module, as a Case Note, with the category "Professional Disclosure Statement" and summary title "Signed."

### B. Notice of an Appeal

1. An applicant, eligible individual, former eligible individual, or if applicable, his/her parent or legal guardian (hereafter referred to as the aggrieved party) must be provided with notice of their appeal rights at certain times during the VR process. These times include:
  - a. at the time the individual applies for vocational rehabilitation services;
  - b. at the time the individual is assigned to a category in the order of selection, if Ohio has established an order of selection;
  - c. at the time the Individualized Plan for Employment (IPE) is developed; and
  - d. whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.
2. As soon as the VR Staff or VR Contractor is aware of a potential disagreement, or as otherwise specified above, they shall provide the aggrieved party with appeal rights as follows:

- a. Provide the aggrieved party a copy of the "Appeal Process Overview" (80-VR-06.B) (formerly "Attachment A"); or
- b. As an alternative, appeal rights may also be provided to the aggrieved party in the language of a case closure letter, in the body of the IPE, or by embedding the appeal rights language into a letter informing the aggrieved party that their services are being reduced, suspended, or terminated.

As soon as the VR Staff or VR Contractor is aware of an individual's desire to appeal an issue, they shall provide the aggrieved party with a "Vocational Rehabilitation Appeal Form" (80-VR-06.A).

### 3. Requests to Change VR Staff or VR Contractor Assignment

- a. If an individual requests a change to his/her assigned VR Staff or VR Contractor, the supervisor shall make a determination as to whether the assignment is adversely affecting the delivery of VR services.
  - i. If the supervisor agrees that the current VR Staff or VR Contractor's relationship with the individual is adversely affecting the delivery of VR services, the supervisor shall reassign the individual to a different VR Staff or VR Contractor.
  - ii. If the supervisor does not agree that the current VR Staff or VR Contractor's relationship with the individual is adversely affecting the delivery of VR services, the supervisor may or may not reassign the individual to a different VR Staff or VR Contractor.
- b. In making decisions on whether to exercise discretion in changing an individual's assigned VR Staff or VR Contractor, a supervisor shall consider all of the following factors:
  - i. the capacity to make a change given current staffing levels;
  - ii. the current state of the counseling relationship; and
  - iii. the history, if any, of requests from the individual for changes to his/her assigned VR Staff or VR Contractor.
- c. If an individual disagrees with a supervisor's decision not to reassign him/her to a different VR Staff or VR Contractor, the individual shall be provided with notice of their appeal rights.

### C. Timing for an Appeal

1. An aggrieved party may appeal, in writing, to the Executive Director within 30 days of first learning about OOD's decision about the provision or denial of services as it relates to their case or the closure of their case.
  - a. The 30 days begins upon the notification to the aggrieved party about the decision.
    - i. In the case of written decisions, the 30 day time frame begins when the letter is postmarked or the email is sent. In either of these cases, attempts should be made to contact the aggrieved party via telephone or in person, on the same day.

- a) When a VR Contractor becomes aware of a potential disagreement, he/she shall notify the VR Contracts Unit.
  - b. VR Staff or VR Contractors are encouraged to keep lines of communication open during the pendency of the appeal and to continue collaborating with the aggrieved party on possible resolutions.
2. Upon receipt of the appeal, the DLS will schedule a fair hearing within 60 days of receipt of the appeal and notify the aggrieved party in writing, and local area management via email, of the appeal.
  3. An administrative review must be offered unless approval is given by DLS to forgo the administrative review and must be conducted within 21 days of being informed of the notice of appeal.
  4. Mediation is also available and may be entered into any time after the appeal is received but prior to the scheduled fair hearing date by contacting DLS.

#### D. Mediation

1. Mediation is conducted by an impartial qualified mediator who is not an employee of OOD.
2. Discussions that occur in the mediation session are required to be kept confidential in accordance with state and federal law.
3. The mediation parties may discuss the issue and develop a mutually acceptable resolution of the disagreement.
  - a. During the mediation process, the parties develop a mediation agreement with the assistance of the impartial mediator.
4. Mediation does not extend the 60 day timeline in which to hold the hearing.

#### E. Informal Administrative Review

1. The aggrieved party may choose to forgo an informal administrative review and proceed directly to a fair hearing.
2. An informal administrative review is conducted by a designated OOD management representative who has had no involvement in the case prior to the review.
3. An informal administrative review must be conducted within 21 days of being informed of the notice of appeal, and may be in person, by telephone or by video conference.
4. The aggrieved party and at least one (1) OOD representative, who is associated with the applicant, eligible individual, or former eligible individual's case, will attend and present their respective positions to the designated management representative.
5. The designated management representative will have seven (7) days from the date of the informal administrative review to provide a written resolution offer, if applicable, to the aggrieved party, or provide notification to the aggrieved party that OOD cannot make an offer.
  - a. The designated management representative will copy DLS on the offer, or notice of non-offer.

6. The aggrieved party will have 14 days from the date of the written resolution offer to accept the offer and withdraw his/her appeal.
  - a. If the offer is not accepted and appeal not withdrawn the case shall proceed to fair hearing.
7. The informal administrative review does not extend the 60 day timeline in which a fair hearing must be held.

