

Appeal and Request for Review

I. Purpose

Applicants and eligible individuals have the right to request a review of decisions made by Vocational Rehabilitation about providing or denying their services. A minor individual's parent or guardian, the legal guardian, or an authorized representative has the right to request a review on behalf of an applicant or eligible individual. The review must be timely and appeal any decision made by Vocational Rehabilitation concerning the provision or denial of vocational rehabilitation services.

II. Definitions

- AD means Assistant Director of Vocational Rehabilitation.
- ALJ means administrative law judge.
- Commissioner means the Commissioner of the Department of Health and Human Services, or an individual who has been delegated with the authority to sign documents on behalf of the Commissioner.
- Days means calendar days.
- Good Cause means having a valid reason to take a certain action.
- Hearing means an impartial due process hearing.
- Individual means an eligible individual or applicant.
- IPE means individualized plan for employment.
- IR means informal review.
- Representative means a minor individual's parent or guardian, an individual's legal guardian, or an individual's authorized agent.
- VR means vocational rehabilitation.

III. Notification

VR shall notify an individual and, if applicable, the representative, in writing of the:

- Right to request a review of VR's decisions, and
- Client Assistance Program (CAP).

VR will send this notification when:

- The individual applies for services.
- VR:
 - Denies the individual VR services.
 - Develops the IPE.

- Reduces VR services, including evaluation and assessment.
- Suspends VR services.
- Terminates VR services.
- Assigns the individual to an order of selection category, if VR is on an order of selection.

VR will also notify an individual and, if applicable, their representative, of CAP before a:

- Mediation.
- Hearing.

IV. Submission of Request for Review

An individual or, if applicable, a representative may request a review when VR:

- Denies an individual the right to apply or reapply for VR services.
- Decides an individual is ineligible for VR services.
- Places an individual into an order of selection category, if VR is on an order of selection.
- Makes a decision that affects the provision of services, including evaluation, assessment, or services on the IPE.
- Denies, suspends, reduces, or terminates VR services.

An individual or, if applicable, a representative must:

- Submit a request for review in writing;
- Include in the request for review the following:
 - The VR decision;
 - The reasons for the request;
 - The date and the name of the individual or, if applicable, the representative; and
 - A statement indicating whether the individual initially is requesting an IR, mediation, a hearing, or any combination thereof.
- Send the request for review within thirty (30) days after notice of the decision through one of the following:
 - Mail to Assistant Director, 1000 E. Divide Ave, Bismarck, North Dakota 58501;
 - Fax to (701) 328-1884; or
 - Electronic mail to dhssovr@nd.gov

VR will forward a request for review to the Appeals Supervisor in the Department of Health and Human Services (DHHS) Legal Division within three (3) business days of when the Assistant Director receives the request for review.

VR will provide accommodations for disabilities during the request for review process. The individual or, if applicable, the representative must request accommodation from the AD before the IR, mediation, or hearing.

V. Review Process

A. Overview

If a VR counselor and an individual have an issue, one of them or, if applicable, the representative should tell the local VR Regional Administrator. The VR Regional Administrator may attempt to solve the issue.

If the VR Regional Administrator cannot resolve the issue at the local level, VR must give the individual and, if appropriate, the representative notification pursuant to Section

The individual or, if applicable, the representative may request to start the review process. Options in the review process include:

- Informal Review (IR);
- Mediation; and
- Hearing.

Individuals and, if applicable, representatives can do any or all the review process options.

VR must complete a hearing within sixty (60) days of the date of a request for a hearing. The clock starts when VR receives a request for a review, even if the request is not specific to a hearing. VR does not need to complete the hearing if VR successfully resolves the issues through IR or mediation before the hearing. However, VR may not use the IR or mediation to deny or delay the individual's right to a hearing. The parties may agree to extend the deadline.

