

Dear Senators GOEDDE, Mortimer, Malepeai, and  
Representatives BLOCK, Hartgen, Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Vocational Rehabilitation:

IDAPA 47.01.01 - Rules Pertaining To The Rules of the Idaho Division of Vocational Rehabilitation  
(Docket No. 47-0101-1202).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 10/30/2012. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/28/2012.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address on the  
memorandum attached below.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Education Committee and the House Commerce & Human Resources Committee

**FROM:** Principal Legislative Research Analyst - Eric Milstead

**DATE:** October 11, 2012

**SUBJECT:** Vocational Rehabilitation

IDAPA 47.01.01 - Rules Pertaining To The Rules of the Idaho Division of Vocational Rehabilitation  
(Docket No. 47-0101-1202)

The Division of Vocational Rehabilitation has submitted proposed rulemaking at IDAPA 47.01.01 - Rules Pertaining To The Rules of the Idaho Division of Vocational Rehabilitation (Docket No. 47-0101-1202). The agency states that the proposed rule reflects the changes that appeared in the temporary rule from April 2012 and that the temporary rule was implemented in response to recommendations from the Division's most recent federal audit. In addition to those changes, other changes to the rule that appear in this docket include revisions and new language in the sections governing customer appeals (Rule 100) and the mediation process (Rule 102). The new mediation rule replaces language governing that topic in Rule 103.04. Other changes in this docket include revisions to the order of selection of customers (Rule 200) and revisions to the rule governing customer service (Rule 300).

The Division notes that negotiated rulemaking was conducted and that the initial notice was made in the form of the temporary rule published in April 2012.

It appears that the proposed rule is authorized pursuant to section 33-105, Idaho Code.

cc: Vocational Rehabilitation  
Tracie Bent & Jane Donnellan

## IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

### 47.01.01 - RULES OF THE IDAHO DIVISION OF VOCATIONAL REHABILITATION

#### DOCKET NO. 47-0101-1202

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 33-105, 33-2301, Idaho Code and the Rehabilitation Act of 1973 and all subsequent Amendments.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Proposed changes incorporate the changes made by the temporary rule published in the April 2012 Administrative Bulletin. The temporary rule changes were made in response to recommendation from Divisions last federal audit. Additional proposed changes are being made in response to a comprehensive review of the policies and procedures of the Division and clarify language regarding the customer appeal and mediation processes as well as the order of selection process and incorporates the updated version, approved by the State Board of Education on August 16, 2012, of the Division of Vocational Rehabilitation Field Service Policy manual by reference.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. Initial notice was made in the form of the temporary rule published in the April 2012 Idaho Administrative Bulletin, [Volume 12-4, page 16](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Division of Vocation Rehabilitation outlines specific programs and processes on the access of services in the Division of Vocational Rehabilitation Field Service Manual; due to the specific nature of these processes it is not feasible to include the text within a rule. All documents incorporated by reference are must go through the rule promulgation process to be changed.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jane Donnellan, at (208)287-6477 or [jane.donnellan@vr.idaho.gov](mailto:jane.donnellan@vr.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24<sup>th</sup>, 2012.

DATED this 31<sup>st</sup> day of August, 2012.

Tracie Bent  
Chief Planning and Policy Officer  
Office of the State Board of Education

650 W State Street  
PO Box 83720, Boise, ID 83720-0037  
(208) 332-1582, fax: (208) 334-2632

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 47-0101-1202**

**004. INCORPORATION BY REFERENCE.**

**01. General.** Unless provided otherwise, any reference in these rules to any document identified in Subsection 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-30-01)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (3-30-01)

**a.** All federal publications through the [Rehabilitation Services Administration](#). (2-17-09)

**b.** Idaho Division of Vocational Rehabilitation Field Services [Policy](#) Manual, ~~2008~~ [June 2012](#), available for review on the website at <http://www.vr.idaho.gov/>. (~~2-17-09~~)<sup>(1)</sup>

~~**c.** [Federal State Plan for Vocational Rehabilitation 2008—2010](#), available for review on the website at <http://www.vr.idaho.gov/>.~~ (~~2-17-09~~)

~~**d.** Workforce Investment Act, Public Law 105-220. (5-3-03)~~

~~**e.** Federal Register, Department of Education, 34 CFR Part 361- 363. (2-17-09)~~

~~**f.** The Rehabilitation Act of 1973, as amended. (2-17-09)~~

**03. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the Central Office, Idaho Division of Vocational Rehabilitation, 650 W. State Street, Room 150, Boise, Idaho 83720, (208) 334-3390 or through access to the internet URL addresses outlined in Subsection 004.02. (2-17-09)

**005. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Authorization to Purchase.** A purchase order issued on behalf of the Division. (5-3-03)

**02. CFR.** Code of Federal Regulations. (7-1-93)

**03. ~~Client/Participant~~ Customer.** Any individual who has applied for or is eligible for Vocational Rehabilitation services. (~~5-3-03~~)<sup>(1)</sup>

**04. Designated State Agency.** The Idaho State Board of Education. (5-3-03)

**05. Designated State Unit.** The Idaho Division of Vocational Rehabilitation. (7-1-93)

**06. IDVR.** The Idaho Division of Vocational Rehabilitation. (4-5-00)

**07. IPE.** Individualized Plan for Employment. (4-5-00)

**08. Most Significant Disability (MSD).** Meets the criteria as Significant Disability as found in the Rehabilitation Act of 1973, as amended, and defined in 34CFR Part 361.5 (b) 30 and is further defined as: (2-17-09)

**a.** Having a severe physical, mental, cognitive or sensory impairment which seriously limits ~~two~~ [three](#)

~~(23)~~ or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and ~~(5-3-03)~~()

b. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (3-20-04)

**09. Method of Written Notification.** The written notification of findings and conclusions arising from an Informal Dispute Resolution, Mediation, ~~Impartial Due Process Fair~~ Hearing, shall be served to the ~~client customer~~ via the U.S. Postal Service ~~by means of certified mail. Durational requirements for appeals shall commence on the day received by the client as noted by the certified mail records.~~ ~~(5-3-03)~~()

**10. PM.** Policy Memorandum. (5-3-03)

**11. RSA.** Rehabilitation Services Administration, U.S. Department of Education. (5-3-03)

**12. State Administrator.** The Chief Executive Officer of the Idaho Division of Vocational Rehabilitation. (4-5-00)

**13. VRC.** Vocational Rehabilitation Counselor. (5-3-03)

**011. -- 099. (RESERVED)**

**100. CLIENT/PARTICIPANT CUSTOMER APPEALS.**

In accordance with 34 CFR Part 361.57, the ~~client/participant~~ ~~customer~~ appeals process is governed by Section 100 through 103 of these rules and is outlined in the Division's agency Field Services Manual on the website at <http://www.vr.idaho.gov/> that is incorporated by reference into these rules in Subsection 004.02.b. ~~(2-17-09)~~()

**101. INFORMAL APPEALS REVIEW PROCESS.**

The informal ~~administrative~~ review process is an option available to the ~~individual~~ ~~customer~~ as a proven means likely to result in a timely resolution of disagreements. An individual must request an informal ~~administrative~~ review within ~~ten~~ ~~twenty-one~~ ~~(1021)~~ 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. The request must describe the complaint. In holding an informal ~~administrative~~ review, the regional manager will function as the administrative review officer, ~~and At the customer's request another regional manager may be substituted. The reviewer~~ will be responsible for: ~~(3-29-10)~~()

**01. Advising the Customer.** ~~Advising the customer of his right to have a representative present and encouraging the customer to use the services of CAP.~~ ()

~~02. Conducting the Review.~~ Conducting the review within fifteen (15) calendar days following written receipt of a request for such a hearing. ~~Unless an extension is agreed upon by both parties.~~ ~~(3-29-10)~~()

~~b. Advising the individual of their right to have a representative present and encouraging the individual to use the services of CAP.~~ ~~(3-29-10)~~()

~~c. Insuring that the review is conducted at a time mutually agreed to by the parties involved that ensures the entire appeals process can be completed within forty five (45) calendar days, unless the parties agree to a specific extension of time.~~ ~~(3-29-10)~~()

~~d. When undue delay is caused by the individual in scheduling an administrative review, the individual will be informed that if the review is not conducted within thirty (30) calendar days following the individual's request for an informal administrative review, the individual's request will be viewed by IDVR as invalid.~~ ~~(3-29-10)~~()

~~e03. Documented Effort.~~ When the ~~individual~~ ~~customer~~ makes a documented effort to utilize CAP or another ~~selected~~ advocate to resolve the dissatisfaction, the time allowed for conducting an ~~administrative~~ ~~informal~~ review will be extended accordingly. ~~(3-29-10)~~()

**f04. Review Location.** Holding the review at a time and place convenient to the *individual customer*, generally at the local IDVR branch office. (3-29-10)()

**g05. Communication Method.** Providing communication methods for those *individuals customers* who have a sensory impairment. An interpreter will be provided for those *individuals customers* who cannot communicate in English. (3-29-10)()

**h06. Transportation.** ~~Assuring~~ If needed assure that the *individual customer* is provided transportation to and from the review site. ~~if needed.~~ (3-29-10)()