#### F. Fair Hearing

1. If the informal administrative review does not result in the appeal being withdrawn then the case shall proceed to a fair hearing.
2. The fair hearing will be held pursuant to ORC Chapter 119.
3. The fair hearing will be held in Columbus, Ohio, unless the aggrieved party provides written medical documentation, from a qualified provider, which supports the need for an alternative site due to the aggrieved party's disability.
4. The fair hearing process is as follows:
  - a. The aggrieved party may choose to be represented, at their own expense, by an attorney licensed to practice law in the state of Ohio or permitted to practice pro hoc vice or may be represented by Disability Rights Ohio, under the Client Assistance Program ([www.disabilityrightsohio.org](http://www.disabilityrightsohio.org)).
  - b. OOD will be represented by an Assistant Attorney General.
  - c. Both parties may provide an opening statement.
  - d. Both parties will have an opportunity to present witnesses and written documentation to support their case.
    - i. The aggrieved party may choose to present his or her arguments in writing in lieu of appearing for the hearing.
  - e. Each party is responsible for providing five (5) copies of any documentation that is to be presented at the fair hearing.
  - f. Both parties may present a verbal closing statement, or a written closing statement if the Hearing Officer requests it.
  - g. The Impartial Hearing Officer is required to issue his/her decision within 30 days of the hearing, or within 30 days after written closing statements are received.
  - h. The decision of the Impartial Hearing Officer is final and binding.

#### G. Continuation and Termination of Services

1. OOD shall continue to provide the services as listed in the eligible individual's IPE until the appeal is resolved.
2. Any change in dates for services shall not be considered a suspension, modification, or termination of services.

3. A service may be modified, suspended or terminated without a fair hearing if the service was obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the eligible individual.

#### H. Case Record

1. VR Staff and VR Contractors shall ensure that vocational rehabilitation appeals and the related documentation (the appeal notice letters, and any outcomes [e.g. administrative hearing officer decisions, mediation agreements]) are placed into the applicant, eligible individual, or former eligible individual's AWARE case file.

#### I. Civil Rights Complaint

1. An aggrieved party may assert a civil rights complaint.
2. A civil rights complaint may be asserted by any reasonable means that would put an employee of OOD on notice that the aggrieved party believes they are the subject of discrimination or retaliation.
  - a. An OOD employee may be put on notice in various ways that includes, but is not limited to, a phone call, voicemail, letter, or email.
3. When an OOD employee receives a civil rights complaint, the employee shall:
  - a. provide the aggrieved party access to OOD's "Equal Employment Opportunity policy (50-EEO-03); and
  - b. contact James Clinkscale, Diversity and Inclusion Manager, any member of OOD's Division of Human Resources Office of Diversity and Inclusion (HR, ODI), or the Deputy Director of Human Resources.
4. When an aggrieved party files an appeal that claims discrimination, DLS will forward the civil rights complaint portion of the appeal to HR, ODI for further investigation.

#### J. Miscellaneous Internal Procedures

1. If an aggrieved party seeks accommodation(s) for any meeting held throughout the appeal process, the local office will be notified and will be responsible for scheduling any necessary services. The local office shall work in conjunction with DLS to ensure that accommodations are both necessary and reasonable.
2. VR Staff or VR Contractors will be asked to ensure that all necessary case documentation (e.g. forms, case notes, medical information) is in the AWARE case file so that DLS can prepare the case for fair hearing for the Assistant Attorney General.
3. VR Staff or VR Contractors will be notified if they are to be called as witnesses and will participate in a case preparation meeting with the Assistant Attorney General and DLS prior to a fair hearing.

## FORMS AND ATTACHMENTS

- 80-VR-01.A - Applicant or Eligible Individual Appeal Form
- 80-VR-01.B – Appeal Process Overview (*formerly Attachment A*)

## RESOURCES

- Policy 50-EEO-03 “Equal Employment Opportunity”

## FUNDING

Programs provided by the Opportunities for Ohioans with Disabilities are funded, in whole or in part, with federal grants awarded by the U.S. Department of Education (DOE) or the U.S. Department of Health and Human Services (HHS).

For purposes of the Vocational Rehabilitation (VR) Program, including Pre-Employment Transition Services (Pre-ETS), OOD received 78.7% of its funding through the DOE VR grant. In Federal fiscal year (FFY) 2018, OOD received \$100,336,097 in federal funds. Funds appropriated by the State covered 21.3 % of the total costs, or \$27,155,767. Of these federal funds, \$15,050,415 is set aside for Pre-ETS.

For purposes of the Supported Employment Program, the DOE VR grant funded 100% of the costs for the Supported Employment for Youth with a Disability Program. In FFY 2018, OOD received \$303,725. The grant also funded 95% of the Supported Employment Program (non-Youth). In FFY 2018, OOD received \$303,725 and the State appropriated funds paid the remaining 5% or \$33,747 of the total costs.

For purposes of the Independent Living Services for Older Individuals Who are Blind (OIB) Program, the federal grant received from DOE in FFY 2018 paid 90% of the total costs incurred under the program. In FFY 2018, OOD received \$1,174,400 in federal grant funds. Funds appropriated by the State paid 10% or \$130,489 of the total costs incurred under the OIB program.

For purposes of the Independent Living (IL) Program, the federal grant received from HHS paid 90% of the total costs incurred in FFY 2018. In FFY 2018, OOD received funding of \$632,411. Funds appropriated by the State paid 10% or \$70,268 of the total costs incurred under the IL Program.

## REVIEW

It is the responsibility of the Deputy Director, or designee, to review this policy, on or before, the date listed in the header and if applicable, make any necessary revisions. The Deputy Director or designee shall document the review as required in “Policy and Procedure Development, Review, Dissemination and Acknowledgement” (10-ADM-01).