

Readopt with amendment Ed 1000, effective 1-10-20 (Document #12971, Interim), to read as follows:

CHAPTER Ed 1000 VOCATIONAL REHABILITATION PROGRAMS

PART Ed 1001 PURPOSE, ~~AND~~ SCOPE, *INTENTION, AND PARTICIPANT INVOLVEMENT*

Ed 1001.01 Purpose. Chapter Ed 1000 for the New Hampshire vocational rehabilitation services program provide the rules for uniform application of the State Vocational Rehabilitation Services Program authorized by Title I of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq. and regulated by 34 CFR Parts 361, **363, 367, and 397**.

Ed 1001.02 Scope.

(a) The New Hampshire vocational rehabilitation services (*NHVR*) program shall be responsible for assessing, planning, developing, and providing vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they can prepare for and engage in gainful employment. The rules for the New Hampshire vocational rehabilitation services program implement the State Vocational Rehabilitation Services Program authorized by Title I of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(b) *NHVR shall work with individuals with disabilities to obtain an employment outcome in the most competitive and integrated employment settings consistent with the individual's unique employment factors. In addition, NHVR provides training and services to employers. Services include training and technical assistance on disability awareness issues, providing guidance on developing work-based learning experiences, providing pre-employment transition services for students with disabilities, providing recruitment training, as well as training techniques to assist in successful employment outcomes.*

(c) *NHVR shall comply with the provisions of this chapter and 34 CFR 361 when determining the eligibility and scope of vocational rehabilitation services for individuals with disabilities.*

***Ed 1001.03 Intention to Achieve an Employment Outcome.***

(a) *During the application process, individuals shall be informed that vocational rehabilitation services are only provided if they intend to achieve an employment outcome. Individuals with disabilities are active partners with the vocational rehabilitation counselor and together work to establish employment goals and the steps to reach those goals.*

(b) *An employment outcome means an individual entering, advancing in, or retaining:*

*(1) Full time, or if appropriate part-time, competitive integrated employment;*

*(2) Supported employment that meets the definition of competitive integrated employment;  
or*

*(3) Other types of employment in competitive integrated settings consistent with the individual's employment factors, including customized employment, self-employment or business ownership, and telecommuting.*

***1001.04 Participant Involvement***

*(a) The bureau recognizes that individuals with disabilities, their families and representatives are partners with their NHVR counselors in developing their vocational rehabilitation plans. The active involvement of individuals in their plans for employment contributes to the success of, and satisfaction with, the employment goal and degree of independence achieved.*

*(b) The vocational rehabilitation counselor is available to assist the individual with the vocational rehabilitation process and the attainment of the employment goal.*

*(c) The bureau shall foster the greatest degree of independence and responsibility, as desired by an individual. Individuals shall be encouraged to actively participate in developing their own IPE's, schedule their own appointments, complete investigatory assignments and perform other tasks with the full support and guidance of their counselors, as needed.*

*(d) Families, representatives and others shall also be encouraged to play an important role in the success of a vocational rehabilitation plan to the extent the individual with a disability requests, desires and needs such supports.*

#### PART Ed 1002 DEFINITIONS

Ed 1002.01 Definitions. In addition to the definitions in the in 34 CFR 361.5, unless context makes another meaning manifest, the following definitions shall apply to Ed 1003 through Ed 1012:

(a) "~~Bureau~~ **New Hampshire Vocational Rehabilitation (NHVR)**" means the department of education, division of career technology and adult learning **workforce innovation**, bureau of vocational rehabilitation.

(b) "Department" means the New Hampshire department of education;

(c) "**Individual**" means the individual requesting services or the individual's representative;

(~~d~~) "Individual with a most significant disability" means an individual with a significant disability:

(1) Who has a ~~significant~~ **severe** mental or physical impairment that seriously limits ~~2~~ **3** or more functional capacities such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance and work skills, or work tolerance or work skills in terms of employment outcomes; and

(2) Whose vocational rehabilitation can be expected to require ~~2~~ **3** or more vocational rehabilitation services, ~~in addition to the vocational rehabilitation counselor provided services of guidance, counseling, service coordination and job placement,~~ over an extended period of time of 6 months or longer.

(~~e~~) "Program for the deaf and hard of hearing" means the program established under RSA 200-C:18.

(~~f~~) "Review " means the procedure for determining whether decisions made by personnel of ~~the bureau~~ **NHVR** that affect the provision of vocational rehabilitation services are consistent with the Act and rules adopted thereunder.