**i07. Written Proposal.** The *administrative informal* review officer (regional manager) will attempt to resolve the matter to the satisfaction of the *individual customer*, developing a written *agreement proposal* with the *individual customer* at the conclusion of the appeal process. ~~A copy will be sent to the Administrator, Chief of Field Services, the involved counselor(s) and the counselor's supervisor.~~ The results are binding for the agency unless the *decision proposal* is not permitted by law. The *individual customer* may reject the *findings of the review proposal* and request a *formal appeal known as an Impartial Due Process Hearing* 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. (3-29-10)()

## **102. MEDIATION.**

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

**01. Time Line.** A customer must 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 and informal review has not resolved the dispute to the satisfaction of the customer. ()

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

**03. Participation.** Participation in the mediation process is voluntary on the part of the customer and on the part of IDVR. 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. ()

**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. ()

**05. Mediator.** All mediation is conducted by a qualified and impartial mediator who is selected randomly from a list of mediators maintained by IDVR. ()

**06. Confidentiality.** Mediation discussions are confidential and may not be used as evidence in a fair hearing. A confidentiality agreement will be signed by both parties at the beginning of the mediation process. ()

**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 IDVR designated representative. ()

**08. Cost.** Cost of mediation is paid by IDVR. IDVR is not required to pay for any cost related to the representation of a customer. ()

## **1023. FORMAL APPEALS FAIR HEARING PROCESS.**

The *formal appeal* fair hearing process is an option available to any *individual customer* who is dissatisfied with any

determination made by personnel of IDVR that affects the provisions of vocational rehabilitation services. ~~An individual 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 ~~individual's customer's~~ representative, a timely review of the determination. Such request must be made within sixty (60) days of the IDVR ~~case management~~ 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 ~~formal appeal~~ fair hearing process shall include ~~an impartial due process fair~~ hearing by ~~an impartial fair~~ hearing officer (~~FHO~~). (3-29-10)()

**a01. Procedure.** A formal fair hearing is a procedure whereby ~~an individual customer~~ who is dissatisfied with any determination concerning the provision or denial of IDVR services or the findings of the ~~administrative~~ informal review or mediation may seek a determination of agency action before ~~an impartial fair~~ hearing officer. (3-29-10)()

~~b. The individual must request a hearing within ten (10) calendar days of the agency notice regarding the provision or denial of services based upon the conclusion of the administrative review or mediation. The individual may bypass the informal administrative review or mediation process entirely and go directly to the impartial due process hearing (fair hearing). That process will then commence immediately. (3-29-10)~~

**e02. Written Request.** A request for a fair hearing must be sent in writing to the Chief of Field Services and clearly state the ~~individual's customer's~~ dissatisfaction with the agency's decision. (3-29-10)()

**d03. 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 the parties agree to a specific extension of time. (3-29-10)

**e04. Fair Hearing Officers.** A list of fair hearing officers shall be ~~conducted by an impartial hearing officer selected from the pool of qualified persons~~ identified jointly by the Administrator of IDVR and the State Rehabilitation Council. The fair hearing officer shall be selected from the list by the administrator of IDVR and the customer. (3-29-10)()

**f05. Written Report.** The fair hearing officer shall issue a written report of the findings and decision of the hearing within thirty (30) calendar days of the completion of the hearing. (3-29-10)()

**g06. Decision.** The decision of the fair hearing officer shall be considered final by the agency. (3-29-10)()

**h07. Dispute.** Any party who disagrees with the findings and decisions of ~~an impartial fair~~ hearing officer shall have the right to bring a civil action with respect to the matter in dispute. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. (3-29-10)()

~~03. Impartial Due Process Hearing. An individual may request an impartial due process hearing immediately without having to go through other appeal steps. Even if an individual agrees to an informal hearings process, such individual is entitled to a due process hearing within sixty (60) days of the IDVR case management decision that initiated the disagreement, unless both parties agree to an extension. (3-29-10)~~

**04. Mediation.** ~~Mediation is an alternate dispute resolution method available to applicants and eligible individuals who have initiated the formal appeals process. (3-29-10)~~

~~a. An individual must request mediation within ten (10) calendar days of the agency notice regarding the results of the administrative review. Mediation is available to an individual when an administrative review has not resolved the dispute to the satisfaction of the individual. (3-29-10)~~

~~b. A request for mediation must be made in writing to the Chief of Field Services and clearly state the reason for dissatisfaction with the results of the administrative review. The Chief of Field Services will represent IDVR or assign a member of the administrative or supervisory staff who has not participated in agency action that created the individual's dissatisfaction. (3-29-10)~~

