

Section 7 – Informal Reviews, Mediation and Administrative Hearings

Guidance

The Bureau encourages consumers and staff to attempt to resolve issues on an informal basis. Staff and consumers should consult with the appropriate supervisor, district director or central office representative when there is an unresolved disagreement about the provision of services or other program issue.

Even though the Bureau should try to resolve disputes as informally as possible, *informal reviews**, *mediation** and administrative hearings are a legal right available to consumers. It is therefore imperative that consumers be informed of the availability of these redress procedures, and the 30-day timeframes that they must follow to exercise their rights.

Legal Requirements

A. General Provisions

1. Consumers must be informed of the right to *mediation** and administrative hearing at the time the individual applies for services, at the time the Employment Plan/IPE is developed and upon reduction, suspension or cessation of vocational rehabilitation services.
2. Consumers may be granted an *informal review**, *mediation** and/or administrative hearing in any of the following situations:
 - a. the denial of an applicant or the denial of the right to apply or reapply for BRS services;
 - b. any bureau action concerning the development, implementation, denial, suspension, reduction or termination of services under an Employment Plan;
or
 - c. unresolved disputes pertaining to the scope of services provided to the consumer.
3. A request for an *informal review**, mediation and/or administrative hearing must be in writing or other form of communication appropriate to the consumer's disability needs.

It must contain a clear and concise statement of the issue(s) to be addressed, and must be received within the allowable timeframes (described below).

4. Consumers have the option of first going to an informal review and/or mediation, or they may choose to bypass these steps and go immediately to an administrative hearing. *Mediation** will be held, however, only by mutual consent of the consumer and BRS. BRS cannot use the informal review or mediation to deny or delay the individual's right to an administrative hearing.
5. Consumers have the right to present evidence and to have representation in *informal reviews**, *mediation** and administrative hearings. However, the consumer is responsible for any fees incurred by having representation.
6. Information in the case file must be made available to the consumer or his/her *representative**. Medical, psychological or other information which BRS determines may be harmful to the consumer cannot be released directly to him/her, but must be provided through his/her designated *representative**.
7. *Informal reviews**, *mediation** and administrative hearings will be held at an accessible location during working hours or at a time and place mutually agreed upon by the parties and approved by the reviewer, mediator or impartial hearing officer.
8. Services that are being provided when an *informal review**, *mediation** or administrative hearing request is received may not be suspended, reduced or terminated pending a decision by the impartial hearing officer or DORS Commissioner.
“Services that are being provided” means the following:
 - a. For persons in the process of being evaluated for eligibility, continuation of the eligibility determination;
 - b. For persons who are in the process of an evaluation for rehabilitation needs, continuation of evaluations needed for Employment Plan development;
 - c. For persons who have an approved Employment Plan, continuation of the services agreed to in the plan, using whatever timeframes, costs, or other parameters that are spelled out in the plan.

B. Informal Review

1. *Informal reviews** are conducted by BRS staff, as designated by the Bureau Director.

District Directors are the individuals generally designated to conduct *informal reviews**.

2. Requests for an *informal review** must be addressed to the respective district director and received by BRS within 30 days after the date BRS notifies the consumer of the decision which s/he is appealing.

3. The informal review* must be scheduled within a timely matter.
4. Failure to appear at a scheduled review is a waiver of the right to a review. The reviewer may dispose of the matter, or if the defaulted party submits a request for rescheduling within 10 days for good cause, the review may be rescheduled.

For additional information concerning *informal reviews**, see the BRS state regulations.

C. Mediation

1. Requests for *mediation** must be received within 30 days of the date of notification of the BRS decision which the consumer is appealing or mailing of the informal review* decision, whichever is later.
2. Participation in *mediation** is a voluntary process, and will be held only if both the consumer and BRS agree to be involved in the process.
3. BRS may deny a request for *mediation** in cases where it is not likely that *mediation** will resolve the issue. In such cases, the consumer may request to pursue an administrative hearing.
4. At any point in the *mediation** process, either party or the mediator may elect to terminate the *mediation**. In the event *mediation** is terminated, either party may pursue resolution of the issue through an administrative hearing.
5. *Mediation** must be conducted by a qualified mediator, who is skilled in conducting mediation and knowledgeable of the vocational rehabilitation program.
6. The mediator may be chosen on a random basis, by mutual agreement of the BRS director and the consumer, or in accordance with a procedure established by BRS, provided this procedure assures the neutrality of the mediator.
7. Discussions that occur during *mediation** must be kept confidential and may not be used as evidence in a later hearing or litigation.
8. The *mediation** agreement, if applicable, must be in writing.
9. BRS is not bound by terms in the *mediation** agreement if the issues resolved in a *mediation** agreement are later appealed in an administrative hearing or court.
10. BRS may offer *mediation** in cases other than those instances where the individual requests *mediation** or an administrative hearing.

*Mediation** is a valuable resource in many cases where more informal resolution of an issue is not possible. Since a resolution using *mediation** is the result of both parties coming to an agreement, this potentially leads to a better, more amicable solution than adversarial procedures, such as an administrative hearing. However, note that staff need to obtain District Director approval before offering *mediation** to consumers who have not formally requested a hearing or *mediation**.

D. Administrative Hearing

1. Administrative hearings are conducted by impartial hearing officers.
2. Requests for administrative hearings must be received by the BRS director within 30 days of the latter of (as applicable):
 - a. the date of notification of the BRS decision which the consumer is appealing;
 - b. mailing of the informal review* decision; or
 - c. completion of *mediation**. *Mediation** is considered “completed” when an agreement is signed or *mediation** is formally terminated. In the absence of either an agreement or formal termination, it is considered completed at the last *mediation** session held.
3. The administrative hearing must be held within 60 days of receipt of the request for an informal review*, *mediation** or administrative hearing, unless the consumer and BRS agree to an extension.
4. Administrative hearings must be held before an impartial hearing officer who is not an employee of BRS.
5. The impartial hearing officer must render a decision within 30 days of completion of the hearing.
6. Either the consumer or BRS may request that the DORS Commissioner review the impartial hearing officer’s decision. The request must be received within 20 days after the mailing of the impartial hearing officer’s decision.
7. Either the consumer or BRS may appeal the Commissioner’s decision (or hearing officer’s decision if there was no review by the Commissioner) to state or federal court.

For additional information concerning administrative hearings, see the BRS state regulations.