#### PART Ed 1003 PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION

##### ***Ed 1003.01 Notice to the Individual.***

*(a) At the time of the initial interview, and as appropriate through the rehabilitation process, the counselor shall inform an individual of NHVR's policies on acquiring, using and protecting information of a personal nature. Such notice shall be given in a language or method of communication understandable to the individual. The explanation shall include at least general information about the principal purposes for which NHVR intends to acquire, use or release the information and shall identify those agencies and circumstances under which NHVR expects to share the information. The individual shall give full and informed consent in writing to release any information. The individual shall also be informed that they can withdraw their consent for release of information by notifying NHVR in writing.*

*(b) If an individual indicates that information in his or her file is misleading or inaccurate, NHVR shall carefully consider the individual's reasons. Obvious errors shall be corrected, but information regarded by the counselor as accurate and necessary shall be retained. If the information is not amended, the record of services must document that the individual did request such an amendment and the individual shall be informed of the availability of the hearing process.*

*(c) If an individual refuses to grant permission for NHVR to release information or obtain needed information from another agency or source, the reasons for the refusal shall be discussed and the potential consequences shall be explained to the individual. If the refusal results in NHVR being unable to share or obtain needed information, NHVR shall make a decision on whether or not to proceed with the case.*

Ed 1003.042 Confidentiality. In addition to the requirements under 34 CFR 361.38, the following shall apply regarding confidentiality:

*(a) NHVR's acquisition of personal information about applicants carries with it the obligation to fully inform applicants about what information is gathered and how it will be used, and how it will be safeguarded against unnecessary or inappropriate dissemination. Personal information is all material which is identifiable to an individual, including reports, evaluations, case histories, notes, photographs and directory information. NHVR's obligation to preserve confidentiality pertains to its own use of information directly, and the release of personal information to third parties, other individuals and agencies. Release of personal information also involves the individual's access to his or her own personal information and records.*

*(ab) All current and stored information as to personal facts given or made available to the designated state unit, its representative, or its employee, in the course of the administration of the vocational rehabilitation program, including photographs, lists of names and addresses and records of agency evaluation, shall be held to be confidential by the division and by individuals, service providers, other cooperating agencies and organizations, and interested parties to whom such information is disseminated. NHVR shall obtain only information necessary to determine eligibility or to provide services to an individual. Necessary information may already exist and be available from the individual and his or her family members, treating physicians, other agencies, or it may be information acquired by NHVR specifically for the purpose of serving the individual. To the greatest extent possible, existing information shall be used;*

*(c) An individual shall have full, timely access to any information that NHVR maintains about him or her, unless NHVR determines that some information may be harmful to the individual or if NHVR obtained the information from a source which has restricted its dissemination to the individual. Information that may be harmful shall only be released to anyone the individual designates as his or her representative. If NHVR received information from a source that restricted its further*

*dissemination, NHVR shall advise the individual to contact that source directly to obtain the information.*

(bd) Individuals, agencies, and organizations shall pay a fee of \$.06 per page to cover costs of duplicating records and making extensive searches required for the release of information in accordance with 34 CFR 361.38 and the rules of this part.

Ed 1003.023 Personal Data Collection. In addition to the requirements of 34 CFR 361.38, the following shall apply to *personal* data collection:

(a) The collection of personal information by designated state unit personnel concerning applicants and eligible individuals shall be authorized by the applicant or individual through completion of a release of information permit containing the ***“Application for Vocational Rehabilitation Services and Authorization to Release Information” form, revised August 2020:***

~~(1) Date;~~

~~(2) Applicant or individual’s name;~~

~~(3) Signature;~~

~~(4) Social security number optional: may be required for eligibility for certain state and federal programs; and~~

~~(5) A statement authorizing release to the designated state unit of medical, psychological, psychiatric, educational, and vocational information necessary for the determination of eligibility and development and implementation of an individualized plan for employment;~~

***(b) The individual, or the individual’s representative, shall complete and file the “Personal Information Form” revised August 2020.***

(bc) The signature of the parent or guardian shall be required when the applicant or eligible individual is under 18 years old or has a legal guardian; and

(ed) The designated state unit shall collect personal information under 29 U.S.C. 709(c), 29 U.S.C. 721(a)(6)(A), and 34 CFR 361.38. Failure by the applicant or eligible individual to provide sufficient personal information to the designated state unit to determine eligibility, or to prepare an individualized plan for employment or to monitor progress of services provided, shall result in the case being closed.

Ed 1003.034 Release of Information. In addition to the requirements of 34 CFR 361.38, the following shall apply to the release of information:

***(a) By completing the “Application for Vocational Rehabilitation Services and Authorization to Release Information” form, revised August 2020, an applicant or individual authorizes NHVR to release relevant information when requested in accordance with this section.***

(a) ~~Personal information concerning the applicant or eligible individual shall not be released to any individual or organization except as authorized by the applicant, individual, or law. When personal information has been obtained from another agency or organization, it shall be released only by, or under the conditions established by, the other agency or organization. However, when such information has been used to make a determination regarding the applicant or eligible individual that is being contested through the hearing process it shall be available for release as evidence in the hearing unless precluded by~~

~~law~~ *NHVR shall use information only for the person's participation in the vocational rehabilitation program, and shall safeguard and preserve the confidentiality of all personal information it possesses, including the way information is used within NHVR. Only persons with a need to know personally identifiable information shall be allowed access to the materials. Information shall be shared with other programs and agencies only with the individual's informed, written consent if the information is necessary for the program. If NHVR has received information from another source with restrictions or conditions for any further dissemination, NHVR will release the information only under the conditions established by the other agency or organization;*

