



Eric Milstead
Director

Legislative Services Office

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MEMORANDUM

TO: Senators MORTIMER, Thayn, Buckner-Webb and,
Representatives CLOW, Kerby, McCrostie

FROM: Elizabeth Bowen - Principal Legislative Drafting Attorney

DATE: October 03, 2019

SUBJECT: Temporary Rule

IDAPA 47.01.01 - Rules Governing Vocational Rehabilitation Services (New Chapter) - Adoption of
Temporary Rule - Docket No. 47-0101-1901

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Elizabeth Bowen at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
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Legislative Audits

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Information Technology

**IDAPA 47 – STATE BOARD OF EDUCATION
DIVISION OF VOCATIONAL REHABILITATION**

47.01.01 – RULES GOVERNING VOCATIONAL REHABILITATION SERVICES

DOCKET NO. 47-0101-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 29, 2019.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution, Section 33-2303, Idaho Code, and the Federal Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This rule will establish the minimum federal requirements for distributing Federal Vocational Rehabilitation funds pursuant to the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act. Provision contained in the rule include formal and informal review processes, referral and application for services processes, and order of selection criteria.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act provides the framework for the distribution of federal vocational rehabilitation funds. Due to the expiration of the June 30, 2019 version of IDAPA 47.01.01 clarification of those provisions and how they are implemented in Idaho need to be re-established. The temporary rule includes only those minimum federal requirements for vocational rehabilitation requirements and is a placeholder while the Division of Vocational Rehabilitation goes through a comprehensive process of engaging stakeholders and gathering feedback prior to submitting a proposed rule in 2020.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208) 332-1582 or tracie.bent@osbe.idaho.gov.

Dated this 30th day of August, 2019.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 47-0101-1902
(New Chapter)

IDAPA 47
TITLE 01
CHAPTER 01

IDAPA 47 – STATE BOARD OF EDUCATION

47.01.01 – RULES GOVERNING VOCATIONAL REHABILITATION SERVICES

000. LEGAL AUTHORITY.

Article IX, Section 2 of the Idaho Constitution, Section 33-2303, Idaho Code, and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA). (8-29-19)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 47.01.01, “Rules Governing Vocational Rehabilitation Services.” (8-29-19)T

02. Scope. The provision of these rules is to establish the program requirements and to implement program changes necessitated by the Rehabilitation Act of 1973, as amended by WIOA. (8-29-19)T

002. WRITTEN INTERPRETATIONS.

Written interpretations to these rules may be available from the Idaho Division of Vocational Rehabilitation. Other agency guidance documents, as well as agency policy statements of interpretations not rising to legal effect of a rule, if any, are available for inspection at the agency during regular business hours. (8-29-19)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by Section 100 of these rules in accordance with 34 CFR Part 361.57. (8-29-19)T

004. INCORPORATION BY REFERENCE.

01. Documents Incorporated by Reference. No Documents are incorporated by reference. (8-29-19)T

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Idaho Division of Vocational Rehabilitation is in Boise, Idaho. The office is located at 650 W. State Street, Room 150, Boise, Idaho 83720. The hours of operation are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. The telephone number is, (208) 334-3390, the facsimile number is (208) 334-5305 and the internet website address is <http://www.vr.idaho.gov>. (8-29-19)T

006. PUBLIC RECORDS ACT COMPLIANCE AND CONFIDENTIALITY OF RECORDS.

This rule is subject to and in compliance with the Public Records Act, Title 74, Chapter 1, Idaho Code.

01. Confidential Records. All personal information concerning the Divisions customers is confidential. The information is used only for purposes directly connected to the administration of Vocational Rehabilitation services, and may not be released without the informed, written consent of the customer, except as

otherwise provided by law. (8-29-19)T

007. – 009. (RESERVED).

010. DEFINITIONS.

01. Authorization for Purchase. A purchase order issued on behalf of the Division. (8-29-19)T

02. Customer. Any individual who has applied for or is eligible for vocational rehabilitation services. (8-29-19)T

03. Division. The Idaho Division of Vocational Rehabilitation. (8-29-19)T

04. State Administrator. The Chief Executive Officer of the Idaho Division of Vocational Rehabilitation. (8-29-19)T

011. ABBREVIATIONS.

01. AFP. Authorization for Purchase. (8-29-19)T

02. CAP. Client Assistance Program. (8-29-19)T

03. CFR. Code of Federal Regulations. (8-29-19)T

04. IPE. Individualized Plan for Employment. (8-29-19)T

05. VRC. Vocational Rehabilitation Counselor. (8-29-19)T

06. WIOA. Workforce Innovation and Opportunity Act. (8-29-19)T

012. – 099. (RESERVED).

100. CUSTOMER APPEALS.

In accordance with 34 CFR Part 361.57, the customer appeals process is governed by Section 103 of these rules. (8-29-19)T

101. INFORMAL REVIEW PROCESS.

An informal review process is an option available to the customer as a method to resolve disagreements or dissatisfaction with the provision of services. An individual may request an informal review within twenty-one (21) calendar days of the agency notice regarding the provision or denial of services that are in question. The request must be in writing to the regional manager and describe the complaint. The regional manager will function as the administrative review officer in the informal review process. At the customer's request, another regional manager may be substituted. The reviewer will be responsible for: (8-29-19)T

01. Advising the Customer. Advising the customer of his right to have a representative present and encouraging the customer to use the services of Client Assistance Program (CAP). (8-29-19)T

02. Conducting the Review. Conducting the review within fifteen (15) calendar days following receipt of a written request for such a review, unless both parties agree upon an extension. (8-29-19)T

03. Documented Effort. Extending the time allowed for conducting an information review accordingly, when the customer makes a documented effort to utilize CAP or another advocate to resolve the dissatisfaction. (8-29-19)T

04. Review Location. Holding the review at a time and place convenient to the customer, generally at the local Division branch office. (8-29-19)T

05. Communication Method. Provide communication using appropriate methods for those customers who have a sensory impairment. Providing an interpreter for those customers who cannot communicate in English. (8-29-19)T

06. Transportation. Provide transportation to and from the review site, if needed. (8-29-19)T

07. Written Proposal. Resolve the matter to the satisfaction of the customer, developing a written proposal with the customer at the conclusion of the appeal process. Results of the written proposal are binding for the division unless the proposal is not permitted by law. The customer may reject the proposal and request a fair hearing within ten (10) calendar days of the informal review proposal or sixty (60) calendar days of the original agency decision, whichever comes later. (8-29-19)T

102. MEDIATION.

Mediation is an alternate dispute resolution method available to applicants and eligible customers who have initiated the formal appeals process. (8-29-19)T

01. Timeline. A customer may request mediation within twenty (20) calendar days of the original decision or ten (10) calendar days following the written proposal from the informal review. Mediation is available to a customer when an informal review has not resolved the dispute to the satisfaction of the customer. (8-29-19)T

02. Written Request. Requests for mediation must be made in writing to the field services chief and clearly state the reason for dissatisfaction with the decision or results of the informal review. The chief of field services will represent the Division or assign a member of the administrative or supervisory staff who has not participated in the agency action that created the customer's dissatisfaction. (8-29-19)T

03. Participation. Participation in the mediation process is voluntary on the part of the customer and on the part of the Division. Either party may reject mediation as an alternate dispute resolution method. Once mediation has been accepted as an alternate dispute resolution method, either party may terminate the mediation process. (8-29-19)T

04. Fair Hearing. Mediation may not be used to deny or delay the customer's right to pursue a fair hearing. Should the customer and/or designated representative select mediation in lieu of a fair hearing the option for a fair hearing will be extended to allow the results of the mediation to be established. Once the final results of the mediation are determined, the customer retains the right to request a fair hearing. (8-29-19)T

05. Mediator. All mediation is conducted by a qualified and impartial mediator who is selected randomly from a list of mediators maintained by the Division. (8-29-19)T

06. Confidentiality. Mediation discussions are confidential and may not be used as evidence in a fair hearing. Both parties at the beginning of the mediation process will sign a confidentiality agreement. (8-29-19)T

07. Mediation Agreement. The mediator will develop a written mediation agreement if an agreement between the parties is reached. The agreement must be signed by the customer, the mediator, and the Division designated representative. (8-29-19)T

08. Cost. Cost of mediation is paid by the Division. The Division does not pay for any cost related to the representation of a customer. (8-29-19)T

103. FAIR HEARING PROCESS.

The fair hearing process is an option available to any customer who is dissatisfied with any determination made by personnel of the Division that affects the provisions of vocational rehabilitation services. A customer may request a fair hearing immediately without having to go through any other appeal steps. A customer may request, or if appropriate may request through the customer's representative, a timely review of the determination. Such request may be made within sixty (60) days of the Division decision resulting in the initial disagreement or within ten (10) calendar days of the conclusion of the informal review or mediation process, whichever is later. The fair hearing process will include a fair hearing conducted by a fair hearing officer. (8-29-19)T

01. Procedure. A fair hearing is a procedure whereby a customer who is dissatisfied with any determination concerning the provision or denial of Division services or the findings of the informal review or mediation may seek a determination of agency action before a fair hearing officer. (8-29-19)T

02. Written Request. Requests for a fair hearing must be sent in writing to the chief of field services and clearly state the customer's dissatisfaction with the agency's decision. (8-29-19)T

03. Timeline. The hearing shall be conducted within sixty (60) calendar days of receipt of the individual's request for review, unless informal resolution is achieved prior to the 60th day, or both parties agree to a specific extension of time. (8-29-19)T

04. Fair Hearing Officers. The Administrator of the Division and the State Rehabilitation Council will identify a list of fair hearing officers jointly. The Administrator and the customer shall select the fair hearing officer from the list. (8-29-19)T

05. Written Report. The fair hearing officer will issue a written report of the findings and decision of the hearing within thirty (30) calendar days of the completion of the hearing. (8-29-19)T

06. Decision. The decision of the fair hearing officer will be considered final by the agency. (8-29-19)T

104. -- 199. (RESERVED).

200. PROVISION OF SERVICES ON A STATEWIDE BASIS.

Vocational Rehabilitation services are offered on a statewide basis to individuals with disabilities, subject to eligibility determination. (8-29-19)T

201. REFERRAL AND APPLICATION FOR SERVICES.

01. Referral. An agency, organization, individual (including self) or programs of the American Job Center network may refer an individual for services. The Division will make a minimum of three (3) attempts to respond to the individual before closing the referral (8-29-19)T

02. Application for Services. The application process includes the following; an individual must sign and date an application, or make a request for alternate application, provide necessary information to begin an assessment of eligibility, information gathered in the intake interview meets this criterion, and the customer is available and free of restrictions to complete the assessment process for determining eligibility for Division services. (8-29-19)T

03. Residency Requirement. There is no duration of residency to apply for Division services. Individuals must be living in the state of Idaho and legally able to work in the United States (i.e., non-U.S. citizens must show they are legally able to work within the United States). (8-29-19)T

04. Other Requirements. Customers must be available to participate in the eligibility determination process and will be informed of their rights and responsibilities as a customer of the program. (8-29-19)T

202. ELIGIBILITY REQUIREMENTS.

Eligibility for Division services is based upon the following criteria: (8-29-19)T

01. Physical or Mental Impairment. The customer has a physical or mental impairment documented by a qualified professional; (8-29-19)T

a. The customer's physical or mental impairment constitutes a substantial impediment to employment as determined by a qualified Vocational Rehabilitation Counselor (VRC); (8-29-19)T

02. Determination by Qualified VRC. A determination by a qualified VRC employed by the Division that the customer requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain

employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. A qualified VRC is an individual who meets existing licensure or certification requirements applicable to the profession and who meets the Division's Comprehensive System of Personnel Development policy. (8-29-19)T

203. PRESUMPTIVE ELIGIBILITY.

Individuals eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, based upon their disability, are presumed to meet the eligibility requirements for vocational rehabilitation services, unless the VRC questions the individual's ability to benefit from vocational rehabilitation services because of the severity of the individual's disability. (8-29-19)T

204. TRIAL WORK EXPERIENCE.

In cases where a VRC questions a customer's ability to benefit from vocational rehabilitation services, due to the severity of their disability, the VRC must obtain clear and convincing evidence that the individual cannot benefit from services, prior to closing the individual's case. A trial work plan should only include those services which will assess an individual's ability to work in competitive integrated employment. (8-29-19)T

205. SEVERITY OF DISABILITY.

At the time a customer is determined eligible for vocational rehabilitation services, a determination of the significance of disability, as it relates to employment, will also be determined. A priority category assignment will be determined for all eligible individuals, in one of the following categories: (8-29-19)T

01. Priority Category 1 - Eligible Individuals with the Most Significant Disabilities (MSD).

(8-29-19)T

a. Meets criteria established for a customer with a significant disability; and

(8-29-19)T

b. Experiences a severe physical and/or mental impairment that seriously limits three or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome; and

c. Requires multiple primary Individualized Plan for Employment (IPE) services for six (6) months or more. (8-29-19)T

02. Priority Category 2 - Eligible Individuals with Significant Disabilities.

(8-29-19)T

a. Meets the criteria for a customer with no significant disability; and

(8-29-19)T

b. Experiences a severe physical and/or mental impairment that seriously limits two functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome; and (8-29-19)T

c. Requires multiple primary IPE services for six (6) months or more. (8-29-19)T

03. Priority Category 3 - All other Eligible Individuals with Disabilities.

(8-29-19)T

a. Has a physical or mental impairment; and

(8-29-19)T

b. Impairment constitutes or results in a substantial impediment to employment; and

(8-29-19)T

c. Requires vocational rehabilitation services to prepare for, secure, retain, regain or advance in employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (8-29-19)T

206. COMPREHENSIVE ASSESSMENT OF REHABILITATION NEEDS.

A comprehensive assessment of rehabilitation needs is a process utilized to identify the customer's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice as it relates to identifying and

selecting a vocational goal. The assessment will be conducted in the most integrated setting possible, consistent with the informed choice of the customer. (8-29-19)T

207. INDIVIDUALIZED PLAN FOR EMPLOYMENT.

01. IPE Requirements. An eligible customer, or their representative, may develop all or part of their Individualized Plan for Employment, with or without assistance from the Division, however the IPE must be agreed to by a qualified Division staff member. The Division will not pay for IPE development services from other providers. The customer is given a copy of the signed IPE and any subsequent IPEs. There will be only one active IPE at any given time. The Division supports vocational goals in competitive integrated employment, including supported employment and self-employment. (8-29-19)T

02. IPE Content. The IPE will contain the following elements, per federal requirements, including: (8-29-19)T

- a.** Identification of a specific employment outcome; (8-29-19)T
- b.** Necessary rehabilitation services to achieve the employment outcome; (8-29-19)T
- c.** Timelines for achieving the employment outcome and for the initiation of services; (8-29-19)T
- d.** Identification of service providers; (8-29-19)T
- e.** criteria used to evaluate progress; (8-29-19)T
- f.** Terms and conditions including customer rights and responsibilities; (8-29-19)T
- g.** Customer's financial participation, if appropriate; (8-29-19)T
- h.** Identification of comparable benefits as appropriate; and (8-29-19)T
- i.** The expected need for post-employment services. (8-29-19)T

03. Annual IPE Review. IPEs will be reviewed on an annual basis. (8-29-19)T

208. CASE CLOSURE.

The Division may close a customer's case at any time in the vocational rehabilitation process for various reasons, in compliance with federal regulations and reporting guidelines. General reasons for case closure may occur when the vocational rehabilitation counselor determines that a customer is either not eligible or no longer eligible for vocational rehabilitation services; is unavailable to participate in the vocational rehabilitation program; declines to participate in the program; or the customer achieves an employment outcome. Regardless of when in the process the record of service is closed, the vocational rehabilitation counselor must make reasonable attempts to contact the individual, or as appropriate their representative, prior to case closure to discuss the pending case closure. A closure letter or appropriate form of communication is also sent to all individuals whose case is being closed. (8-29-19)T

209. ORDER OF SELECTION.

01. Order of Selection. When the Division cannot provide the full range of vocational rehabilitation services to all eligible customers because of fiscal or personnel capacity constraints, the agency will enter an order of selection. The order of selection will be based on the following requirements: (8-29-19)T

a. Students with disabilities, as defined by 34 CFR 361.5(c)(51), who received pre-employment transition services prior to eligibility determination and assignment to a disability priority category will continue to receive such services. (8-29-19)T

b. All customers who have an Individualized Plan for Employment will continue to be served. (8-29-19)T

02. Priority Status. Priority will be given to eligible individuals with the most significant disabilities, followed by those eligible individuals with significant disabilities, and finally those eligible individuals with disabilities. All eligible customers will be assigned to one (1) of the priority categories as outlined in Section 205 above. (8-29-19)T

03. When Unable to Serve Eligible Individuals. If the Idaho Division of Vocational Rehabilitation cannot serve all eligible individuals within a given priority category, individuals will be released from the statewide waitlist based on disability priority category and date of application. (8-29-19)T

210. -- 299. (RESERVED).

