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Ange Darnell

REGULATIONS COMPILER

1 EDUCATION AND LABOR CABINET

2 Department of Workforce Development

3 Office of Vocational Rehabilitation

4 (Amended After Comments)

5 781 KAR 1:010. Office of Vocational Rehabilitation appeal procedures.

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

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

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to
9 promulgate administrative regulations that are necessary to carry out the provisions of KRS
10 Chapter 13B concerning administrative hearings. 29 U.S.C. 722(c) requires state procedures for
11 the review of determinations made by rehabilitation personnel for basic rehabilitation services.

12 Pursuant to KRS 151B.200, the Commonwealth of Kentucky, agreed to comply with all provisions
13 relating to Federal Vocational Rehabilitation Acts. KRS 151B.195(1) authorizes the commissioner
14 to promulgate administrative regulations for the department. This administrative regulation
15 establishes hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

16 Section 1. [~~Definitions.~~

17 (1) "~~Administrative hearing~~" is defined by KRS 13B.010(2).

18 (2) "~~Administrative review~~" means an informal process through which office personnel not
19 involved in the initial decision conduct a review of an office decision to ensure the decision
20 complies with office policy.

- 1 ~~(3) "Appellant" means an applicant, potentially eligible, or eligible individual who~~
2 ~~requests an appeal of an office decision in accordance with this section.~~
- 3 ~~(4) "Applicant" means an individual who submits an application for vocational~~
4 ~~rehabilitation services.~~
- 5 ~~(5) "Branch manager" means the office staff who is responsible for the operations of an~~
6 ~~office branch.~~
- 7 ~~(6) "Case record" means the official written or electronic record of the vocational~~
8 ~~rehabilitation case of an applicant, potentially eligible, or eligible individual.~~
- 9 ~~(7) "Competitive integrated employment" is defined by 34 C.F.R. 361.5(c)(9).~~
- 10 ~~(8) "Eligible individual" means an applicant for vocational rehabilitation services who~~
11 ~~the office determines is an individual with a disability who requires vocational~~
12 ~~rehabilitation services to prepare for, secure, retain, or regain employment.~~
- 13 ~~(9) "Executive director" means the Executive Director of the Office of Vocational~~
14 ~~Rehabilitation.~~
- 15 ~~(10) "Hearing officer" is an individual who meets the qualifications established in KRS~~
16 ~~13B.010(7) and who has knowledge of the laws applicable to the office.~~
- 17 ~~(11) "Office" means the Office of Vocational Rehabilitation.~~
- 18 ~~(12) "Office Appeal Form" means the office form incorporated by referenced and used~~
19 ~~by an applicant, potentially eligible, or eligible individual to request an appeal of an office~~
20 ~~decision.~~
- 21 ~~(13) "Potentially eligible individual" means an individual who might be eligible for~~
22 ~~vocational rehabilitation services, but whose eligibility has not yet been determined.~~
- 23 ~~(14) "Secretary" means the Secretary of the Education and Labor Cabinet.~~

1 ~~Section 2.~~ Right to Appeal.

2 (1) The office shall notify every ~~applicant, potentially eligible individual, or eligible~~
3 individual in writing:

4 (a) ~~T[t]hat they have~~~~[the individual has]~~ the right to appeal any determination made by the
5 office that affects the provision, denial, reduction, suspension, or cessation of that
6 individual's vocational rehabilitation services;[-]

7 (b) That they have the right to pursue mediation, which shall be conducted by a qualified
8 mediator selected in accordance with 34 CFR 361.57(d);

9 (c) The names and addresses of individuals with whom requests for mediation or
10 **appeals**~~[hearings]~~ may be filed;

11 (d) That an impartial hearing officer shall be selected in accordance with 34 C.F.R.
12 361.57(e); and

13 (e) The availability of the client assistance program.

14 (2) This notice shall be provided:

15 (a) At the time an individual applies for vocational rehabilitation services;

16 (b) At the time the individual is assigned to a priority category in order of selection;

17 (c) At the time the individualized plan of employment is developed or amended; and

18 (d) Whenever **vocational[s]** rehabilitation services for an individual are **denied**, reduced,
19 **suspended**, or terminated.