*(b) Information shall also be released for approved audit, evaluation and research for purposes directly connected with vocational rehabilitation or for purposes which would significantly improve the quality of life for people with disabilities. The entity receiving the information shall assure that it will be kept confidential and shall be used only for the purpose indicated. The final product shall not reveal any personally identifying information without the affected individual's informed written consent.*

~~(bc)~~ When a third party requests particular information about an applicant or eligible individual, the third party shall provide a written request signed by the applicant or individual or their guardian designating the third party as a representative who may have access to client information. Third parties may include attorneys, service providers, and other public or private agency or organizations; and

~~(cd)~~ The request shall include:

- (1) The applicant's or eligible individual's name;
- (2) The information being requested;
- (3) The reasons why the material is being requested; and
- (4) The name of the individual, agency, or organization assuming responsibility for the information and giving assurance that the information will not be released to any other individual, agency or organization.
- (5) The request shall also include the following statement:

"I \_\_\_\_\_, hereby authorize the release of information for the purpose of providing vocational rehabilitation services relating to me which is in the custody or control of the New Hampshire Department of Education, ~~Division of Career Technology and Adult Learning~~ *workforce innovation*. I have considered and understand the implications of this waiver. The release of this information is more important to me than the loss of privacy which may result directly or indirectly from the release. I agree to hold harmless the New Hampshire Department of Education, ~~Division of Career Technology and Adult Learning~~ *workforce innovation* and their authorized representatives for any damages arising out the release of the information I am requesting. "

Ed 1003.045 Exchanging Information with Other Parties.

(a) When ~~the bureau~~ *NHVR* is working with an agency or organization on behalf of an applicant or eligible individual, information shall be exchanged after obtaining a written release of information authorization described in Ed 1003.03(~~d~~), signed by the individual, or his or her parent or guardian if the individual is under 18 years old or has a legal guardian. For agencies and organizations having an agreement with the designated state unit to exchange information, information regarding mutual applicants or eligible individual's information shall be exchanged without obtaining an individual's

release. The agencies and organizations having such cooperative agreements shall be identified by the designated state unit on the application for vocational rehabilitation services.

(b) Agencies and organizations with which ~~the bureau~~ **NHVR unit** shall exchange information include but are not limited to:

- (1) The New Hampshire department of health and human services;
- (2) The New Hampshire department of labor, division of workers' compensation;
- (3) New Hampshire WORKS Partners established under the Workforce Investment Act of 1998, 29 U.S.C. 705, as described in the cooperative agreement;
- (4) Community rehabilitation programs;
- (5) New Hampshire disability determination services; and
- (6) The Social Security Administration.

(c) In situations not covered by the provisions of Ed 1003.04(a), upon receiving the informed written consent of the applicant or eligible individual or, if appropriate, the applicant's or individual's representative, ~~the bureau~~ **NHVR** shall release personal information to another agency or organization for its program purposes only to the extent that the information shall be released to the involved applicant or individual or the applicant's or individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

***1003.06 Exceptions.***

***(a) Personal information shall be released without the individual's consent, as required by law in circumstances including, but not limited to:***

- (1) Subpoenas and court orders signed by a judge;***
- (2) In connection with investigations concerning law enforcement, fraud or abuse; and***
- (3) To protect the individual or others if the individual poses a threat to his or her own safety, or another person's safety.***

***PART Ed 10084 PROVISION AND SCOPE OF SERVICES REFERRALS AND APPLYING FOR SERVICES***

~~Ed 10084.01 Processing Referrals and Applying for Services. In addition to compliance with the provisions of 34 CFR 361.41, the bureau shall request the following minimum information from each individual who is referred to the designated state unit for vocational rehabilitation services:~~

- ~~(a) Name and address;~~
- ~~(b) Disability;~~
- ~~(c) Age and gender;~~
- ~~(d) Date of referral; and~~

~~(e) Source of referral.~~

*(a) Any individual who has a disability which results in a substantial impediment to employment may be referred to NHVR to apply for services.*

*(b) Individuals with disabilities may:*

*(1) Seek bureau services directly; or*

*(2) Be referred by family members, guardians, friends, schools, independent living centers, Federal, State or local agencies, medical providers, and other sources.*

*(c) Referral information shall include the person's name, address, date of birth, and as much of the following information as is available:*

*(1) Social Security number, if available;*

*(2) Race or ethnicity;*

*(3) Referral disability; and*

*(4) Referral source.*

*(d) When referring an individual to NHVR for services, the referral source shall, at the time of the referral, provide all necessary and available information related to the individual's disability and employment needs to expedite eligibility decisions and planning for services. Documentation from referral sources and individuals shall contain available information about the nature, extent of the disability, and the functional deficits resulting from the disability and the impact on the person's ability to become employed and to achieve a vocational goal.*

*(e) When information received from referral sources does not include name, address, date of birth or a statement of informed consent, NHVR staff shall request that the referral agency provide the data as well as other necessary information, including informed consent.*

