Chapter 20:

Appeals Process

Vermont Division for the Blind and Visually Impaired
Policy and Procedures Manual

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1. General Policy
	1. Effective communication between individuals applying for or receiving DBVI services and DBVI staff is essential. DBVI staff must be aware of and use the methods that best assure that our message is received and understood by the other party.
	2. Although most problems may be resolved through communication with the Rehabilitation Counselor, and/or DBVI Director, the followingoptions are available for those situations when resolution is not achieved:
		1. Administrative review by a Senior DBVI Counselor designated by the DBVI Director;
		2. Mediation (must be agreed to by the individualand DBVI);
		3. Fair Hearing before the Agency of Human Services Board (HSB);
		4. Civil court action.

Any level of appeal may be skipped in favor of a higher level of appeal.

An individual may seek assistance from the Client Assistance Program (CAP) at any level of the appeals process.

### Guidance – Using the Client Assistance Program.

The Client Assistance Program (CAP) is an independent entity authorized under Title I, Section 112 of the Rehabilitation Act. CAP’s purpose is to inform and advise anyone applying for or receiving DBVI servicesof available benefits under the Act and, upon request, to assist and advocate for them in their relationships with projects, programs and facilities providing services to them under the Act. Vermont’s CAP is part of Vermont Legal Aid, Inc.

DBVI strongly encourages DBVI Counselors to inform anyone applying for or receiving DBVI services about CAP services at any time in the vocational rehabilitation process. CAP has been instrumental in resolving issues or providing information that assists individuals in understanding the DBVI process. It is DBVI’s goal to resolve issues as early as possible in the appeals process.

*End Guidance.*

* 1. Written notice of appeal rights shall be provided to any individual or, as appropriate, their representative:
		1. At the time of application for DBVI services;
		2. When an individual is determined ineligible for DBVI services;
		3. At the time when the IPE is being developed;
		4. Whenever DBVI services are reduced, suspended or terminated;
		5. Whenever anyone applying for or receiving DBVI services is dissatisfied with any determination made by DBVI that affects the provision of DBVI services;
		6. Whenever a disagreement between an individual and the DBVI counselor cannot be resolved to the individual’s satisfaction.
	2. Notice must include a description of the appeals process including:
		1. The name and address of where the appeal may be filed;
		2. The manner in which a mediator or impartial hearing officer may be selected;
		3. An explanation of how to contact CAP for no-cost assistance during the appeals process.
	3. To help ensure understanding, the written description of the appeals process may be supplemented by other appropriate modes of communication depending on the individual’s disability or needs.
	4. The case record must demonstrate that the individual received notice at each appropriate stage. If the individual was receiving services of any kind at the time of an appeal, the case record must document whether or not services continued pending the outcome of the appeals process.
	5. Pending completion of an appeal (mediation, administrative review, or fair hearing), services may not be suspended, reduced, or terminated unless the consumer so requests or the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or, as appropriate their representative.
	6. A detailed description of each appeals option is outlined in Sections II – IV.

# Administrative Review

## General Description

* 1. An administrative review is an informal hearing conducted by a DBVI Senior Counselor designated by the DBVI Director. The review officer shall not have had any prior involvement in the case or issue unless the individual agrees to the designation.
	2. A request for an administrative review may be made verbally (in person, by phone, or video conference, or through an interpreter) or in writing to the DBVI Director.
		1. If a request is made verbally, the request must be recorded and dated in the individual’s case record.
		2. A written request shall state the request for an administrative review and the nature of the dissatisfaction; it should be signed, dated, and placed in the case record.
		3. An administrative review must be requested within sixty (60) calendar days of the notice of decision or action in dispute.
	3. The DBVI Director will notify the individual of the identity of the designated DBVI Senior Counselor (review officer) within ten (10) working days of receiving the request.
	4. The review shall involve the individual, the counselor involved in the decision or action in dispute, and the DBVI Senior Counselor assigned to conduct the review. The review also may include:
		1. Anyone the individual wants to have present (including her/his representative or advocate);
		2. Any other DBVI personnel who may have been involved in the decision or action in dispute;
		3. Anyone the review officer wishes to be present for informational or facilitative purposes.
	5. If the consumer is a minor or under a guardianship, the review must also include the presence of the legal guardian.
	6. The designated DBVI Senior Counselor shall have the authority to settle the issue in dispute.
	7. Facts relevant to the issue will be discussed; documentary material may be submitted by any party. Direct access to the case record shall comply with Federal and State laws on confidentiality.
	8. The review will be audio-recorded. DBVI staff may not use personal recording devices. Access to the recording by parties not directly involved in the administration of the vocational rehabilitation program requires the prior written consent of the individual or their representative.
	9. An administrative review will be completed (including a written recommendation by the review officer) within forty-five (45) calendar days of DBVI’s receipt of the request, unless the parties agree to a specific extension of time.
	10. DBVI may assist the individual in paying reasonable costs associated with participating in the review (e.g., transportation, interpreter, attendant care services, etc.). DBVI is not responsible for paying for the individual’s legal representation, if any.

