

Department of Human Services
Division of Rehabilitation Services
Division of Service to the Blind and Visually Impaired

PROGRAM GUIDE
DRS/DSBVI – 12-01
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Draft

FROM: Grady Kickul, DRS Director
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TO: All DRS & DSBVI Offices

SUBJECT: Due Process Procedures.

This Program Guide replaces Program Guide DRS/DSBVI 00-03 on Due Process Procedures. This Program Guide will provide instructions and clarify the implementation of the due process policy for the Vocational Rehabilitation Services Programs for DRS and SBVI applicants and eligible consumers.

Informing Individuals of their right to due process

All applicants and eligible individuals will be informed of their right to an appeal (Administrative Review, Mediation, and Fair Hearing) at the following stages of the rehabilitation process:

- Application
- Eligibility
- Plan
- Closure
- Reduction, suspension or cessation of vocational rehabilitation services.

The due process information is included on the agency's application form, plan and template letters sent to individuals prior to closing their case. Individuals choosing to request an appeal a counselor's decision need to submit a letter to the Assistant Director of the appropriate Division. The attached template letter can be provided as a guide to a consumer who wishes to appeal a decision. Enclosed is a chart of an individual's due process options. Due process is designed as a series of sequential steps that may be necessary to settle a dispute that an applicant/eligible individual has concerning eligibility and/or service delivery. It is expected that most disagreements or misunderstandings will be worked out within the counseling relationship. When this is not possible, due process procedures are available to resolve the dispute. A dispute is defined as a complete inability to resolve a disagreement between the counselor and applicant or eligible individual concerning determinations made by the counselor that affect the provision of rehabilitation services. This sequential process is designed to resolve disputes at the lowest level. The sequential steps start with an Administrative Review, if necessary may

progress to Mediation and finally if unresolved, may progress to a Fair Hearing. An individual may request to begin at any step in the process, but by doing so forfeits their right to utilize prior steps. Utilizing Administrative Review or Mediation will not delay the individual's right to a Fair Hearing. Utilization of Mediation and Administrative Reviews are not required steps, but are options designed to resolve the dispute prior to a Fair Hearing.

An individual or their legal guardian who request due process must submit their written request within 30 days of being notified of the eligibility decision or denial of services.

Requests for due process for DRS applicants/consumers must be submitted in writing to:

Bernie Grimme, Assistant Director
Department of Human Services
Division of Rehabilitation Services
East Highway 34, c/o 500 East Capitol
Pierre, SD 57501

Requests for due process for SBVI applicants/consumers must be submitted in writing to:

Eric Weiss, Assistant Director
Department of Human Services
Division of Service to the Blind and Visually Impaired
East Highway 34, c/o 500 East Capitol
Pierre, SD 57501

All individuals seeking due process will be informed of the Client Assistance Program and provided a copy of their brochure. Counselors need to document this activity in the case file.

Request for Administrative Review

Requests for an Administrative Review should be directed in writing to the Assistant Director of the appropriate Division. The Administrative Review may be assigned to a Certified Rehabilitation Counselor within DRS or SBVI from another district office or another individual as determined appropriate by the Division Director.

The Assistant Director will send a letter to the individual confirming the request for an Administrative Review. The letter will also include who will review the decision and the date and location of the review. The place for the review shall be the District Office closest to the individual's home unless another place is agreed upon. The VR Counselor and Supervisor may participate in the Administrative Review. The reviewer will determine who will be present from the Division at the review. The Reviewer will contact the individual prior to the review to confirm who will be in attendance.

The individual assigned to conduct the review will request a copy of the individual's file and discuss the case with the assigned counselor to prepare for the review. The agenda for the Administrative Review will consist of:

- Introductions and overview of review process

- Review due process options of Mediation and Fair Hearing
- Review the reason for the appeal
- Opportunity for individual to discuss their case and provide any additional information
- Reviewer should have a list of questions prepared to ask during the review
- Closing

The Reviewer will submit a written decision to the individual, Division Director, Assistant Director, and the counselor within 10 days after the review. The written decision will also address the individual's responsibility to contact in writing the Assistant Director within 10 days after receiving the written decision if they want to continue the Mediation and/or Fair Hearing. If the written request is not received within the 10 days time requirement, the due process will be ended and the decision of the administrative review will be implemented.

Request for Mediation

Individuals who have a dispute will be provided a copy of "A Guide to Mediation for South Dakota Vocational Rehabilitation Services". This manual provides information on the Mediation Process.

Requests for Mediation should be directed in writing to the Assistant Director of the appropriate Division. Once the request for Mediation has been received, the Assistant Director will arrange for a Mediator who is available to provide the Mediation in a timely fashion. Once a mediator has been selected, a liaison from DRS or SBVI will assume responsibility for all arrangements and notifications as to the actual Mediation. This liaison will work jointly with the individual, mediator and the Assistant Director to make all arrangements and notifications. The mediator will make the final decision on who will attend the Mediation session. No participants will be admitted without prior knowledge and consent of the mediator.

The number of participants at a Mediation session will be kept to a minimum in order to enhance the potential for effective problem solving. Participants from DRS or SBVI will depend on the nature of the appeal. Representation from the Division will include an employee who has the authority to make decisions on the matter that is being appealed.

At the conclusion of the mediation, the individual will have 10 days to request in writing if they want to continue their due process with a Fair Hearing. If the written request is not received within the 10 days time requirement, the due process will be ended and the decision of the mediation will be implemented.

Request for Fair Hearing

An applicant or eligible individual can specifically request a Fair Hearing without participating in an Administrative Review or Mediation. Requests for a Fair Hearing may be a continuation of the due process from the Administrative Review and/or Mediation. A request for a Fair Hearing should be directed in writing to the Assistant Director of the respective Division. Immediately upon receipt of the request, the Assistant Director will contact the Hearing Office to inform them of the request and to schedule the hearing.

Once the Fair Hearing has been scheduled, the Office of Hearing Examiners will handle all arrangements and correspondence with the individual and the Division. The Office of Hearing Examiners will schedule the date and location for the hearing. The location of the hearing will be at the District Office closest to the aggrieved party's home unless both parties agree upon another location. The Office of Hearing Examiners will send a notice of hearing to both parties. The hearing will be held within 60 days from the date of the written request is received. The Hearing Officer, for good cause, may grant an extension of time beyond 60 days to hold the hearing. It is necessary that the correspondence granting an extension and the reason for the extension be in the case file.

The DRS or SBVI Assistant Director will handle the processing of the Fair Hearing for their respective Division. The case file and other supporting documentation will be sent to the Assistant Director. The Division Director of DRS or SBVI or their designee will represent the Division at the Fair Hearing. The counselor and/or supervisor may be requested to participate in the hearing.

Coordination and Participation of Due Process Procedures

The Assistant Director for the respective Division will be the primary contact person for the appeals processes. The Assistant Director will work closely with the respective Division Director during the appeals process. The assigned DRS or SBVI liaison will make all arrangements and be the primary contact to all parties in these arrangements. The Division may have another Division Specialist such as an Assistive Technology Specialist, Independent Living Specialist, or Deaf Specialist participate in the appeals process depending upon the nature of the appeal. If the applicant or eligible individual is involving legal counsel in their appeal, Administrative Review, Mediation or Fair Hearing, the Division will also have legal counsel present.

If you have any questions on this Program Guide, please contact the Assistant Director of the respective Division.

Enclosures: