

# YOUNG ADULTS IN TRANSITION: VOCATIONAL REHABILITATION SERVICES

*Young Adults in Transition: Vocational Rehabilitation Services* is a guide for advocates working with students, families and guardians to facilitate the involvement of state Vocational Rehabilitation Agencies in the process of special education transition.

## ABOUT THIS GUIDE SERIES

This Guide was produced by the RAISE Center under a grant from the U.S. Department of Education, Rehabilitation Services Administration.



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## USING THE GUIDE

The Guide is composed of a glossary of terms and six related parts that summarize vocational rehabilitation services, their intersection with special education transition, the rights and responsibilities of stakeholders, and advocacy tips.

### Parts in the guide series include:

- Part 1: Introduction to Vocational Rehabilitation (VR) & Eligibility
- Part 2: Special Education Transition and VR Services
- Part 3: Employment Goals and the Individual Plan for Employment
- Part 4: Vocational Rehabilitation Services
- Part 5: Vocational Rehabilitation and Assistive Technology
- Part 6: VR Services Appeal Rights

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# GLOSSARY AND DEFINITIONS

The following terms are used throughout this advocacy tools series. They are provided here for the user's convenience and reference.

**Administrative Review** – The first level of several appeal processes through which an individual with disabilities can contest a determination by the VR Agency. Sometimes called an Informal Hearing, Administrative Review is a meeting with the VR Counselor's supervisor and/or VR Program Manager to resolve the issue.

**Client Assistance Program (CAP)** – Client Assistance Programs (CAPs) are federally funded agencies in each US state and territory that help people with disabilities get appropriate services from their state's VR Agency. They provide information, advice, and advocacy to help people with disabilities secure and solve problems related to VR Services.

**Comparable Service and Benefits** – Services and benefits that are:

- Provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits;
- Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the person's Individualized Plan for Employment; and
- Commensurate to the services that the individual would otherwise receive from the designated state vocational rehabilitation agency.

Comparable benefits do not include awards and scholarships based on merit.

**Comprehensive Transition and Postsecondary Programs for Students with Intellectual Disabilities**

– Grant-funded initiative created under the Higher Education Act of 2008 reauthorization to create or expand model programs designed to help postsecondary students with intellectual disabilities to continue academic, career and technical, and independent living instruction in order to prepare for employment.

**Fair Hearing** – The third level of several appeal processes by which an individual with disabilities can contest a determination by the VR Agency. Fair Hearing is a formal appeal process where the case is presented in front of an impartial administrative law judge/hearing officer.

**Financial Participation** – The process by which a state VR agency considers the financial need of eligible individuals or individuals who are receiving VR services, and may require VR service recipients to share in the cost of services. Under certain circumstances and for some specific VR Services, the VR agency may not apply a financial needs test or require the financial participation of the individual.

**Higher Education Act of 2008** - Reauthorization of a Federal Law originally enacted as the Higher Education Act of 1965 to “strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary education.” The 2008 reauthorization included new access to financial aid to students with intellectual disability attending college programs that meet the requirements of a “Comprehensive Transition Program” (CTP). The legislation did not mandate that colleges offer such programs.

**IDEA** – The Individuals with Disabilities Education Act (IDEA) is a federal law that ensures students with disabilities are provided a Free Appropriate Public Education (FAPE) that is tailored to their individual needs. The goal of IDEA is to provide children with disabilities the same opportunity for education as those students who do not have a disability.

**Individualized Plan for Employment (IPE)** – The Individualized Plan for Employment (IPE) is a personalized written plan outlining an individual’s vocational goal and the services to be provided by the VR Agency to reach that goal. It is written on the basis of the program assessment that is conducted by the Vocational Rehabilitation Counselor after eligibility for VR Services is established by the VR Agency.

**Informed Choice** – Informed Choice is a guiding principle in the provision of VR Services. Informed Choice is generally defined as the process by which individuals participating in VR Programs make decisions about their vocational goals, the services and service providers that are necessary to reach those goals, and how those services will be procured. The decision-making process takes into account the individual’s values and characteristics, the availability of resources and alternatives, and general economic conditions.

**Lawsuit** – The highest and final appeal process by which an individual with disabilities can contest a determination by the VR Agency. Such a lawsuit is a civil legal action filed in federal or state court and requires representation by a licensed attorney.

**Mediation** – The second level of several appeal processes through which an individual with disabilities can contest a determination by the VR Agency. Mediation involves meeting with VR and an impartial and qualified mediator (not an employee of the VR Agency) to try to resolve the dispute.

**Order of Selection** – The process by which state VR Agencies prioritize and meter the provision of VR Services when the needs of eligible individuals exceed the state’s available resources. Under federal law, states are allowed but not required to prioritize service provision to individuals with the greatest need.

**Post-Employment VR Services** – A subset of VR Services that VR Agencies may provide after a person has achieved an employment outcome, which are necessary for the individual “to maintain, regain, or advance in employment.”

**Pre-employment Transition Services (Pre-ETS)** – Transition services provided by VR Agencies in collaboration with local school districts to support a student’s vocational goals. There are five prescribed Pre-ETS services available to students while still in high school. Students are NOT required to be determined eligible for VR services or have developed an IPE in order to receive these services. See section 2 of this guide for more information.

**Secondary Transition** – Secondary Transition is the process of preparing students for adult life after they leave high school. This guide focuses on the role of Vocational Rehabilitation Services that may be available while the student is still in high school. These services are designed to be provided through collaboration between the school and VR Agencies, and can include assistance with transition planning, developing post-secondary goals, job exploration counseling, career exploration counseling, developing appropriate VR referrals, work-based learning experiences, instruction in self-advocacy, and more.

**Section 504** – Section 504 of the Rehabilitation Act of 1973 is a disability civil rights law prohibiting discrimination against people with disabilities in programs that receive federal financial assistance. Section 504 works together with the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA) to protect children and adults with disabilities from exclusion and unequal treatment in schools, jobs, and the community.

**State Official Reviewing Officer** – An additional level of appeal that may be established by state VR Agencies through which an individual with disabilities can contest a determination by the VR Agency. The reviewing officer must be the chief official of the state VR agency or an official from the office of the Governor.

**Rehabilitation Act of 1973 (Rehab Act)** – The federal law extending and revising the provision of grants to states for vocational rehabilitation services, with special emphasis on services to those with the most severe disabilities. The Rehab Act also expands special Federal responsibilities and research and training programs with respect to individuals with disabilities. Sections of the Rehab Act created and extended civil rights for children and adults with disabilities in education, employment, and various other settings.

**VR Agency** – VR agencies operated by individual states were created by the Rehabilitation Act of 1973 (Rehab Act) and funded by the US Rehabilitation Services Agency (RSA). These state agencies provide Vocational Rehabilitation Services (VR Services) to persons with disabilities in each state and US territory.

**Vocational Rehabilitation Services (VR Services)** – VR Services are a broad range of services and benefits provided to individuals with disabilities to help them prepare for, secure, regain, or retain employment. VR Services are individually developed and designed to reduce or remove barriers to employment.

If at any time the client needs information or assistance regarding VR services or their rights under these programs, tell them to contact their state's **Client Assistance Program (CAP)**. *More information is available about CAP in Section 6 of this guide series.*

For more legal analysis, see *Work, Assistive Technology and State Vocational Rehabilitation Agencies: The Vocational Rehabilitation Agency's Obligation to Fund AT to Support Employment Preparation*; Ronald M. Hager, Esq., September 2018; **National Disability Rights Network**.

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# INTRODUCTION & ELIGIBILITY

## Introduction

The Individuals with Disabilities Education Act (IDEA) requires planning for the transition from school to adult life for students with disabilities to begin at age 16. Many states begin earlier at around age 14. In addition to pre-vocational education and work experiences provided by the school, students should prepare for receiving vocational rehabilitation services from their state's Vocational Rehabilitation (VR) agency if they expect to be eligible for these services. VR agencies, which are found in every state, offer vocational rehabilitation services to eligible persons with disabilities to help them to prepare for, retain, regain, or advance in employment. Some states have separate VR agencies serving individuals who are blind. VR agencies are now also required to provide a specific set of services for secondary students who may not be presumed to be—or ever be deemed—eligible for general VR services called Pre-employment Transition Services (Pre-ETS). *For more on Pre-ETS services, see Part 2 of this guide series.*

## About VR Agencies

VR agencies were created by the Rehabilitation Act of 1973 (Rehab Act). Under Title I of the Act, states receive money to provide VR services to persons with disabilities. VR agencies use this money to fund a wide range of goods and services that are connected to a person's vocational goal. Eligible individuals have a right to these services under federal and state laws.

The Rehab Act is based on the principal that “people with disabilities are capable of achieving high quality, competitive and integrated employment when provided the necessary services and supports.” State-run VR systems were created to provide the services persons with disabilities need in order to participate in job-driven training and to pursue high-quality employment outcomes.

Since 1986, the Rehabilitation Act has required VR agencies to “maximize the employment” outcome for those receiving VR services. This change expanded VR services to increase the potential of individuals with disabilities to achieve competitive integrated employment.

In 1998, President Clinton signed the Workforce Investment Act (WIA), and in 2014, President Obama signed the Workforce Innovation and Opportunity Act (WIOA), both of which significantly strengthened the Rehabilitation Act’s original requirements.

Today, the law continues to reinforce and ensure its original intent: “Individuals with disabilities, with appropriate supports and services, are able to achieve the same kinds of competitive integrated employment as non-disabled individuals.” It also now places a greater emphasis on serving people with disabilities, including people with the most significant disabilities, and VR agencies’ responsibility to help them achieve competitive employment in an integrated setting.



### ADVOCACY TIP

Encourage parents and students to learn more about VR and VR services. If they think the student may be eligible for VR services, they should contact the state VR agency as soon as possible to apply.

## Eligibility for Vocational Rehabilitation Services

To be eligible for Vocational Rehabilitation services, the individual must:

- 1 Have a physical, mental, emotional, or learning disability that is a real barrier to the individual getting and keeping a job,
- 2 Need Vocational Rehabilitation services to prepare the individual to get, keep, or regain employment, and
- 3 Be able to benefit from the services that will help the individual to get and keep the job or to benefit from independent living.

If the individual receives Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI), they are automatically considered eligible. But it is important to note that the individual does not need to be eligible for or receiving SSI or SSDI in order to be eligible for VR services.

Students who are in special education programs, receive accommodations in school, or have a severe health conditions may be eligible.

Applicants for VR services must have a “substantial impediment” — a mental, physical, or learning disability — that interferes with the ability to work and hinders their access to an ultimate employment goal. The

regulations indicate that “impediment” should be interpreted broadly.

A substantial impediment must also cause a person to need VR services in order to “prepare for, secure, retain, advance in, or regain employment,” AND the applicant must be able to benefit from VR services.

Before a VR agency can determine that an individual cannot benefit from VR services, it must explore the individual’s work potential through a variety of assessments and trial work experiences. Examples might include supported employment or on-the-job training in realistic work situations. The trial work experiences must:

- Be in competitive integrated employment settings to the maximum extent appropriate,
- Be of sufficient variety and over a sufficient length of time to determine whether the individual can benefit from services, and
- Provide supports (such as assistive technology and personal assistance services).

In order to decide that a person cannot benefit from VR services, the VR agency must show by “clear and convincing” evidence that they cannot benefit through the provision of supports. That evidence might be developed from assessments by healthcare or employment specialists, or from service providers who have concluded that they would not be able to meet the individual’s needs due to the severity of the individual’s disability. “Clear and convincing evidence” must include a functional assessment of skills with any necessary supports (including assistive technology), in real life settings.

An additional set of school-to-work transition services called “Pre-Employment Transition Services” (Pre-ETS) are provided by VR agencies to students with disabilities while they are still in secondary school. Pre-ETS do not require a VR eligibility determination. *For more on Pre-ETS, see Part 2 of this guide series.*



### ADVOCACY TIP

Students receiving special education services in secondary school can receive VR services while still in school beginning at age 14 but not later than age 16. A member of the IEP Team or any school staff member can refer the student for VR services. Students—without or without help from family members—can also self-refer. Getting started early can help ensure a smooth transition to the VR services they’ll need after they graduate.



### ADVOCACY TIP

VR Transition Counselors can collaborate with the school team and provide VR services before graduation. If the VR agency is invited to the school team’s table, they are required to help the IEP Team develop the IEP.

## VR Comparable Service Rules

A VR agency can deny VR services in whole or in part if the services needed are provided by or funded by any other program within the state. Some VR services must be provided regardless of whether that is the case.

Exceptions include:

- assessments for determining eligibility or services needed,
- counseling and guidance related to employment decisions,
- referral services,
- job search/job placement/job retention services,
- assistive technology, and
- post-employment services.

A VR agency **CANNOT** deny VR services if the decision would interrupt or delay the person's progress toward:

- achieving the employment outcome in the Individualized Plan for Employment (IPE),
- an immediate job placement, or
- the provision of VR services to a person who is determined to be at extreme medical risk.

If comparable services exist and are available at the time needed, the VR agency must use those comparable services or benefits to meet, in whole or part, the costs of the VR services. If comparable services exist and are NOT available, the VR agency must provide VR services until the comparable services become available.

## Financial Participation

State VR agencies may consider the income of eligible individuals to determine if they will be required to share the cost of general vocational rehabilitation services. The VR agency may ask that the individual fill out a Financial Participation Assessment form.

Individuals who receive SSI or SSDI are exempt from Financial Participation.

If a state VR agency does require Financial Participation, it must maintain written policies and apply them uniformly to individuals in similar circumstances. The VR agency may apply different levels of need for different geographic regions in the State, but it must apply them uniformly to all individuals within each geographic region. State's Financial Participation policies must also ensure that the level of an individual's participation is reasonable, accounts for any personal circumstances including disability-related expenses, and is not so high as to effectively deny the individual a necessary service. Additionally, some VR services

are exempt from state Financial Participation requirements, and the individual will not be required to pay for those services.

## Order of Selection

Not all individuals who are eligible will necessarily receive VR services. VR agencies are required to serve individuals with the most significant disabilities first when there are not enough resources to serve everyone who is eligible. This means that “individuals with the most significant disabilities” are given priority over those with less significant disabilities. This process is called an “Order of Selection.”

The federal regulations do not specifically define “individual with a most significant disability.” State VR agencies are given discretion in how they define an individual with a most significant disability.

**Typically, the categories they define will consider:**

1. the number of functional capacities affected,
2. the need for multiple VR services for an extended period of time, and
3. the existence of one or more physical or mental disabilities.

No other factors — including type of disability, referral source, or income — can be used to determine significance of disability or assignment to a priority category.

If a VR agency determines that it cannot provide the “full range” of VR services to all eligible individuals, it must include in its State plan “the order to be followed in selecting eligible individuals to be provided [VR] services.”

A state’s Order of Selection must “show the order to be followed in selecting eligible individuals for” VR services and provide justification for the plan it selects. Individuals receiving disability benefits from the Social Security Administration (SSA) are considered to be individuals with significant disabilities, but under Order of Selection, they must be further assessed to determine if they meet the State agency’s criteria for “individuals with the most significant disabilities.”

**When a state implements an Order of Selection, it must:**

1. Do so on a statewide basis;
2. Notify all eligible individuals of the priority categories the State has established in its Order of Selection, their assignment into a particular category, and the right to appeal their category assignment; and
3. Continue to provide all necessary services to all individuals who started receiving services prior to the effective date, regardless of the severity of the individual’s disability.

Individuals may still apply for VR services under Order of Selection. The VR agency is still required to provide assessment services to all individuals who apply to determine eligibility for VR services and, for those found eligible, their priority category under the State's Order of Selection.

The VR agency must continue to provide information and referral services to any individuals on waiting lists during the Order of Selection year, but it will not develop IPEs for them.

## Vocational Rehabilitation Evaluations and Assessments

Vocational assessment is the process of determining an individual's interests, abilities, aptitudes, and skills to identify vocational strengths, needs, and career potential. Vocational assessment may use a variety of standardized techniques (tests) or non-standardized approaches (interviews, observing people).

For students transitioning from secondary school, VR agencies may also review evaluations and other documents from the student's school years.

Parents and school districts should consider updating assessments in anticipation of the student's referral to the VR agency. However, the VR agency is ultimately responsible for obtaining any additional assessments that it needs to determine eligibility for VR services.

VR agencies sometimes perform "situational assessments," to assess work behaviors, work tolerance, ability to follow instructions, work with others, and more. These involve placing the person in an actual work situation to assess their performance. Such assessments can also be used to assess job-specific work skills and abilities.

If a student of transition age has had work experience during their school years, documentation from the student's performance in these settings may also be considered.



### ADVOCACY TIP

If the state is under an Order of Selection, individuals should still apply for services. They can still be found eligible and receive assessments and other services while on a waiting list.



### ADVOCACY TIP

Encourage parents and student to gather and review any evaluations or assessments they may have, including those received during school years. If the student is still in secondary school, they should ask the school team to develop new evaluations to prepare for receiving VR services.

If at any time the client needs information or assistance regarding VR services or their rights under these programs, tell them to contact their state's **Client Assistance Program (CAP)**. *More information is available about CAP in Section 6 of this guide series.*

For more legal analysis, see *Work, Assistive Technology and State Vocational Rehabilitation Agencies: The Vocational Rehabilitation Agency's Obligation to Fund AT to Support Employment Preparation*; Ronald M. Hager, Esq., September 2018; **National Disability Rights Network**.

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# SPECIAL EDUCATION TRANSITION & VOCATIONAL REHABILITATION SERVICES



## ADVOCACY TIP

Encourage parents and students to learn more about VR and VR services. If they think the student may be eligible for VR services, they should contact the state VR agency as soon as possible to apply.

Understanding VR services is particularly important to students and their families during transition from school to adult life. State VR agencies are required to respond to requests from the school district to collaborate on transition planning. Having VR representatives at the IEP table and developing positive working relationships with VR while a student is still in school can help smooth the transition between these two service systems.

## How do families and youth involve the state VR agency in transition planning?

School personnel — including but not limited to special educators, guidance counselors, school nurses, school



## ADVOCACY TIP

A member of the IEP Team the student, or the family can refer the student for VR services. If the VR agency is invited to the school team’s table, they are required to help.

psychologists, speech/language pathologists, administrators, and general education teachers, as well as parents/guardians — may refer students to VR and request that they participate in planning during the student’s secondary school years.

Students may be referred for VR services at the earliest age established by the State VR agency, and there is no minimum age given in the statute. In general, the VR system recommends that students who are expected to be eligible for VR services be referred and apply at least two years before leaving school. For students who are involved in or expect to be involved in Community Based Work Experiences (CBWE), referral and application is generally recommended at age 16, but may begin earlier. Many states begin with referral at age 14.



### ADVOCACY TIP

VR Transition Counselors can collaborate with the school team and provide VR services before graduation. If the VR agency is invited to the school team’s table, they are required to help the IEP Team develop the IEP.

developing post-secondary goals, developing appropriate VR referrals, or educating school staff, parents, students, and others about available VR programs. Once VR refers someone, they may also help students get an early start on the application and VR services eligibility determination process.

**Remember:** The school district should consider updating assessments in anticipation of the student’s referral to vocational rehabilitation. While the VR agency is ultimately responsible for obtaining any additional assessments that would be required to determine eligibility for VR services, the availability of fresh evaluations can prevent delays in receiving VR services, especially in post-secondary education settings (see Part 5 of this VR Toolkit guide).



### ADVOCACY TIP

Students have a right to receive VR services while still in school. Starting at age 16 (or sooner in some states) or as soon as possible if the student is older, talk with the school team about integrating VR services into transition planning.

Collaboration between the school district and the VR agency helps expedite the availability of services and ensures there are no gaps between service systems after graduation. State VR agencies are now required by law to develop interagency agreements with state Education Departments to facilitate this collaboration.

### If a Student is Presumed or Expected to be Eligible for VR Services...

VR agencies can help students with disabilities transition from school into postsecondary education, training, or directly into employment with the ultimate goal of meaningful inclusion in the adult community. The VR Transition Counselor may work with school staff to provide assistance with transition planning,



### ADVOCACY TIP

Encourage students, parents, and the school team to review any evaluations or assessments that may have been developed in school. Consider asking the IEP team to update or develop new evaluations to prepare for receiving VR services after graduation.

Once a student is determined eligible for VR services, the student or their representative develops an individualized plan for VR services called the Individual Plan for Employment (IPE) (to learn more about the IPE, see Section 3 of this VR Toolkit series). The student or their representative may seek assistance in the development of the IPE from family members, a knowledgeable advocate, or other individuals. However, only a qualified VR Counselor employed by the VR agency may approve and sign the IPE.

The IPE for a student who receives special education and related services under Part B of IDEA or educational services under Section 504 must be developed so that it is consistent with and complementary to the student's IEP or plan for Section 504 services.

If transition from secondary school to VR services is to be seamless, the IPE should be developed and approved by the student or the student's representative and the VR agency no later than the time the student leaves the school setting.



### ADVOCACY TIP

The IPE developed during the school years must be consistent with the student's IEP or 504 Plan.

## If a Student is Not Presumed or Expected to be Eligible for VR Services...

The VR agency must provide services for students who may not be eligible for VR services while they are still in secondary school. VR agencies are now required to use 15% of their public VR funding on a specific set of services for secondary students called Pre-employment Transition Services (Pre-ETS). Students are NOT required to be determined eligible for VR services or have developed an IPE in order to receive these services.

There are five required Pre-ETS services that VR can provide to students with disabilities while they are still students:

1. Job exploration counseling;
2. Work-based learning experiences, which may include in-school or after-school opportunities or experiences outside the traditional school setting;
3. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
4. Workplace readiness training to develop social skills and independent living;
5. Instruction in self-advocacy, which may include peer mentoring.

The requirement that VR agencies provide Pre-ETS services is relatively new, and many VR agencies nationwide have reported difficulty in effectively implementing these services.

Pre-ETS Services are funded under designated and limited state VR budgets. As a result, whether the VR Agency will provide Pre-ETS or other VR Services in secondary school and which services it will provide may

depend on several factors, including the student's VR eligibility, when the eligibility was determined, and when the Order of Selection was instituted.

For more on this subject, refer to the Rehabilitation Services Administration Regional Training Series, Regulations Implementing the Rehabilitation Act of 1973, as Amended by the Workforce Innovation and Opportunity Act.

[www2.ed.gov/about/offices/list/osers/rsa/wioa/employment-outcomes-competitive-integrated-employment.pdf](http://www2.ed.gov/about/offices/list/osers/rsa/wioa/employment-outcomes-competitive-integrated-employment.pdf).



### ADVOCACY TIP

Even if a student is not expected to be eligible for VR services while in school, the VR agency is required to provide specific VR services called Pre-employment Transition Services (Pre-ETS), and work with the school team to help unless an Order of Selection restricts the appropriate services.

If at any time the client needs information or assistance regarding VR services or their rights under these programs, tell them to contact their state's **Client Assistance Program (CAP)**. *More information is available about CAP in Section 6 of this guide series.*

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# UNDERSTANDING VR EMPLOYMENT GOALS AND THE INDIVIDUAL PLAN FOR EMPLOYMENT (IPE)



## ADVOCACY TIP

Encourage students and parents to learn about VR Employment Goals and the Individual Plan for Employment (IPE).

## The Individualized Plan for Employment

After eligibility for VR services is established and assessments have been performed, the next step is to develop a written plan to determine the person's employment goal and the specific VR services needed to help the individual reach that goal.

This plan is known as the Individualized Plan for Employment (IPE). It is developed by the VR "client," with or without assistance from the VR counselor, and is completed on a form provided by the state VR agency. The IPE must be developed no later than 90 days after the person's eligibility determination is made. If necessary, the VR agency and client can agree to an extension to a specified later date.

For young adults in school, some of this planning may already have begun. No later than the Individual Educational Program (IEP) year in which the student turns 16, the IEP is required to include post-secondary goals for employment, education/training and, if appropriate, independent living with specific transition services to assist the student in meeting these goals. Note that in

order to include these goals the IEP must be developed during the prior school year, when the student is 15 years old. Understanding the requirements of the VR IPE while in school can help better prepare the student for receiving VR services. The IPE developed while the student is in school must be consistent with the goals in the IEP.

### For VR services, the IPE must include:



### ADVOCACY TIP

If the student is still in school, encourage parents and/or students to work with the IEP Team to coordinate the development of the IPE with the transition goals in the IEP. They need to be consistent.

1. A description of the specific employment outcome chosen by the eligible person that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.
2. A description of the specific rehabilitation services that are needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices or services and personal assistance services, including training in the management of these services. Services must be provided in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the person.
3. Timelines for the achievement of the employment outcome and for initiation of services.
4. A description of the entity or entities chosen by the person (or representative) that will provide the VR services, and the methods used to procure these services.
5. A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome.
6. The terms and conditions of the IPE, including the rights and responsibilities of the VR agency and the person, the extent of the person's financial participation in paying for the cost of services, the responsibility of the person regarding applying for and securing comparable benefits, and the responsibility of other entities.

The IPE must be reviewed at least annually and must be amended if necessary due to changes in employment outcome, VR services to be provided, and VR service providers. Changes made when the IPE is reviewed cannot take place until they are agreed upon by the person and their VR Counselor.

## Employment Goals and Outcomes

Employment goals and outcomes are central to the IPE and are defined by law as “entering, advancing in, or retaining full-time or part-time competitive integrated employment.” They include “customized employment, self-employment, telecommuting, or business ownership.”

- Competitive integrated employment is full or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities performing the same work, and fully integrated with coworkers without disabilities.

- Customized employment is competitive, integrated employment for an individual with a significant disability based on a personalized determination of the individual’s “strengths, needs and interests.” It is designed to meet the specific abilities of the individual and the business needs of the employer and is carried out with “flexible strategies.”
- Supported employment may be a goal for persons with the most significant disabilities who need intensive supports and extended services when it is consistent with their unique strengths, priorities, concerns, abilities, capabilities, and interests. Supported employment service can include supplementary assessments of rehabilitation needs, skilled job trainers for the person at the worksite, social skills training, follow-up services, and facilitation of natural supports at the worksite. These services are usually provided on a short-term basis when they are expected to lead to competitive employment within 2 years.
- Telecommuting involves performing job-related functions at a location other than the employer’s physical location. Telecommuting can be arranged with some employers for some jobs, and performed for part or all of the employee’s work time. VR services can help with expenses related to telecommuting, such as computers, internet service provider costs, and needed assistive technology devices and services. Telecommuting may be an important IPE goal for persons living in remote rural locations, or who may not have access to effective transportation services.
- Business ownership is just that, developing and starting one’s own business. Although state VR agencies vary in their approaches to funding self-employment, most will require a self-employment feasibility study and/or draft business plan. The funding VR will agree to cover varies as well, and VR agencies may encourage the individual to explore other funding sources and services, such as their local Workforce (One-Stop) system.



## ADVOCACY TIP

When it comes to planning employment goals, encourage Dreaming Big. The employment goals set in the IPE and the VR services that will be provided to achieve them are required to **maximize the student’s employment, economic self-sufficiency, independence, and inclusion and integration into society.**

## Maximization of Employment

In 1986, the Rehabilitation Act of 1973 was amended to include its purpose to “[E]mpower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through ... comprehensive and coordinated state-of-the-art programs of vocational rehabilitation.”

In 1992, specific language was included to add “The purpose of the VR Program is, in part, to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society.”

Taken together these amendments are broadly interpreted to mean that if a person has the required ability, the VR agency should provide services to persons who need help to qualify for, find, or keep a job that is consistent with their strengths, resources, priorities, concerns, abilities, interests, and informed choice.

WIA regulations in 2001, and the passage of WIOA in 2014, reaffirmed that states must look beyond options in entry-level employment for VR program participants who are capable of more challenging work.

### **Together they stressed that:**

- Individuals with disabilities who are currently employed should be able to advance in their careers;
- VR services should maximize the potential for individuals with disabilities to prepare for, obtain, retain, and advance in the same high-quality jobs and high-demand careers as persons without disabilities;
- VR eligibility should recognize each participants’ work potential and require vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and
- VR agencies should encourage qualified individuals who are eligible to receive services, enabling them to pursue advanced training in science, technology, engineering, or mathematics (including computer science) fields, medicine, law, or business.

### **Informed Choice**

VR agencies are required to implement their programs and provide information and services with “respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities.”

Implementation of informed choice ensures that the person, or the person through their representative, is able to:

- Make decisions related to the assessment process, employment outcomes, employment setting, VR services, VR service providers, and the methods for procuring services;
- Have a range of options from which to make these decisions or, to the extent possible, the opportunity to create new options that will meet the individual’s specific rehabilitation needs;
- Have access to sufficient information about the consequences of various options;
- Have skills for evaluating the information and for making decisions, or, to the extent possible, the opportunity to develop such skills or support and assistance in carrying out these functions;

- Make decisions in ways that reflect the individual’s strengths, resources, priorities, concerns, abilities, capabilities, and interests; and
- Take personal responsibility, to the greatest extent possible, for implementing the chosen options.

This principle, and many rules surrounding vocational rehabilitation, help to ensure that the VR process is consumer-driven and that the VR agency’s policies and methods facilitate the flexible provision of services and afford eligible persons meaningful choices and services.



### ADVOCACY TIP

Students engaging with the VR agency have a right to make “Informed Choices” (see Glossary). The VR agency will provide information to help, but students and parents should consider interests carefully and learn as much as possible about their employment options, available services, and their rights throughout the VR process.

If at any time the client needs information or assistance regarding VR services or their rights under these programs, tell them to contact their state's **Client Assistance Program (CAP)**. *More information is available about CAP in Section 6 of this guide series.*

For more legal analysis, see *Work, Assistive Technology and State Vocational Rehabilitation Agencies: The Vocational Rehabilitation Agency's Obligation to Fund AT to Support Employment Preparation*; Ronald M. Hager, Esq., September 2018; **National Disability Rights Network**.

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# VOCATIONAL REHABILITATION EMPLOYMENT SERVICES

## Required Vocational Rehabilitation Services (VR Services)

VR services are any services, described in an IPE, necessary to assist a person with a disability in “preparing for, securing, retaining, advancing in, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual.”

Even if a state limits VR services by going to an “Order of Selection,” the VR agency must serve each applicant for services who is in a category that is eligible to be served, and it must provide all needed services to each individual it serves. For more on VR Order of Selection, see Part 1 of this guide series.

The services that are available from the VR system are incredibly broad and varied. Essentially, whatever an individual with a disability needs to overcome his or her barrier to employment can be covered.



### ADVOCACY TIP

The services available from the VR system are incredibly broad and varied. Encourage students and parents to learn about the full range of required services, both to them as an individual, and to any potential employer.

**VR services must include, but are not limited to, the following:**

- 1.** The assessment to determine eligibility and needs (if appropriate, conducted by someone skilled in rehabilitation or assistive technology);
- 2.** Counseling, guidance, and job placement services and, if appropriate, referrals to the services of other agencies including others within the statewide workforce development system;
- 3.** Vocational and other training, including higher education and the purchase of tools, materials and books, which includes:
  - a)** Graduate level training in any field
  - b)** “Tuition and other services for students with intellectual or developmental disabilities in a Comprehensive Transition and Postsecondary Program for Students with Intellectual Disabilities, as defined by the Higher Education Act of 2008”;
- 4.** Diagnosis and treatment of physical or mental impairments to reduce or eliminate impediments to employment, to the extent financial support is not available from other sources, including health insurance or other comparable benefits. This may include:
  - a)** Dentistry
  - b)** Nursing services
  - c)** Corrective surgery or therapeutic treatment
  - d)** Diagnosis and treatment for emotional disabilities
  - e)** Necessary hospitalization
  - f)** Medications and supplies
  - g)** Prosthetic and orthotic devices
  - h)** Eyeglasses and visual services
  - i)** Podiatry
  - j)** Physical therapy, occupational therapy, speech, or hearing therapy
  - k)** Treatment of either acute or chronic medical complications or emergencies
  - l)** Services for individuals with end-stage renal disease, including dialysis, transplants, and artificial kidneys
  - m)** Diagnosis and treatment for mental or emotional disorders
  - n)** Other medical or medically related rehabilitative services;
- 5.** Maintenance for additional costs incurred during rehabilitation;
- 6.** Transportation, defined as “travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a [VR] service.” Additionally, “[t]he purchase and repair of vehicles, including vans” is an example of an expense that would meet the definition of transportation;

7. Personal assistance services while receiving VR services;
8. Interpreter services for individuals who are deaf. For individuals who are blind, readers, rehabilitation teaching, and orientation and mobility services can be provided;
9. Occupational licenses, tools, equipment, initial stocks, and supplies;
10. Technical assistance for those who are pursuing telecommuting, self-employment or small business operation;
11. Rehabilitation technology (i.e., AT), including vehicular modification, telecommunications, sensory and other technological aids and other technological aids and devices;
12. Transition services for students with disabilities to facilitate the achievement of the employment outcome identified in the IPE;
13. Supported employment;
14. Customized employment;
15. Services to the family to assist an individual with a disability to achieve an employment outcome;
16. Other goods and services determined necessary to enable the individual with a disability to achieve an employment outcome;
17. Post-employment services necessary to assist an individual to maintain, regain, or advance in employment.

**VR agencies may also provide services to employers who have hired or are interested in hiring individuals with disabilities, including:**

- (a) Providing training and technical assistance to employers regarding the employment of individuals with disabilities, including disability awareness, and the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other employment-related laws;
- (b) Working with employers to—
  1. Provide opportunities for work-based learning experiences (including internships, short-term employment, apprenticeships, and fellowships),
  2. Provide opportunities for preemployment transition services, in accordance with the requirements under 34 C.F.R. 361.48(a),
  3. Recruit qualified applicants who are individuals with disabilities,
  4. Understand how to train employees who are individuals with disabilities, and
  5. Promote awareness of disability related obstacles to continued employment;
- (c) Providing consultation, technical assistance, and support to employers on workplace accommodations, assistive technology, and facilities and workplace access through collaboration with community partners and employers, across States and nationally, to enable the employers to recruit,

job match, hire, and retain qualified individuals with disabilities who are recipients of vocational rehabilitation services under this part, or who are applicants for such services; and

- (d) Assisting employers with utilizing available financial support for hiring or accommodating individuals with disabilities.

States must develop policies concerning the provision of VR services. These policies must ensure that services are provided based on each person's individual needs. They may not place "any arbitrary limits on the nature and scope of" VR services that are provided to achieve an employment outcome. The VR agency may establish reasonable time periods for the provision of services, but they must not be so short as to effectively deny a service and they must "permit exceptions so individual needs can be addressed."

Similarly, the state's policies on the rates of payment for services must not be so low as to effectively deny an individual a necessary service and may not be absolute.

Finally, the policies must include provisions for the timely authorization of services, "including any conditions under which verbal authorization can be given."

## Assistive Technology Services

When a person has become eligible for VR services, VR agencies must consider Assistive Technology (AT) devices and services needed to develop and achieve employment goals.

The VR agency may deny funding for AT devices and services if they are required to be provided as "auxiliary aids or services" by another agency or organization, under the ADA or Section 504 of the Rehabilitation Act (Section 504).

Once a person has been determined eligible for VR services, and if there is no other responsible party, e.g., the school and/or Medicaid, the VR agency must pay the full cost of AT devices and services, and they are not subject to Financial Participation cost sharing rules.

The VR agency may review existing evaluations regarding the need for AT devices and services, or it may conduct its own assessments and evaluations.

If a person needs AT devices or services to participate in new evaluations during the development of the IPE, or during trial work experiences, the VR agency is required to provide them so they can participate meaningfully in the IPE development.

If the VR agency provides AT devices, then it must also provide training on how to use the devices to the individual and any other persons who may be required to assist in their use.



### ADVOCACY TIP

Students have a right to receive the Assistive Technology devices and services (AT) that they need to participate in assessments, their job, and training. The VR agency must pay the full cost if there is no other responsible party under the ADA or Section 504.

Personal choices and preferences of AT devices are important factors for the VR agency to consider. However, they are not the only factor. The VR agency may consider cost in selecting the device. VR agencies are not required to buy the most expensive device if a less expensive device will be effective in helping the individual reach their goal.

The individual has a right to choose who provides their AT devices and services, including the training that they may need in its use. The VR Counselor must provide them with a list of providers to choose from.

## Out-of-State Services

There are times when a VR client needs to attend a program out-of-state because there is no comparable program within the state to prepare the person for the agreed-upon employment goal. Alternatively, the VR client may prefer, for personal reasons, to attend an out-of-state program.

VR regulations allow this choice. A state “may establish a preference for in-state services,” as long as there are exceptions to ensure that an individual is not denied a necessary service. If there is no appropriate program available within the state, the state must have a process to fund the out-of-state program (subject to any financial need criteria the state may have established).

If the out-of-state program costs more than an in-state service, and either service would meet the individual’s rehabilitation needs, the VR system is not responsible for costs in excess of the cost of the in-state service.

## Post-Employment VR Services

VR agencies can provide services after the person has achieved an employment outcome, which are necessary for the individual “to maintain, regain, or advance in employment.” Maintaining employment may be necessary if the person’s employment is jeopardized because of issues related to their disability. Examples might include:

1. conflicts with supervisors or coworkers related to the person’s disability;
2. the person needs mental health services and counseling to maintain the employment;
3. the person requires assistive technology to maintain the employment;
4. the person needs to regain employment, for example if the persons’ job is eliminated through reorganization and new placement services are needed; and
5. if the person needs to advance in employment, for example if the employment is no longer consistent with the person’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.



### ADVOCACY TIP

Students don’t have to limit their selection of VR service providers to those in their state of residence, especially if they live near a state border, where other providers may be available. They have a right to select an out-of-state provider if they wish.

The IPE must indicate whether post-employment services are expected or needed. VR agencies must also inform the person of the availability of post-employment services before closing their case.



### ADVOCACY TIP

The IPE must include Post-Employment VR services. The VR agency is required to inform the individual about post-employment services before closing their case. These services are available to ensure they are able to “maintain employment” and/or “advance employment.” Individuals should contact the VR Counselor and consider changing or requesting additional Post Employment services in the IPE from their VR counselor if they anticipate needing them due to changes in skills, workplace conditions, interests, etc. as soon as they become aware of them.

If at any time the client needs information or assistance regarding VR services or their rights under these programs, tell them to contact their state's **Client Assistance Program (CAP)**. *More information is available about CAP in Section 6 of this guide series.*

For more legal analysis, see *Work, Assistive Technology and State Vocational Rehabilitation Agencies: The Vocational Rehabilitation Agency's Obligation to Fund AT to Support Employment Preparation*; Ronald M. Hager, Esq., September 2018; **National Disability Rights Network**.

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# VOCATIONAL REHABILITATION AND ASSISTIVE TECHNOLOGY (AT) IN EDUCATIONAL TRANSITION

Whether or not the VR agency will provide Assistive Technology (AT) devices and services for transitioning students varies depending on when and where it is needed. Here we will consider the following:

- Students preparing for transition in secondary school
- Students transitioning to post-secondary education settings

## VR and AT in Secondary Transition

VR agencies have specific responsibilities to serve students with disabilities who are still in secondary school special education programs and receiving transition services. While the VR agency is required to provide Pre-Employment Transition Services (Pre-ETS) to students in secondary school settings, AT devices and services are not required.

Allowing AT devices purchased by school districts to follow students to settings after graduation has long been considered desirable, but it has proven difficult to achieve in practice.

Because school districts are responsible for funding AT devices for students under IDEA, many VR agencies will deny funding while a student is still in school, claiming it is not responsible under VR Comparable Benefits rules.

At the same time, AT devices purchased by schools are often considered school property, and schools may require that devices

be surrendered back to the school when secondary enrollment ends.

This disconnect presents a significant problem, because the AT device a student uses in school will often be useful (if not essential) for further education or employment as an adult.

Under controlling federal policy for schools, equipment may be transferred to post-secondary settings “at the discretion of the school,” and specific guidance on this policy was issued in 1998. Some states have implemented interagency agreements that attempt to facilitate (but none require) the transfer. Nonetheless, many schools and VR agencies nationwide do not have local or state policies in place that effectively facilitate the transfer.

If an AT device used by a student in secondary school will be needed after graduation, students and parents should raise the issue of transfer with the school team. Though not common, some schools will agree to attempt to arrange the transfer of the devices. Remember, however, that the VR agency is responsible for the full cost of AT devices and services for eligible individuals, unless they are required to be provided by another agency or organization as “auxiliary aids” or services under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504).

## VR Services, Including AT, for Post-Secondary Students

VR agencies can provide a range of services for students enrolled in post-secondary education. However, colleges and universities have their own responsibilities to provide accommodations under the ADA and Section 504 that cross over with common VR services. The result is that needed services are often provided by both.

## Accommodations in Post-secondary Education Institutions

Post-secondary education institutions are not required to provide a Free and Appropriate Public Education (FAPE), as the high school was. Under the ADA and Section 504, post-secondary schools are only required to provide “reasonable and appropriate accommodations, academic adjustments, and/or auxiliary aids” as needed to ensure that it does not discriminate on the basis of disability.



### ADVOCACY TIP

In secondary school, the school pays for Assistive Technology devices and services under IDEA. VR agencies will typically deny funding of AT during secondary school because it is a Comparable Service. Transfer of AT from the secondary school to post-secondary schools or employment is desirable but problematic, and is rarely approved. Have the student or parent ask anyway. If the school district does not approve the transfer, ensure the VR agency provides it in a timely way so it is available and ready when the student needs it.



### ADVOCACY TIP

The VR agency may provide a range of VR services while a student is enrolled in post-secondary education.

As adults, students are required to advocate for their own accommodations. Parents may or may not be allowed to participate in arranging student accommodations. The Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records. The privacy rights under FERPA transfer solely to the student at age 18, or when they begin post-secondary education at any age. Post-secondary institutions are allowed to share student information with parents if the student is claimed as a dependent for tax purposes, or based on a school official's personal knowledge or observation of the student, but they are not required to do so. Some post-secondary institutions will seek the student's explicit permission to share information with parents.

Most post-secondary schools have disability services offices, which may help with arranging and documenting the accommodations needed and requested by students, but the post-secondary education institution is not required to assist a student with self-advocacy. Some disability services offices will allow parents to participate if the student signs a privacy waiver allowing them to share the student's private information.



### ADVOCACY TIP

Disability services offices (or the like) at post-secondary schools, may help with arranging and documenting the accommodations needed and requested by students. The quality of services from these offices vary. When selecting from post-secondary school options, students and parents should learn about this office's work and services before making their school selection.

In order to obtain these accommodations, students are required to provide documentation showing they have a current disability and need an academic adjustment. Post-secondary schools are allowed to set reasonable standards for documentation, and some will require more than others. They may consider using the students latest IEP or 504 Plan and recent evaluations performed in secondary school. The post-secondary school may require new evaluations, but they are not required to pay for them. If the post-secondary school requires a new evaluation, the student may be required to pay for it. However, if the student is eligible for VR services, the VR agency may cover the cost of the new evaluations under the IPE.

It is also important to understand that the post-secondary school is not required to lower or substantially modify essential academic requirements. It is not required to change the substantive content of the course curriculum or tests as the secondary school was.



### ADVOCACY TIP

The VR Agency may pay post-secondary tuition costs if the education is part of an eligible student's IPE. Tuition support is typically subject to VR Financial Participation.



### ADVOCACY TIP

Parents may be allowed to be involved and assist with the development of accommodations and may ask the student to sign the post-secondary school's privacy waiver.

If the post-secondary school provides housing to nondisabled students, it must provide comparable, convenient, and accessible housing to students with disabilities at the same cost.

Personal aids and personal assistance services, including help in bathing, dressing, or other personal care, are not required to be provided by postsecondary institutions. However, if the student is receiving VR services, the VR agency may fund personal assistance services (including training in managing, supervising, and directing personal assistance services).

Available post-secondary school accommodations are individualized and vary, but some common accommodations include:

- Extended time on exams (not the same as “untimed” tests, which are not typically available)
- Use of laptops for tests and exams
- Use of calculators for tests and exams
- Permission to make audio recordings of classes (some schools may loan out smart pens for this purpose)
- Reduced course load (note that financial aid may be reduced as a result)
- Priority registration for courses
- Copies of notes from a classmate
- Access to audiobooks
- Access to voice recognition software
- Access to text-to-speech programs

Post-secondary schools are also required to provide “Auxiliary Aides” as part of their responsibilities to make their programs accessible. Some of these might be considered AT devices and services. Examples include:

- Digital audio texts
- Notetakers
- Interpreters
- Readers
- Talking calculators
- Electronic readers



### ADVOCACY TIP

Understanding the accommodations/modifications received in HS that were successful is helpful when discussing services in post-secondary schools.

- Braille calculators, printers, or typewriters
- Telephone handset amplifiers
- Closed caption decoders
- Open and closed video captioning
- Voice synthesizers
- Specialized gym equipment
- Calculators or keyboards with large buttons
- Reaching device for library use
- Assistive listening devices
- Telecommunications devices for deaf persons

If an auxiliary aid is necessary for the classroom or other appropriate (nonpersonal) use, the post-secondary school must make it available, unless provision of the aid would cause undue burden as defined under the ADA.

A post-secondary student with a disability may not be required to pay part or all of the costs of that auxiliary aid or service. If the cost of the auxiliary aid or service is considered an undue burden, the post-secondary student may try to obtain reimbursement for the cost of an aid from the state VR agency.

## VR Services Available to Post-secondary Students

The VR agency can provide services to students in post-secondary education settings and may even provide tuition support if it is necessary to achieve a vocational goal consistent with an individual's capacities, abilities, and choices as set out in the IPE.

If post-secondary tuition support is included in the IPE, the VR agency may require the student to make maximum efforts to secure financial assistance from other sources, including federal student aid. If this is the case, the student typically will be required to apply for the federal Free Application for Federal Student Aid (FAFSA), and the VR agency may use the form to determine student/family participation and to determine VR support levels. The student may also be encouraged to take out student loans, but this is not a federal requirement. The VR agency may agree to pay for some or all of the remaining costs, after consideration of Financial Participation.



### ADVOCACY TIP

Post-secondary schools are required to provide auxiliary aides under the ADA and Section 504 as part of needed accommodations for students with disabilities. Many are AT devices such as electronic readers, telephone handset amplifiers, voice synthesizers, assisted listening device, and calculators or keyboards with large buttons, talking calculators, and more.



### ADVOCACY TIP

A VR Agency's support for post-secondary tuition costs usually requires the student/family to secure federal student aid. VR may suggest that the student/family consider loans, but the student/family is not required to assume debt.

During the annual review of the IPE, the VR agency will need to see that the course of study is clearly connected to the employment goals in the IPE, and that the student is maintaining good academic standing.

The VR agency may also provide common VR services for eligible post-secondary students including re-evaluations, personal assistance services, vocational counseling, job placement, and referral to disability support services consistent with the goals in the IPE. However, the ultimate responsibility for the costs of auxiliary aids is the responsibility of the post-secondary school.

If at any time the client needs information or assistance regarding VR services or their rights under these programs, tell them to contact their state's **Client Assistance Program (CAP)**. *More information is available about CAP in Section 6 of this guide series.*

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# VOCATIONAL REHABILITATION APPEAL RIGHTS AND ADVOCACY ASSISTANCE

Every person engaging with their state VR agency has specific rights under federal law. If the VR client disagrees with a decision by the VR agency that affects their VR services, they have the right to appeal the decision. Common decisions that the individual may disagree with include:

- Not being eligible for VR services;
- Placement into an Order of Selection category;
- VR not approving the employment goal they selected for their IPE;
- Denial of a choice of a service provider;
- Refusal to allow the individual to pursue a self-employment goal;
- Refusal to provide a specific VR service, such as assistive technology;
- Decreasing, suspending, or terminating VR service;
- Closure of the case; or
- Denial of VR Post Employment Service



## ADVOCACY TIP

Encourage students and their parents to learn about and understand their rights to VR services and the VR appeal process in their state.

Any time the VR agency makes a decision about an individual's eligibility or services, it must send the client a Written Notice that explains its decision. The Written Notice must contain:

- The VR agency's decision
- The reason for the decision
- A notice about appeal rights, including an enclosed Request for Review of Determination form, and
- A description of services available through the Client Assistance Program (CAP), see below.

To appeal the VR agency's decision, clients must return their VR agency's Request for Appeal form. The form and deadlines for their response should have been included in their Written Notice.

If the individual does not receive Written Notice from VR, a formal written request, in letter or email form, is also acceptable to file an appeal. The individual still has the right to appeal its decision.

The VR Agency's request for an appeal form will provide the client with a choice of several informal and formal processes to get their appeal started. These include:

**Administrative Review/Informal Hearing** – The VR agency will review the disagreement by having the client or their representative meet with the VR Counselor's supervisor and/or have the VR Program Manager try to resolve the issue.

**Mediation** - Mediation is a voluntary alternative for resolving disputes with the VR agency. Both the client and the VR agency must agree to a Mediation in order for a Mediation conference to take place. Mediation involves meeting with VR and an impartial and qualified mediator to try to resolve the dispute. The mediator is not an employee of VR. The Mediation conference must be scheduled in a timely manner and in a location that is convenient to the client, their representative and the VR representative. Discussions occurring and information provided during a mediation conference cannot be used as evidence in any subsequent due process hearing or civil proceeding. VR must pay for all fees relating to the Mediation.

**Fair Hearing** - A Fair Hearing is a formal appeal process where the case is presented in front of an impartial administrative law judge/hearing officer. Both parties are allowed to provide evidence, bring witnesses, and share information that supports each position.

If a decision is made in the client's favor at any of the above appeal stages, the IPE should be modified to reflect new employment goals or VR services that the client will now be receiving.



### ADVOCACY TIP

Emphasize the importance of reading all communications (letters, emails, etc.) that individuals receive from the VR agency. If the individual doesn't understand or agree with something VR has decided, they should contact the VR counselor and ask for clarification.

## Additional appeal options are available beyond the Fair Hearing determination.

**State Reviewing Official** - States may establish a second level of administrative review. The review officer must be the chief official of the designated state VR agency or an official from the office of the Governor. If the state does establish a second level of administrative review, either party may appeal to it within 20 days of the hearing officer's decision. The review officer cannot overturn a hearing decision unless, based on clear and convincing evidence, the decision is "clearly erroneous" based on an approved State VR Plan, state or federal law, or policy that is consistent with federal law.

**Lawsuit** - Either the individual or the VR agency may appeal a final administrative decision to state or federal court. They must have appealed the VR agency's decision in a Fair Hearing before they can file a lawsuit. If they wish to appeal a Fair Hearing or State Reviewing Official's final decision to a state or federal court, they should seek immediate legal advice. As a plaintiff in these courts they must have legal representation from a licensed attorney. Pending the court's review, the final administrative decision will be implemented.



### ADVOCACY TIP

Every individual engaging with a state VR agency has specific rights to appeals of VR decisions under federal law.

## Advocacy Assistance Available through the Client Assistance Program

Every state and US Territory has a Client Assistance Program (CAP). CAP provides advocacy services related to VR issues free of charge.

The VR client or applicant should contact CAP if they:

- Have recently become disabled and are wondering how to apply for rehabilitation services;
- Are denied the right to apply for services;
- Are found to be not eligible for services;
- Disagree with the Individualized Plan for Employment (IPE);
- Disagree with VR's decision to close the case;
- Are having difficulty finding rehabilitation services and want information about other resources;
- Are concerned about their relationship with their counselor or staff members;
- Are dissatisfied with the rehabilitation services they are receiving;
- Do not understand their rights or the services available to them under the ADA or Rehabilitation Act; or
- The case has been closed and the client wants to be reconsidered for rehabilitation services.

## Contact the Local CAP

If at any time the client needs information or assistance regarding VR services or their rights under these programs, tell them to contact their state's **Client Assistance Program (CAP)**. To learn how to contact the local CAP, visit <https://www.ndrn.org/about/ndrn-member-agencies> and scroll down to the state. In some states the CAP is included in the general protection and advocacy program, and in others it is a separate program. The site for that state will list the CAP separately in those states.

For more legal analysis, see *Work, Assistive Technology and State Vocational Rehabilitation Agencies: The Vocational Rehabilitation Agency's Obligation to Fund AT to Support Employment Preparation*; Ronald M. Hager, Esq., September 2018; **National Disability Rights Network**.

<https://www.raisecenter.org/wp-content/uploads/2019/06/VR-Funding-of-AT-2018.pdf>

### For additional or general support:

#### Center for Parent Information and Resources (CPIR)

– There are nearly 100 Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) in the US and Territories. To find a state's Parent Center, visit the CPIR website.

<https://parentcenterhub.org/find-your-center>.

**RAISE Center** – The National Resources for Advocacy, Independence, Self-determination and Employment (RAISE) Technical Assistance Center works with the seven (7) Rehabilitation Service Administration (RSA)-funded Parent Training & Information Centers (PTIs) to develop and disseminate information and resources that increase their capacity to serve youth and young adults with disabilities and their families. Visit the RAISE Center website.

<https://raisecenter.org>