## Role of Administrative Review Officer

* 1. The review officer's charge is to determine whether the issue under appeal is consistent with federal law and DBVI policies and procedures. The review officer will either support the decision or make recommendations for resolution of the dispute to the DBVI Director.
	2. The review officer will study the record of services and may research and review relevant state and federal information and consult with DBVI’s attorney, as appropriate. The review officer may not discuss the issues with any of the parties involved in the dispute prior to the scheduled review.
	3. The review officer must contact the parties involved, set the date, time and location for the review, and arrange for an interpreter, attendant, or other special service needed by the individual to participate in the review. The individual will receive confirmation of this information by certified mail.
	4. The site of an administrative review will be within the individual’s district unless they agree to a different location.
	5. The review officer will chair the review and is responsible for:
		1. Taping the proceedings;
		2. Explaining theirrole and the objective(s) of the meeting; and
		3. Establishing ground rules for the conduct of the meeting.
	6. During the meeting, the review officer shall;
		1. Allow all parties a reasonable opportunity to be heard;
		2. Ask for clarification when necessary; and
		3. Facilitate the flow of communication.
	7. The review officer shall summarize the review in writing. If no solution was reached, the review officer shall consider the information provided or available and the policy and procedural implications, and shall include theirrecommendations for action in the report. Copies of the review officer’s report shall be sent to the parties involved within ten (10) working days of the review.
	8. If the individual disagrees with the decision in the administrative review, they have;
		1. ten (10) working days from the date of the decision to request mediation, if that option has not been used, or
		2. thirty (30) calendar days from the date of the decision to request a fair hearing. At the same time, they will receive instructions for requesting a fair hearing.

# Mediation

## General Description

* 1. Mediation is a process using an impartial third party (a mediator) to help the two parties in a dispute reach a mutually acceptable agreement to resolve the dispute. Mediators help define the problem, evaluate possible solutions, and form agreements. Mediators do not decide who is right or wrong but guide the parties toward productive communication in informal and confidential settings.

## General Requirements

* 1. Mediation can be used only when the individual and DBVI agree to participate.
	2. Mediation shall not be used to deny or delay the right of an individual to a fair hearing under this Section IV of this Chapter or to deny any other right afforded under Title I of the Rehabilitation Act.
	3. Mediation shall be conducted by a qualified and impartial mediator.
		1. The mediator must be trained in effective mediation techniques and be familiar with the laws and regulations relating to the provision of vocational rehabilitation services.
		2. DBVI shall have knowledge of and access to local mediators and shall provide that information to individuals seeking mediation and to CAP.

### Guidance – Mediator Qualifications.

Preference may be given to mediators who are familiar not only with laws relating to vocational rehabilitation, but also with disability issues. The list shall include information about CAP — not as a provider of mediation but as a reference for assistance in resolving the dispute, in understanding mediation, choosing a mediator, etc.

End Guidance.

* 1. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent appeal or civil proceeding. The parties to the mediation process will be required to sign a confidentiality agreement prior to beginning of mediation.
	2. Mediation can be terminated at any point by DBVI or the individual.
	3. DBVI shall bear the reasonable costs of the mediation process including the mediator’s fee, the consumer’s cost for transportation, attendant services, interpreter services, etc. DBVI will not pay for the individual’s legal representation, if any.