20 ~~[The office shall provide to every applicant, potentially eligible individual, or eligible~~
21 individual:

1 (a) ~~As established in the Kentucky Office of Vocational Rehabilitation Policies and~~
2 ~~Procedures Manual, the procedure for requesting an appeal, including the name and~~
3 ~~address of office staff to whom a request for appeal shall be submitted; and~~

4 ~~(b) The Office Appeal Form.]~~

5 (3) A request for appeal shall be ~~[submitted using the Office Appeal Form and shall be~~
6 ~~]submitted to the office within fourteen (14) days of receipt of written notice of an office~~
7 ~~decision[or receipt of verbal notice of an office decision, as determined by the date in the~~
8 ~~case record].~~ A timely request for appeal may be submitted via US Mail, email or orally
9 to the office, including by telephone or in person. A voicemail message shall not
10 constitute a request for appeal[telephonically].

11 (4) As required by 34 CFR 370.3, an individual~~[An appellant]~~ shall have the right to be
12 represented by an advocate or attorney at all appellate proceedings, and the
13 individual~~[appellant]~~ shall bear all cost for representation.

14 (5) Upon receipt of an appeal~~[a request for an administrative hearing]~~, the office shall:

15 (a) Conduct an informal administrative review of the decision on appeal~~[prior to the~~
16 ~~administrative hearing; and]~~;

17 (b) Offer the individual an opportunity to participate in mediation if the individual
18 disagrees with the findings of the informal administrative review; and

19 (c)[(b)] If the matter is not resolved through the administrative review or mediation,
20 convene~~[Convene]~~ an administrative hearing within sixty (60) days **from the request for**
21 **appeal**, except that an~~[a time]~~ extension, not to exceed one (1) year, shall be granted upon
22 **written** agreement by both parties.

1 (6) During an appeal, the office shall not suspend, reduce, or terminate services provided
2 under the individualized plan for employment unless:

3 (a) It has evidence that the service was obtained through:

- 4 1. Misrepresentation;
- 5 2. Fraud;
- 6 3. Collusion; or
- 7 4. Criminal conduct; or

8 (b) The individual[appellant] requests the action **in writing, and the request is confirmed**
9 **in writing by the office.**

10 Section 2[3]. Informal Administrative Review.

11 (1) Upon receipt of an appeal[~~a notice of appeal, the office shall conduct an informal~~
12 ~~administrative review of the decision.~~

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

16 ~~(2)~~[~~(3)~~] The administrative review shall be conducted either in person or by teleconference,
17 and the individual[appellant] shall be invited to participate.

18 ~~(3)~~[~~(4)~~] A written determination shall be sent to the individual[~~The branch manager shall~~
19 ~~issue a written a determination~~] within five (5) business days **of the informal**
20 **administrative review**[**and notify the appellant**] via electronic mail or U.S. Mail.

21 Section 3[4]. Mediation.

22 (1) The individual[appellant] shall have the right to participate in mediation before an
23 administrative hearing is convened.

1 (2) ~~[The office shall maintain a list of qualified mediators.~~

2 ~~(3)]~~ If mediation is requested, the office shall:

3 (a) Schedule~~[Choose a mediator from the list and schedule]~~ the mediation for a date prior

4 to an administrative hearing;

5 (b) Convene the mediation in a location convenient to the office and the

6 individual~~[appellant], or virtually,~~ and provide reasonable accommodations if requested;

7 (c) Bear the cost of mediation; and

8 (d) Send a representative of the office to the mediation who is authorized to bind the office

9 to an agreement.

10 ~~(3)~~(4) The individual~~[appellant]~~ shall attend the mediation.

11 ~~(4)~~(5) Discussions or agreements arising from the mediation shall be confidential and

12 shall not be used as evidence in any subsequent administrative hearing or civil proceeding.

13 ~~(5)~~(6) An agreement reached by the parties through mediation shall be documented in

14 writing and~~;~~ signed by both parties~~[prior to the conclusion of the mediation, and a copy~~

15 ~~shall be issued to both parties]~~.