*(f) Information about the application process shall be presented to an individual as soon as possible after the referral in a group orientation or individual counseling setting. An initial contact shall not be delayed because of missing information.*

*(g) When referral information has been received from a referral source other than the individual without a signed application or a signed letter requesting services, but reflects that the referred person is aware of and consenting to the referral, NHVR shall request the individual complete and file the "Application for Vocational Rehabilitation Services and Authorization to Release Information" form, revised August 2020.*

*(h) Cooperative agreements and memoranda of understanding shall be established between NHVR and agencies enumerated in Ed 1005.05(b), which shall include specific referral criteria and processes to promote referral. These referral criteria should be used as appropriate.*

*(i) An individual is considered to have submitted an application, which means that eligibility shall be determined within 60 calendar days, when the individual or the individual's representative, as appropriate:*

*(1) Has either:*

*a. Completed and signed NHVR's "Application for Vocational Rehabilitation Services and Authorization to Release Information" form, revised August 2020;*

*b. Submitted a signed letter with the necessary information enumerated in Ed 1004.01(e); or*

*c. Has requested services verbally, because he or she cannot sign a form or letter due to a disability;*

*(2) Has provided information necessary to initiate an assessment to determine eligibility; and*

*(3) Is available to directly participate in and complete the assessment process.*

*(j) When applying for services, the individual shall provide information including, but not limited to, employment history, medical information, work status, or school records necessary to determine eligibility and shall be available to meet with, provide available information to, and to participate in assessments as necessary.*

~~Ed 108.02 Processing Applications. The bureau shall process applications in accordance with 34 CFR 361.41(b).~~

#### ***PART Ed 1005 ASSESSMENT***

##### ***Ed 1005.01 Assessment: Generally.***

*(a) For vocational rehabilitation, assessments shall be ongoing, person-centered and shall occur at critical decision points throughout the vocational rehabilitation process.*

*(b) The assessment process shall begin when an individual with a disability applies for NHVR services with the intent to reach an employment outcome.*

*(c) The assessment process shall be utilized for the following:*

*(1) To determine eligibility;*

*(2) To determine the significance of disability;*

*(3) To identify the scope of required services and supports to meet rehabilitation needs;*

*(4) To substantiate appropriateness for supported employment;*

*(5) To develop the individualized plan for employment (IPE);*

*(6) To determine progress during the implementation of the IPE; and*

*(7) To determine if the individual has achieved an employment outcome in a competitive integrated setting consistent with the individual's employment factors.*

*(d) The NHVR counselor shall, to the extent possible, use existing information to establish eligibility and develop the IPE. When additional information is needed, a vocational evaluation or other assessment service shall be authorized. These services shall be conducted in the most integrated setting possible.*

*(e) An individual shall be accommodated to participate in the assessment process using the most appropriate mode of communication to enable the individual to comprehend and respond to information being communicated during the assessment process.*

**Ed 1005.02 Role of the Vocational Rehabilitation Counselor.**

*(a) The NHVR counselor shall:*

- (1) Collect, analyze, synthesize, and interpret available information;*
- (2) Engage the individual with a disability in the assessment process; and*
- (3) Develop a positive counseling and guidance relationship by making every effort to understand the individual's priorities during the assessment process.*

*(b) If additional information is needed, the NHVR counselor, along with the individual receiving services, shall decide how to obtain the information and establish appropriate timeframes for completion.*

*(c) The decision to pursue any additional assessments shall be fully discussed and explained to the individual.*

*(d) The NHVR counselor shall obtain only the information that is necessary for eligibility or service planning.*

*(e) The individual's active involvement shall be documented in the record of services.*

**Ed 1005.03 Individual's Participation in the Assessment Process.**

*(a) The individual shall be offered every opportunity to actively participate in the assessment and decision-making process.*

*(b) The individual shall:*

- (1) Work with the NHVR counselor to understand how the assessment process is used to determine eligibility, plan for services, and identify an employment outcome;*
- (2) Be available for assessment services and complete any agreed upon assessment activities within the timeframe established; and*
- (3) Participate in a discussion of the results and what they mean in terms of achieving an employment outcome.*

*(c) The individual shall have an opportunity to respond to assessment results and include a representative in any discussions.*

*(d) While the decision-making process shall be collaborative, decisions shall reflect the judgment of the NHVR counselor in accordance state and federal rehabilitation policies and regulations.*

***Ed 1005.04 Focus on Functional Capacities and Employment Factors.***

*(a) Assessment shall focus on the overall functional capacities of the individual, particularly the strengths related to pursuing employment.*

*(b) Assessment shall include a review of the individual’s disability and its impact on one or more functional capacities as described in Ed 1007.02(b)(3) .*

*(c) The results of the assessment process shall then identify how one or more of these functional capacities impact the individual’s unique employment factors as described in Ed 1006.02(d).*

*(d) Assessment shall define what supports shall be provided to the individual to enhance strengths and overcome limitations. For some individuals, there may be a need to experiment with the potential supports, modifications and/or strategies that enable the individual to meet the essential performance demands of the work situation.*