VR may not suspend, reduce, or terminate VR services during the review process, unless one of the following happens:

- VR finds evidence that an individual or, if applicable, a representative got VR services by:
 - Misrepresentation,
 - Fraud,
 - Collusion, or
 - Criminal conduct.
- The individual or, if applicable, the representative requests VR:
 - Suspend services,
 - Reduce services, or
 - Terminate services.

B. Informal Review (IR)

An IR is an informal dispute resolution process. The IR does not waive the right to a mediation or hearing or extend the deadline for the hearing. An individual or, if applicable, a representative does not have to go through an IR to request mediation or a hearing.

The individual or, if applicable, the representative has ten (10) days from the time VR receives the request for review to agree to IR. The AD may conduct the IR or ask a VR employee who has no previous involvement in the case to conduct it. The AD should inform the individual or representative that a hearing will be processed alongside the IR, and that the individual or representative can later opt out of a hearing. If the individual or, if applicable, the representative agrees to the IR, the IR must be done within fifteen (15) days of receipt of the request for review. The parties can agree to extend the deadline.

VR will hold the IR at a time and place convenient for the individual and, if applicable, the representative. Generally, VR uses the local VR office.

VR will provide:

- Communication methods for an individual and, if applicable, the representative who has a sensory impairment;
- An interpreter for individual and, if applicable, a representative who cannot communicate in English; and
- Transportation to and from the review site, if needed.

VR will not pay for an individual's representation or other related fees and costs.

If an individual or, if applicable, a representative does not show up to the IR and fails to provide good cause, they waive the right to an IR. However, if the individual or representative has good cause, VR must reschedule it.

The AD typically makes a decision or writes an agreement during the IR. If not, the AD will send it to the parties within ten (10) days of the IR. The AD may take longer to send a decision or agreement if there is good cause. If there is a delay, the AD will notify the individual and, if appropriate, the representative of the date it will be sent.

The AD will send the decision to the:

- Director of Vocational Rehabilitation,
- Involved counselors,
- Involved VR Regional Administrator, and
- Appeals Supervisor.

The AD will also document the decision in the AWARE case management system.

If the AD does not resolve the matter, the AD will provide the individual and, if applicable, the representative with information about the right to mediation. The individual and, if applicable, the representative must notify VR of their request for a mediation. They must request a mediation within thirty (30) days of the original VR decision or within fifteen (15) days of the IR decision, whichever is longer.

The results of the IR are binding for VR unless the AD's decision is not legal. The results are not binding for the individual. The individual or, if applicable, the representative may request mediation.

C. Mediation

VR will only hold a mediation if both parties agree to it. Either party or the mediator may end the mediation at any point.

A written request for mediation must be:

- Made to the AD within thirty (30) days of the original VR decision or within fifteen (15) days of the IR, whichever is longer, and
- Specific about the issue.

The AD may deny a mediation request if it is unlikely to resolve the issue. VR must notify the individual, and, if applicable, the representative of the denial. VR must

- Put the notice in writing; and
- Send it within ten (10) days of receiving the request.

The mediation must be conducted by a qualified mediator who:

- Is not an employee of a VR agency.
- Is not a member of the State Rehabilitation Council (SRC).
- Has not been involved in the individual's VR case.
- Knows about VR services, the State plan, and relevant Federal and State regulations.
- Does not have a conflict of interest.

VR schedules and conducts mediation sessions in a timely manner. VR will select a location that is convenient for both parties.

An individual and, if applicable, a representative can:

- Present evidence at the mediation.
- Have representation during the mediation.

VR will pay for the mediator. VR will not pay for representation or other related fees and costs.

VR, the individual, and, if applicable, the representative will keep the mediation confidential. They may not use information learned at the mediation as evidence in a later hearing.

If the parties reach an agreement:

- The mediator will develop a written agreement.
- Both parties and the mediator will sign the agreement.

- VR must send a copy of the signed agreement to both parties and to the Appeals Supervisor.

The mediator should draft the agreement during the mediation. If there is a delay, the mediator will finish and send the mediation agreement to the parties within fifteen (15) days of the mediation.