16 (6) Mediation is voluntary and shall not be used to delay the scheduling of an impartial

17 hearing.

18 Section 4~~[5].~~ Administrative Hearing. If the individual is not satisfied with the outcome of

19 the informal administrative review process, did not choose to participate in mediation or if

20 the mediation was unsuccessful, the~~[applicant, potentially eligible, or eligible, The]~~ office

21 shall conduct an administrative hearing in accordance with KRS Chapter 13B.~~[and Section~~

22 ~~2 of this administrative regulation if the elects not to participate in mediation or if the~~

23 ~~mediation did not result in an agreement.~~

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

3 ~~(1) The existence of the Client Assistance Program;~~

4 ~~(2) The services provided by the program; and~~

5 ~~(3) How to contact a program representative.~~

6 ~~Section 7. Findings and Decision:~~

7 ~~(1) The hearing officer shall issue a recommended order in accordance with KRS~~
8 ~~13B.110.~~

9 ~~(2) Either party shall have the right to submit exceptions to the recommended order to the~~
10 ~~secretary as established in KRS 13B.110.~~

11 ~~(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120.~~

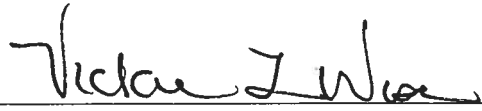
12 ~~Section 8. Incorporation by Reference:~~

13 ~~(1) "Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual", June~~
14 ~~2022, is incorporated by reference.~~

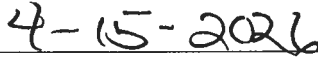
15 ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright~~
16 ~~law, at the Office of Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort,~~
17 ~~Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

18 ~~(3) This material is also available at kcc.ky.gov/vocational-rehabilitation.]~~

As approved by:



Vickie Wise, Deputy Secretary, Education and Labor Cabinet



Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

Contact Person: Brooke McDaniel, Administrative Specialist Senior, Office of Vocational Rehabilitation, 500 Mero Street, First Floor, Frankfort, KY 40601

Phone: 502-782-2539

Email: brooke.mcdaniel@ky.gov

Subject Headings: Administrative Hearings, Disability and Disabilities, Workforce Development

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Office of Vocational Rehabilitation's mediation and administrative hearing process as required by 29 U.S.C. § 722 and KRS 13B.

(b) The necessity of this administrative regulation: Changes to the regulation are needed to ensure individuals who apply for and receive vocational rehabilitation services understand their right to appeal a decision made by the Office and the administrative appeal process required to comply with 29 U.S.C. § 722 and KRS 13B

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for the Office of Vocational Rehabilitation to provide mediation and impartial due process rights as required by 29 U.S.C. § 722 and KRS 13B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information necessary for the Office of Vocational Rehabilitation to provide mediation and impartial due process rights as required by 29 U.S.C. § 722 and KRS 13B.

(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 amendments are made to provide a better understanding to individuals who apply for and receive vocational rehabilitation services about their due process rights as set forth in 29 U.S.C. § 722 and KRS 13B.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulation are needed to ensure individuals who apply for and receive vocational rehabilitation services understand their right to appeal a decision made by the Office of Vocational Rehabilitation and the administrative appeal process required to comply with 29 U.S.C. § 722 This administrative

regulation provides information necessary for the Office of Vocational Rehabilitation to provide mediation and impartial due process rights as required by 29 U.S.C. § 722 and KRS 13B.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by outlining the requirements for the mediation and administrative hearing process required by 29 U.S.C. § 722 and KRS 13B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific information to individuals who apply for and receive vocational rehabilitation services about their federally guaranteed due process rights and the procedures used by the Office of Vocational Rehabilitation to ensure compliance with the due process requirements of 29 U.S.C. § 722 and KRS 13B.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? No.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The approximately 46,000 individuals served by the Office of Vocational Rehabilitation.

(5) Provide an analysis of how the entities identified in question (4) 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 (4) will have to take to comply with this administrative regulation or amendment: No person or entity is required to take action as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4): There is no cost associated with this proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4): The regulated individuals will have a better understanding of their due process rights under state and federal law.