***Ed 1005.05 Assessment for Determining Eligibility.***

*(a) An assessment for determining eligibility and priority for services begins when an individual with a disability applies for NHVR services, as outlined in Ed 1004.01, with the intent to reach an employment outcome.*

*(b) An assessment and determination shall be completed within 60 days of receipt of any form of application described in Ed 1004.01.*

*(c) Existing information shall be reviewed by the NHVR counselor to determine if the information is sufficient to determine eligibility. This includes establishing the disability(ies), identifying the impediment to employment, and determining that there is a need for vocational rehabilitation services.*

*(d) When possible, individuals shall obtain and provide documentation from their treating physician, certified treatment program, a licensed or certified practitioner skilled in the diagnosis and treatment of the disability, or other source that verifies the existence and extent of an impairment and the impediments to employment that may result from that disability.*

*(e) With the applicable releases in place, written documentation of the person's disability shall be obtained. This documentation may be from treatment facilities, providers, medical and other diagnosticians, educational sources, federal or state agencies, therapists, and professionals who evaluate and report on functional limitations. Referrals made by other agencies shall include information about the individual's disability, resulting functional limitations, and how it relates to the individual's employment needs.*

*(f) If additional information is needed, the applicant and counselor shall decide how best to obtain the information and establish appropriate time frames. If the applicant is unable to provide appropriate evidence, NHVR shall obtain the required information as part of the assessment process.*

*(g) The applicant and counselor shall complete the “Personal Information Form” dated August 2020 during the assessment process using the information gathered before and during the process.*

*(h) Assessment for determining eligibility is exempt from a financial need review. Exceptions include those non-assessment services, such as a communication device, that are provided to an individual with a significant disability during an exploration of the individual's abilities, capabilities, and capacity to perform in work situations.*

*(i) Existing information will be considered adequate if, in the counselor's judgment, it provides sufficient information to document the person's disability(ies) and employment factors, resulting impediments to employment, ability to benefit from services and requirements for services.*

*(j) If an individual meets NHVR's eligibility criteria, eligibility must not be delayed while waiting for information that is to be used for vocational planning purposes.*

*(k) A determination of eligibility is not a guarantee of the provision of specific services.*

***Ed 1005.06 Assessment for Developing the Individualized Plan for Employment (IPE).***

*(a) Whenever possible, the NHVR counselor and the individual should develop the IPE based on the assessment information gathered during the eligibility process. If existing information obtained during the eligibility process is not sufficient to identify the rehabilitation needs and develop the IPE, a comprehensive assessment of the eligible individual must be completed by the NHVR counselor.*

*(b) A comprehensive assessment of the eligible individual shall be required prior to a referral for supported employment to substantiate that the individual meets all criteria for participation in the supported employment program.*

*(c) A comprehensive assessment of the eligible individual shall be limited to information necessary to identify the rehabilitation needs of the eligible individual and to develop the individual's IPE as follows:*

- 1. Existing information shall be used as the primary source of information;*
- 2. Information provided by the individual and other sources shall be subject to the rules of confidentiality and release of information under Ed 1003;*
- 3. To the degree necessary, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual;*
- 4. To the degree necessary, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and*
- 5. Referral, where appropriate, for rehabilitation (assistive) technology services to assess and develop the capacities of the individual to perform in a work environment.*

***Ed 1005.07 Referral for Assessment Services.***

*(a) After a review of existing information, if additional information is needed, a referral for assessment services shall be considered. All assessment services and related required supports necessary to complete the assessment shall be exempt from a financial needs review.*

*(b) When referring for assessment services, the NHVR counselor shall provide a written referral that focuses on the individual's unique vocational needs. The referral shall include relevant background information about the individual's disability, previous education and work experience, available pertinent records, and existing reports.*

*(c) The NHVR shall make every effort to make the assessment experience more meaningful, and the results more reliable, by preparing the individual for the assessment in advance.*

*(d) The final report from an assessment service shall:*

*(1) Respond to the VR counselor's initial referral questions and focus on the practical application of the results;*

*(2) Identify the abilities of the individual;*

*(3) Clarify the impact of the findings on the individual's ability to work; and*

*(4) Suggest any accommodations to improve the individual's capabilities related to employment.*

*(e) The VR counselor shall assist the individual in understanding the findings and develop a plan.*

#### **PART Ed 1006 ELIGIBILITY FOR SERVICES**

~~Ed 10086.031 Assessment for Determining Eligibility and Priority for Services. The bureau shall comply with 34 CFR 361.42 in conducting assessments for determining eligibility and priority for services to include:~~

~~(a) Eligibility requirements;~~

~~(b) Interim determination of eligibility;~~

~~(c) Prohibited factors;~~

~~(d) Review and assessment of date for eligibility determination;~~

~~(e) Trial work experiences for individuals with significant disabilities; and~~

~~(f) Data for determination of priority for services under an order of selection.~~

*(a) A person shall be determined eligible for vocational rehabilitation services if the individual:*

*(1) Has a physical or mental impairment that is a substantial impediment to employment;*