There is no right to appeal a mediation agreement. If either party ends the mediation agreement, either party may request a hearing. If the parties do not reach an agreement, the individual has the right to a hearing without sending a written request for a hearing to VR.

D. Impartial Due Process Hearing

An Administrative Law Judge (ALJ) will hold a hearing to judge whether the decision about VR services was legal.

An individual or, if applicable, the representative has the right to:

- Present evidence.
- Present witnesses.
- Cross-examine witnesses.
- Have representation of the individual's choice.

VR will not pay for representation or related fees and costs.

The AD shall send the request for hearing to the DHHS Legal Division. The hearing must be conducted within sixty (60) days of receipt of the individual's or, if applicable, the representative's request for hearing, unless the

- Issue is resolved before the sixtieth day or
- Parties agree to an extension.

The ALJ shall issue a written report of the findings and decision within thirty (30) days of the completion of the hearing. The decision of the ALJ must be based on:

- The State Plan,
- The Rehabilitation Act,
- Federal VR regulations, and
- State regulations and policy.

The ALJ's report is a final decision. However, within twenty (20) days of the report, the individual; if applicable, the representative; or the director of VR may request ALJ reconsideration from the Commissioner.

The Commissioner may not change the ALJ's decision in a way that goes against the ALJ's position, unless the Commissioner finds the decision does not follow:

- The State Plan,
- The Rehabilitation Act,

- Federal VR regulations, or
- State regulations and policy.

The Commissioner must use the “clear and convincing” standard to analyze the decision.

A party who disagrees with the ALJ or Commissioner’s decision can file a lawsuit. If a party files a lawsuit, VR must implement the ALJ or, if applicable, the Commissioner’s decision while the court reviews the case.

E. Request for Review Process Summary

The table below summarizes the request for review process options available once the dispute has moved beyond the local level.

Table 1. Overview and Timeline of VR Appeal Process

Day	Informal Review (IR) Appeal Process
Day 1	VR receives a written request for a review of a decision within 30 days of decision.
By Day 10	Individual agrees to IR. IR is scheduled.
By Day 15	IR is completed.
By Day 22	Individual and/or representative, VR Regional Administrator manager, and counselor notified of decision.
By Day 37	Individual does not agree with IR decision and requests a hearing or mediation. VR schedules a hearing or mediation.
By Day 60	Hearing occurs within 60 days of request unless both parties agree to an extension.

Day	Mediation Appeal Process
Day 1	VR receives a written request for a review of a decision within 30 days of decision.
By Day 10	Individual chooses mediation prior to a hearing. VR reviews the request for mediation. If VR denies request, the individual is offered a hearing in the denial letter. The individual must notify VR within fifteen (15) days if a hearing is desired. If VR agrees to mediation, a mediator is notified and mediation is scheduled. The time required for mediation is included in the sixty (60) day requirement to conduct a hearing.

By Day 60	Hearing occurs within 60 days of request unless both parties agree to an extension.
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Day	Hearing Appeal Process
Day 1	VR receives a written request for a review of a decision within 30 days of decision.
By Day 10	Individual bypasses IR and medication. Request for hearing is acknowledged. VR proceeds to notify DHHS Legal Division of the individual's request for a hearing.
By Day 60	Hearing occurs within 60 days of request unless both parties agree to an extension.

Authority: 34 CFR Part 361.57; N.D.A.C. Sections 75-08-01-21, 23, 32, 33, 34, and 37

Summary of Changes from Prior Policy

Below is a brief summary of changes, please review the procedure above for complete details on these changes.

July 17, 2026

- Clarified from the term “appeal” and added “request for review”
- Removed citations to repealed administrative code
- Changed the deadline for requesting a mediation after an IR from “fifteen (15) days” to “within thirty (30) days of the VR decision or within fifteen (15) days of the IR decision, whichever is longer.”
- Simplified language
- Removed the flow chart for accessibility