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

(a) Initially: The proposed amendment does not result in additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment: Federal vocational rehabilitation funds received by the Office of Vocational Rehabilitation and the required state match funds; however, there are no additional costs as a result of this proposed amendment.

(8) 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 proposed amendment.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This proposed amendment does not establish fees or directly or indirectly increase any fees.

(10) TIERING: Is tiering applied? Tiering is not required in this administrative regulation because it applies equally to all individuals who appeal a decision made by the Office of Vocational Rehabilitation.

FISCAL IMPACT STATEMENT

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

Contact Person: Brooke McDaniel, Administrative Specialist Senior, Office of Vocational Rehabilitation, 500 Mero Street, First Floor, Frankfort, KY 40601

Phone: 502-782-2539

Email: brooke.mcdaniel@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: 29 U.S.C. § 722, KRS 13B.170 and KRS 151B.195(1).

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: KRS 13B.170 and KRS 151B.195(1).

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: The Office of Vocational Rehabilitation is the promulgating agency, and no other agencies are affected.

(b) Estimate the following for each affected state unit part, or division identified in (3)(a):

1. Expenditures:
For the first year: None
For subsequent years: None
2. Revenues:
For the first year: None
For subsequent years: None
3. Cost Savings:
For the first year: None
For subsequent years: None

(4)(a) Identify affected local entities (for example; cities, counties, fire departments, school districts): No local entities are affected.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:
For the first year: None
For subsequent years: None
2. Revenues:
For the first year: None
For subsequent years: None
3. Cost Savings:

For the first year: None
For subsequent years: None

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): None

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:
For the first year: None
For subsequent years: None
2. Revenues:
For the first year: None
For subsequent years: None
3. Cost Savings:
For the first year: None
For subsequent years: None

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a) and (5)(a):
Not applicable.

(a) Fiscal impact of this administrative regulation: None.

(b) Methodology and resources used to reach this conclusion: Not applicable.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact,” as defined by KRS 13A.010(13): This proposed amendment will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: Not applicable.

STATEMENT OF CONSIDERATION RELATING TO
781 KAR 1:010
Education and Labor Cabinet
Office of Vocational Rehabilitation
(Amended After Comments)

I. The public hearing on 781 KAR 1:010, scheduled for March 24, 2026, at 11:00 a.m. EST, was canceled. Written comments were received during the public comment period.

II. The following people submitted written comments:

Name, Title, and Agency/Organization/Entity/Other
Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy
Susie Edwards, Office of Vocational Rehabilitation (OVR)

III. The following person from the promulgating administrative body responded to the written comments received during the public comment period:

Name and Title
Brooke McDaniel, Administrative Specialist Senior, Education and Labor Cabinet,
Office of Vocational Rehabilitation

IV. Summary of Comments and Responses

(1) Subject Matter: Section 1(1)(a). Notice of reason for denial.

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy –
The commentor recommended requiring that written notice of a determination include the reason for the denial, reduction, suspension, or cessation of vocational rehabilitation services.

(b) Response:

The agency does not believe an amendment is necessary. 781 KAR 1:020E, Section 4, already requires that written notice stating the reason for the determination be provided when the office determines an individual is ineligible for services. 781 KAR 1:010E governs the process for requesting review of determinations rather than the substantive content of written notice.

(2) Subject Matter: Section 1(1)(c). Typographical Correction.

(a) Comment:

Susie Edwards, Office of Vocational Rehabilitation - The commentor recommended correction of a typographical error to correct “hearings” to “appeal.”

(b) Response:

The agency agrees to amend Section 1(1)(c) to correct the typographical error by replacing “hearings” with “appeal.”

(3) Subject Matter: Section 1(1)(e). Clarification of Client Assistance Program (“CAP”).

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy – The commentor recommended clarifying language regarding the availability of the Client Assistance Program (“CAP”).

(b) Response:

The agency does not believe an amendment is necessary. 781 KAR 1:020E already requires the office to inform individual that the Client Assistance Program (“CAP”) is available to assist them. The agency routinely provides information regarding CAP through forms and communications with individuals receiving services.

(4) Subject Matter: Section 1(2)(d). Typographical correction.