*(2) Can benefit in terms of achieving an employment outcome consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice; and*

***(3) Requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment.***

***(b) A determination of eligibility shall not constitute a guarantee of the provision of specific services or of NHVR's financial support.***

***(c) Eligibility shall be determined without regard to age, race, color, religion, creed, disability, marital status, veteran status, national origin, expected employment outcome, source of referral, the service needed, anticipated costs, income level, employment history, employment status, or the educational or credential status of the applicant.***

***(d) NHVR shall not impose a residency requirement. Persons who are not United States citizens shall prove that they are legally allowed to work in the United States as determined by the United States Citizenship and Immigration Services (USCIS).***

***(e) The individual or the individual's designated representative shall be involved in and informed about the eligibility determination process and decision.***

***Ed 1006.02 Employment Factors.***

***(a) The NHVR counselor shall begin the eligibility process with the presumption that all persons can benefit from vocational rehabilitation services in terms of an employment outcome.***

***(b) Eligibility for services shall be determined in relationship to the individual's need for services to achieve an employment outcome consistent with the individual's employment factors as described in (d) below.***

***(c) Employment factors shall be assessed, documented and considered together when determining eligibility and planning services, relying on existing information available from the individual and other sources, as well as situational assessments where appropriate. One employment factor alone does not outweigh the other factors; each factor shall be balanced with the other components when assessing eligibility or planning for services.***

***(d) Employment factors shall be assessed and documented in the following categories:***

***(1) Strengths as demonstrated by the individual's positive attributes or inherent expertise related to an employment field such as intellectual aptitude, motivation, talents, work and volunteer experience, work skills, work-related hobbies and transferable life skills;***

***(2) Resources as demonstrated by the individual's sources of available support, including financial, social, information, and technological, on which the person can rely to prepare for and meet employment objectives. These resources could be available from the individual, the family, or other community or public sources;***

***(3) Priorities as demonstrated by the individual's consistency with and relationship to employment-related preferences, based on informed choice among available options;***

***(4) Concerns as demonstrated by the individual's employment-related issues that need to be considered in vocational planning such as financial, self-sufficiency, medical, residential, transportation and family considerations;***

*(5) Abilities as demonstrated by the individual’s existing physical, mental, or functional capacity to successfully engage in employment through natural aptitude or acquired proficiency;*

*(6) Capabilities as demonstrated by the potential for an individual to develop the skills necessary for employment through the provision of vocational rehabilitation services;*

*(7) Interests as demonstrated by occupational areas on which an individual has focused special attention; and*

*(8) Informed Choice as demonstrated by the active involvement of participants contributing to the success of and satisfaction with their employment outcomes in the selection of a long-term employment outcome, rehabilitation objectives, and vocational rehabilitation services including assessment services and service providers.*

**Ed 1006.03 Individuals who are Recipients of Supplemental Security Income (SSI) or Social Security Disability Insurance Benefits (SSDI).**

*(a) An individual who has a disability and is receiving SSI or SSDI benefits, as determined by the social security administration (SSA), is presumed to be eligible for vocational rehabilitation services. SSI and SSDI recipients will be considered eligible with at least a significant disability unless NHVR can demonstrate by clear and convincing evidence that the person cannot benefit from an employment outcome because of the severity of the individual’s disability.*

*(b) The individual shall provide appropriate evidence to verify the receipt of SSI or SSDI benefits. If the applicant is unable to provide appropriate evidence to support the receipt of benefits, NHVR shall obtain appropriate releases from the individual and verify the applicant’s eligibility by contacting the SSA. This verification shall be made within a reasonable period of time so that eligibility for vocational rehabilitation services shall be made within 60 days of the application for services.*

**Ed 1006.04 Trial Work Experiences.**

*(a) Before an individual can be determined unable to benefit from vocational rehabilitation services because of the severity of the individual’s disability, the NHVR counselor shall explore the individual’s abilities, capabilities, and capacity to perform in work situations through trial work experiences.*

*(b) A trial work experience shall assess individuals with most significant disabilities by providing an opportunity to demonstrate their potential capacities through real work experiences.*

*(c) The trial work experiences shall provide an opportunity for a variety of experiences over a sufficient period of time with on-the-job supports and training, including assistive technology, except when it is determined not appropriate for an individual to participate in such experience.*

*(d) If a trial work experience is not appropriate for an individual, the vocational rehabilitation counselor shall document in the case record the circumstances for that determination.*

*(e) The results of the trial work experience shall be used demonstrate that the individual can benefit from services or shall enable the NHVR counselor to determine with clear and convincing evidence that the applicant cannot benefit from vocational rehabilitation services in terms of an employment outcome.*

*(f) NHVR counselors shall enlist community rehabilitation providers through vocational assessments that include a situational assessment, community-based workplace assessments, work try-outs, and supported employment as a means to provide the required trial work experiences.*