300. FINANCIAL PARTICIPATION REQUIREMENTS.

The Idaho Division of Vocational Rehabilitation will consider the financial need of an eligible customer for the purposes of determining the extent of their participation in the costs of vocational rehabilitation services. Financial need will not be a consideration in the determination of eligibility for Vocational Rehabilitation but will be a consideration in allocating the cost of VR services, with some exceptions. (8-29-19)T

01. Financial Participation Assessment. Financial participation will be assessed after eligibility, during plan development, while exploring comparable benefits, prior to a plan amendment, and on an annual basis or if a customer's financial circumstances change significantly, whichever occurs sooner. (8-29-19)T

02. Services Exempt from Financial Participation. Services exempt from financial participation include: (8-29-19)T

- a.** Assessment for determining eligibility and vocational rehabilitation needs. (8-29-19)T
- b.** Vocational rehabilitation counseling and guidance and referral services. (8-29-19)T
- c.** Auxiliary aid or services needed (e.g., interpreter services or reader services) that an individual with a disability requires in order to participate in the vocational rehabilitation program. (8-29-19)T
- d.** Personal assistance services. (8-29-19)T
- e.** Job related services, including; job readiness training, job search assistance and placement assistance, SE job coaching, job supports – short term and youth extended services. (8-29-19)T
- f.** Pre-employment Transition Services. (8-29-19)T

03. Financial Participation Criteria. Several factors are considered in determining a customer's level of financial participation, including the household income, family size, estimated annual plan costs, exclusions such as disability impairment related work expenses, and available financial resources which exceed the Department of Health and Human Services (HHS) Federal Poverty Guidelines. Individuals who receive Social security benefits, because of their disability, are exempt for contributing towards plan costs, except for those costs exceeding Division limits. The Division has limits for services and uses a low bid, when possible. Exceptions to financial participation may be granted with appropriate approval when adherence to financial participation could seriously jeopardize the customer's opportunity to achieve the Individualized Plan for Employment objectives and employment outcome. (8-29-19)T

301. COMPARABLE BENEFITS.

Eligible customers will identify and use all comparable benefits that may be available during the development of the Individualized Plan for Employment, including, but not limited to, accommodations and auxiliary aids and services, which may meet, in whole or in part, the cost of vocational rehabilitation services. Comparable benefits and services must be utilized before agency funds are used. (8-29-19)T

01. Exempt Services. Services exempt from the requirement to utilize comparable services and benefits include; medical, psychological or other examinations to determine eligibility, vocational counseling and

guidance, information and referral, job related services to include job search, job supports, job placement and retention services, evaluation of vocational rehabilitation potential, and rehabilitation technology (not including personally prescribed devices). (8-29-19)T

02. Availability of Comparable Benefits. If comparable services or benefits are not available at the time needed to ensure progress toward achieving the employment outcome, The Division may provide such services until comparable services and benefits become available. (8-29-19)T

302. -- 399. (RESERVED).

400. PURCHASING REQUIREMENTS.

All services and purchases will follow federal, state, and Division purchasing guidelines. Purchases require written authorization prior to the initiation of the purchased service. Authorizations are issued on or before the beginning date of services. If services are provided without a Division approved authorization, the Division reserves the right to deny the vendor's invoice. The method of procurement is determined in partnership with the customer, however, the Division prefers that an authorization for purchase be used over other methods, with an invoice from the vendor documenting the service provision. The Division will pay for pre-employment transition services and other services that contribute to the determination of eligibility or that are necessary to achieve an employment outcome. (8-29-19)T

401. PURCHASING STANDARDS.

The Division pays usual, customary, and reasonable charges for services. The Division has established hierarchical levels of purchasing authority to balance process efficiency with the Division's internal controls. The majority of service negotiation is at the counselor level. When necessary, varying levels of exceptions to purchasing authority are available by appropriate management staff. Decisions on case expenditures are determined on an individualized basis. The customer may choose their preferred vendor, however, if the cost of a service exceeds a control threshold, the customer will be responsible for the excess amount, absent an exception. Services that will meet the customer's need at the least cost to the Division will be the service cost considered for planning purposes. Services available in the State of Idaho are preferred over more costly out-of-state options, where applicable. (8-29-19)T

402. PROVISION OF COMMUNITY REHABILITATION PROGRAM SERVICES.

The Idaho Division of Vocational Rehabilitation will purchase vocational services from CRPs that are accredited by either the Commission Accreditation Rehabilitation Facilities or the Rehabilitation Services Accreditation System. In conjunction with the customer, the qualified professional vocational rehabilitation counselor will determine which CRP services, if any, are required for the customer to achieve an employment outcome. The Division will determine the method for establishing CRP service rates. (8-29-19)T

403. -- 999. (RESERVED).