~~*e.* Participation in the mediation process is voluntary on the part of the individual and on the part of IDVR. Either party may reject mediation as an alternate dispute resolution method. Either party, once accepting mediation as an alternate dispute resolution method, may terminate the mediation process. (3-29-10)~~

~~*d.* Mediation is not used to deny or delay the individual's right to pursue an impartial hearing. Should the individual or designated representatives select mediation in lieu of a formal hearing, the option for the formal hearing will be extended to allow the results of the mediation to be established. After the final results of the mediation are determined, the individual retains the right to request a formal hearing. (3-29-10)~~

~~*e.* Mediation is conducted by qualified and impartial mediators who are selected randomly from a list of mediators maintained by IDVR. (3-29-10)~~

~~*f.* Mediation discussions are confidential and may not be used as evidence in a subsequent due process hearing. (3-29-10)~~

~~*g.* The mediator will develop a written mediation agreement if agreement between the parties is reached, signed by the individual, the mediator and IDVR. (3-29-10)~~

~~*h.* Cost of mediation is paid by IDVR, although no costs are provided for representation for the individual. (3-29-10)~~

~~1014.~~ -- 199. (RESERVED)

## 200. ORDER OF SELECTION.

~~*01.* Order of Selection.~~ The following order of selection will be used if the Idaho Division of Vocational Rehabilitation finds that it cannot serve all eligible ~~clients/participants~~ **customers** due to a lack of either personnel and/or financial resources. The priority listings progress downward with priority number one (1) being the most restrictive and priority number four (4) being the least restrictive. (5-3-03)(U)

~~*a01.* Priority Number 1.~~ At the time that a decision to move to an order of selection is made, it is determined that only those consumers who already have an existing individualized plan for employment (IPE) will continue to be served. (5-3-03)

~~*b02.* Priority Number 2.~~ At the time that a decision to move to an order of selection is made, it is determined that only those ~~consumers~~ **customers** in Priority Number 1 above and current and future, otherwise eligible, ~~clients/participants~~ **customers** rated to this or a more restrictive priority can be served. ~~Consumers~~ **Customers** meeting this priority rating are those ~~individuals~~ **customers** with most significant disabilities. (5-3-03)(U)

~~*e03.* Priority Number 3.~~ At the time that a decision to move to an order of selection is made, it is determined that only those ~~consumers~~ **customers** in Priorities Numbers 1 and 2 above and current and future, otherwise eligible, ~~clients/participants~~ **customers** rated to this or a more restrictive priority can be served. ~~Consumers~~ **Customers** meeting this priority rating are those ~~individuals~~ **customers** with significant disabilities. (5-3-03)(U)

~~*d04.* Priority Number 4.~~ All eligible ~~clients/participants~~ **customers** for Vocational Rehabilitation services (no order of selection in place). (5-3-03)(U)

201. -- 299. (RESERVED)

## 300. CLIENT/PARTICIPANT CUSTOMER SERVICES.

~~*01.* Provision of Purchased Services Contingent upon Financial Need of the Client/Participant Customer.~~ The Idaho Division of Vocational Rehabilitation will apply a Financial Needs Assessment. 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. (5-3-03)(U)

**02. Authorization to Purchase.** The Division requires that when purchasing services from a vendor, an authorization must be issued prior to, or on, the beginning date of service. If services are provided without a Division approved authorization to purchase, the Division reserves the right to not honor the vendor's invoice.

(5-3-03)

**03. General Provisions.** Idaho Division of Vocational Rehabilitation will only pay for services that contribute to the determination of eligibility or to achieve an employment outcome.

(3-20-04)

**04. ~~Non-Residents of the State.~~** ~~Financial participation will only be available to residents of Idaho. Citizenship is not a requisite for financial assistance; however, the individual must have legal resident status and be present in the state (i.e., illegal aliens will not be eligible for the Vocational Rehabilitation programs).~~ **Residency.** There is no duration of residency requirement. The customer must be living in the state of Idaho and legally be able to work within the United States (i.e., non U.S. citizens must show they are legally able to work within the United States).

~~(3-20-04)~~( )

**05. Provision of CRP (Community Rehabilitation Program) Services.** IDVR will purchase vocational services from CRPs that are accredited by either Commission Accreditation Rehabilitation Facilities (CARF), the Rehabilitation Accreditation Commission, or Rehabilitation Services Accreditation System (RSAS). In conjunction with the ~~client/participant~~ customer, the qualified professional Vocational Rehabilitation Counselor, will determine which CRP Services, if any, are required for the ~~client/participant~~ customer to achieve an employment outcome.

~~(3-20-04)~~( )