*(g) NHVR counselors shall have a high degree of certainty before concluding that a person is incapable of benefiting from vocational rehabilitation services. There shall be clear and convincing evidence, which shall constitute the highest standard used in the civil system of law, that no employment outcome is possible considering information from the trial work experience and more than one opinion considered and utilized as evidence.*

*(h) A written plan for the trial work experience shall be outlined in the record of services that describes the services necessary to determine eligibility. Only services to determine eligibility or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting from an employment outcome because of the severity of the disability shall be provided during a trial work experience. The written plan shall include the expected duration of services, identification of the service provider, and how the experience will contribute to the determination of the individual's eligibility.*

*(i) All services during trial work experiences shall be provided under the same parameters as when the services are provided under an individualized plan for employment (IPE) with the goal of employment.*

***Ed 1006.05 Criteria for Determining Eligibility.***

*(a) The eligibility determination shall only be made by a NHVR counselor, and shall be based on the following criteria:*

*(1) A physical impairment which shall mean any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:*

- a. Neurological;*
- b. Musculoskeletal;*
- c. Special sense organs;*
- d. Respiratory;*
- e. Cardiovascular;*
- f. Reproductive;*
- g. Digestive;*
- h. Genitourinary;*
- i. Hemic and lymphatic;*
- j. Skin; and*
- k. Endocrine;*

*(2) A mental or psychological disorder including:*

- a. Intellectual disability;*
- b. Organic brain syndrome;*
- c. Emotional or mental illness; and*
- d. Specific learning disabilities;*

*(3) The impairment, as outlined in 1005.06(a)(1)-(2), is determined to be a substantial impediment to the individual's employment when NHVR counselor, considering the individual's medical, psychological, vocational, educational, functional capacities and other related factors, finds that the impairment:*

- a. Hinders the individual from preparing for, entering into, advancing in, or retaining employment consistent with the individual's abilities and capabilities; and*
- b. Is the primary reason that the individual is unable to achieve an employment outcome consistent the employment factors described in Ed 1005.03(d);*

*(4) The individual can benefit from services in terms of an employment outcome as defined in 34 CFR 361.5(c)(15);*

*(5) Trial work experiences as described in Ed 1005.05; and*

*(6) The requirement of vocational rehabilitation services as described in (c) below;*

*(b) A determination that the impairment is a substantial impediment to the individual's employment as described in Ed 1005.05(a)(3) shall only be made by a NHVR counselor. Eligibility for vocational rehabilitation services should be considered when, due to the impairment, the individual's current employment is not consistent with the employment factors.*

*(c) A person requires vocational rehabilitation services when the individual, because of the substantial impediment to employment caused by their disability, cannot achieve an employment outcome consistent with an individual's employment factors without receiving vocational rehabilitation services. The services provided shall be essential and necessary to overcome the barriers to employment which are the direct result of the person's disability. Persons who are currently employed shall be determined eligible for services if they meet the basic eligibility criteria. The counselor shall consider the following circumstances when determining if the individual requires NHVR services to reach an employment outcome:*

*(1) The individual has transferable skills, which are consistent with the individual's employment factors, but the individual's disability prevents him or her from using those transferable skills to prepare for, secure, retain, advance in or regain employment;*

*(2) The individual cannot access services that will allow him or her to achieve an employment goal without vocational rehabilitation services;*

*(3) The individual lost a job because of his or her disability and this prevents him or her from finding other employment; and*

*(4) The individual needs to pursue another job or career because the current position is contraindicated to the disability.*

***Ed 1006.06 Timelines of Eligibility Determinations.***

*(a) Pursuant to 34 CFR 361.41(b), an eligibility determination shall be made within 60 days applying for services, as described in Ed 1004.01(j) unless there are exceptional or unforeseen circumstances, or a trial work experience is necessary.*

*(b) When eligibility cannot be determined within 60 days, as stated in (a) above, NHVR staff shall reach an agreement with the applicant to extend the 60-day time limit. The applicant shall be informed of:*

*(1) The reasons for the delay and the steps necessary to reach an eligibility determination; and*

*(2) A date for which eligibility shall be determined.*

*(c) If the determination will be delayed beyond the projected date, staff shall work with the applicant to resolve any impediments. A new projected date for eligibility determination will be based on the anticipated time frame to collect the necessary information. If an agreement cannot be achieved, the eligibility decision shall be made as quickly as possible, and the individual shall be fully informed of his or her right to an administrative review, mediation and impartial hearing and assistance as described in Ed 1018.*

***Ed 1006.07 Eligibility Determination.***

*(a) Except as provided in Ed 1005.06(b) and (c), within 60 days of an individual's application for services as outlined in Ed 1004.01(j) NHVR shall notify the individual about eligibility as follows:*

*(1) Sufficient information and documentation exists to determine eligibility, the applicant is eligible for services, and planning for services continues;*

*(2) Eligibility cannot be determined because of the severity of the person's disability and a written plan is developed for the services to be provided during a trial work experience to determine if the individual can benefit from NHVR services;*

*(3) Sufficient information and documentation exists to determine that the applicant:*

*a. Does not have a disability;*

*b. Does not have a substantial impediment to employment;*

*c. Is unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of the disability, justified by clear and convincing evidence demonstrated by a trial work experience; or*

*d. Does not require services.*

***Ed 10086.058 Procedures Provisions of an for Ineligibility Determination.*** The bureau's procedures for ineligibility determination shall comply with the provisions of 34 CFR 361.43.