## Procedural Requirements

* 1. A request for mediation must be made to the DBVI Director within sixty (60) calendar days of the date of the decision or action with which the individual is dissatisfied. A request may be made verbally or in writing. Verbal requests (either in person, by phone, or video conference, or through an interpreter) must be put into written form by the DBVI counselor then dated and placed in the individual’s case record. A written request by the individual shall state that mediation is requested and include a statement about why the individual disagrees with DBVI’s decision. It must be signed and dated by the individual, or their representative, then placed in the case record.
	2. The DBVI Director, in consultation with the DBVI counselor, shall decide whether to agree to the request for mediation. The Director shall inform the individual in writing of DBVI’s decision within ten (10) working days of DBVI’s receipt of the mediation request. If DBVI decides not to participate in mediation, the written notice to the individual must state that decision and describe the remaining appeals options available to the individual.
	3. If DBVI refuses mediation and the individual has not used the administrative review option, the dispute will automatically be referred for administrative review. If the individual decides that they do not want to participate in an administrative review, the individual must notify DBVI of this decision within ten (10) working days following the date of the written notice of DBVI’s decision not to use mediation.

### Guidance – Appeals and CAP Participation.

It is good practice for the counselor to strongly encourage the consumer to contact CAP if she/he has not already done so. CAP may be able to help resolve the issue without using the appeals process or may be helpful to the consumer in choosing the most appropriate mediator for the issue at hand. It is often in both the counselor’s and the consumer’s interest to have CAP involved early in the process.

*End Guidance.*

* 1. If DBVI agrees to use mediation, a mediator will be selected by mutual agreement between DBVI and the individual or, as appropriate, the individual’s representative.
		1. The selection shall occur within ten (10) working days of the agreement to use mediation.
		2. Upon selection of the mediator, dates to begin the mediation process shall be set as soon as possible with the goal of completing the mediation process within forty-five (45) calendar days from the date of the agreement to use mediation.
		3. DBVI and the individual may agree to a specific extension of this timeline.
	2. An agreement reached by the individual and DBVI through the mediation process shall be put in writing and signed by DBVI and the individual or their representative. A copy of the agreement must be placed in the case record.

## Documentation Requirements

* 1. When a dispute between DBVI and the individual is not resolved through an informal process, the DBVI counselor must document in their case record whether or not mediation was offered.
	2. When mediation is offered but rejected by either party, the case record must indicate who rejected mediation and the reason for rejection, if known.
	3. If mediation occurred, the record must indicate whether or not:
		1. The individual was given the opportunity to present evidence during the mediation session;
		2. The individual was given the opportunity to have representation during the mediation session;
		3. CAP was involved during the mediation process;
		4. An agreement was reached during the mediation; and
		5. The individual decided to request a fair hearing or file a civil action in court.

# Fair Hearing

* 1. A fair hearing is a formal review conducted by the Agency of Human Services' Human Services Board (HSB). A request for fair hearing must be made:
		1. Within thirty (30 calendar days from the date of an administrative review decision;
		2. Within thirty (30) calendar days following the completion of an unsuccessful mediations.
		3. Within ninety (90) calendar days from the date of the decision if an administrative review or mediation have not been held.
	2. Requests for fair hearing may be made to the DBVI Director who must document the request in writing and forward it to the Agency of Human Services (AHS) Board. A fair hearing request may also be made directly to the Human Services Board (HSB).
	3. In accordance with the rules of the HSB, the individual, or their representative shall have the opportunity to be represented by an advocate and to present evidence, information, and witnesses**,** and to examine all witnesses and other relevant sources of information and evidence.
	4. If a fair hearing occurred, the case record must contain information regarding the date(s) of any hearing(s) and the result of the fair hearing process. As in the mediation process, the record must address the issues of evidence, representation, and CAP involvement.
	5. An individual dissatisfied with the decision of the Human Services Board may appeal to the Vermont Supreme Court.

# Civil Action

* 1. If a civil (court) action is pursued, the case record must so indicate and include information on whether the consumer or DBVI filed the action and the date of the filing. Answers to the following questions must be in the case record:
1. Is CAP representing the consumer?
2. Is the individual represented by an attorney?
3. Has the court heard the case yet?
4. If the court has issued a decision, did it favor the individual or DBVI?
	1. If the court decides in favor of the individual, or if the parties reach an agreement prior to the court issuing a decision, the case record must indicate how the agreement or court decision was implemented.