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy – The commentor noted that the term “vocations” should be corrected to “vocational.”

(b) Response:

The agency agrees to amend Section 1(2)(d) to correct the typographical error by replacing “vocations” with “vocational.”

(5) Subject Matter: Section 1(2)(d). Typographical correction.

(a) Comment:

Susie Edwards, Office of Vocational Rehabilitation – The commentor noted that the term “vocations” should be corrected to “vocational” and that “denied” should be added after “services to an individual.”

(b) Response:

The agency agrees to amend Section 1(2)(d) to correct the typographical error by replacing “vocations” with “vocational” and adding “denied” after “services to an individual.”

(6) Subject Matter: Section 1(3). Appeal filing deadline.

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy – The commentor recommended extending the deadline to request an appeal from fourteen (14) days to thirty (30) days.

(b) Response:

The agency reviewed the recommendations and determined that no amendment is necessary. Federal vocational rehabilitation regulations require that an individual be provided an opportunity for review of determinations within a reasonable amount of time but do not establish a specific filing deadline. The fourteen (14) day timeframe supports timely resolution of disputes and is consistent with the agency's service delivery mode, which often involves time-sensitive services.

(7) Subject Matter: Section 1(3). Clarification regarding voicemail requests for appeals

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy and Susie Edwards, Office of Vocational Rehabilitation both recommended clarifying that voicemail requests for appeals are not accepted.

(b) Response:

The agency agrees to amend Section 1(3) to clarify the acceptable methods by which an appeal may be submitted.

(8) Subject Matter: Section 1(5)(c). Hearing timeline clarification.

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy and Susie Edwards, Office of Vocational Rehabilitation both recommended clarifying the triggering event for the requirement that an administrative hearing be conducted within sixty (60) days.

(b) Response:

The agency agrees to amend Section 1(5)(c) to clarify that an administrative hearing shall be conducted within sixty (60) days from the request for appeal unless the parties agree to an extension.

(9) Subject Matter: Section 1(5)(c). Written extension agreements.

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy and Susie Edwards, Office of Vocational Rehabilitation both recommended requiring that any extension of the hearing timeline be documented in writing.

(b) Response:

The agency agrees to amend Section 1(5)(c) to clarify that extensions must be agreed to in writing.

(10) Subject Matter: Section 1(6)(b). Suspension of services during appeal.

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy and Susie Edwards, Office of Vocational Rehabilitation both recommended requiring that any request to suspend, reduce, or terminate services during an appeal be made in writing.

(b) Response:

The agency agrees to amend Section 1(6)(b) to clarify that requests to suspend services during an appeal must be made in writing and confirmed by the office.

(11) Subject Matter: Section 2(3). Timeline for written determination after informal administrative review.

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy and Susie Edwards, Office of Vocational Rehabilitation both recommended clarifying the timeline for issuing a written determination following an informal administrative review.

(b) Response:

The agency agrees to amend Section 2(3) to clarify that the written determination shall be issued within five (5) business days following the informal administrative review.

(13) Subject Matter: Incorporation of OVR policy manual.

(a) Comment:

Stacy Coontz, Senior Staff Attorney, Kentucky Protection & Advocacy – The commentor recommended incorporating the OVR Policy and Procedures Manual by reference into the administrative regulation.

(b) Response:

The agency reviewed the comments and determined that incorporation of the OVR Policy and Procedures Manual is not necessary. The administrative regulation establishes the governing legal standards for the vocational rehabilitation program. The Policy and Procedures Manual contains internal procedures and implementation guidance used by the agency to administer the program. Incorporating the Policy and Procedures Manual by reference would require the document to be filed and maintained in accordance with KRS 13A.222 and would require regulatory amendments each time operational policies are updated. The agency has determined that maintaining these materials as internal policy allows the agency to administer the program efficiently while ensuring compliance with applicable state and federal requirements.

V. Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body:

The public hearing on this administrative regulation was canceled; however, written comments were submitted during the public comment period. The agency reviewed and responded to the comments received. As a result of the comments and subsequent agency review, amendments have been made to the administrative regulation as reflected in this Statement of Consideration.