*(a) NHVR shall take the following actions concerning an ineligibility decision:*

*(1) The ineligibility determination shall be made only after providing an opportunity for full consultation with the individual, or as appropriate, with the individual's representative; and*

*(2) The applicant shall be informed in writing or by appropriate modes of communication regarding the:*

*a. Determination of eligibility and the reasons for it;*

*b. Individual's right to request a review of the determination and the steps of the administrative review, mediation and impartial hearing process;*

*c. Availability of assistance through the Client Assistance Program (CAP); and*

*d. Availability of assistance to refer to other training or employment related programs through the American Job Center Partnerships.*

*(b) If an individual cannot benefit from services, the NHVR ineligibility certification and record of services shall contain clear and convincing evidence to support the determination. The applicant shall be given information about independent living centers or other appropriate services and an explanation of how to reapply for NHVR services should circumstances change.*

Ed 10086.069 Closure without Eligibility Determination.

*(a) ~~The bureau~~ NHVR shall comply with 34 CFR 361.44 for closure without an eligibility determination so long as ~~the bureau~~ NHVR has made a minimum number of 2 attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.*

*(b) If an applicant or family of the applicant for NHVR services states the only goal of choice is non-competitive or non-integrated employment, NHVR shall not serve that individual. NHVR counselors shall assist the individual in making an informed choice, and the counselor shall assure that the applicant understands the competitive and integrated options available. If the result of the informed choice is non-integrated or non-competitive employment, the counselor shall inform the applicant that NHVR services are not available toward that goal and invite the applicant to return if and when that goal changes to some form of competitive integrated employment. The counselor shall then refer the applicant to the local extended employment provider or independent living center.*

#### **PART Ed 1007 SIGNIFICANCE OF DISABILITY**

**Ed 1007.01 Significance of Disability Categories.**

*(a) NHVR shall assign and track levels of significance of disabilities to ensure vocational rehabilitation services for individuals with significant disabilities, and, in the event that NHVR is unable to provide vocational rehabilitation services to all eligible individuals, establish priority categories to enable NHVR to transition services should an order of selection become necessary.*

*(b) The NHVR counselor shall identify an individual as having a most significant, significant, or less significant disability using existing information without delaying the eligibility decision based on criteria including, but not limited to:*

- (1) The individual’s functional capacities;*
- (2) The services needed to reduce the impact of disability-related limitations; and*
- (3) The duration of the rehabilitation services required for the individual to achieve an employment outcome.*

*(c) Significance of disability shall not be based on a specific diagnosis or disability and may be changed at any time during the life of the case.*

*(d) Significance of disability shall be categorized as follows:*

- (1) Individuals with a most significant disability as defined in Ed 1002.01(c);*
- (2) Individuals with a significant disability as defined in 34 CFR 361.5(30); and*
- (3) Individuals with a disability as defined in 34 CFR 361.5(29).*

***Ed 1007.02 Determining Significance of Disability.***

*(a) Significance of disability shall be determined by reviewing the following three criterion:*

- (1) Serious limitations to functional capacity;*
- (2) Multiple rehabilitation services required to reduce the impact of limitations on employment; and*
- (3) Duration of services for an extended period of time.*

*(b) The following shall apply to serious limitations to functional capacity:*

*(1) Serious limitation in a functional area means a reduction, due to a severe physical or mental impairment, to the degree that the individual requires services or accommodations not typically made for other individuals in order to prepare for, enter into, engage in, advance in or retain competitive integrated employment.*

*(2) For significance of disability, functional capacities shall be seriously limited and include a reference to intensity, frequency and duration considered by the NHVR counselor as follows:*

- a. Intensity, or the degree to which the limitation affects the individual’s ability to function;*
- b. Frequency, or the number of times a given limitation affects the individual’s ability to function within a set period of time; and*
- c. Duration, or the length of time the limitation has existed or is expected to last; and*

*(3) Functional capacities to be considered shall include, but not be limited to:*

*a. Mobility which shall refer to a person’s ability to move to and from work or within a work environment including walking, climbing, coordination, accessing and using transportation, and use of spatial and perceptual relationships;*

*b. Communication which shall refer to a person’s ability to transmit and receive information through spoken, written, or other non-verbal means;*

*c. Self-care which shall refer to a person’s ability to perform activities of daily living, to participate in training or work-related activities, including eating, toileting, grooming, dressing, cooking, shopping, washing, housekeeping, financial management, and health and safety needs;*

*d. Self-direction which shall refer to a person’s ability to independently plan, learn, reason, problem solve, memorize, initiate, organize, and make decisions in order to allow individuals to assimilate information and learn specific skills related to job functions;*

*e. Interpersonal skills which shall refer to a person’s ability to establish and maintain personal, family, or community relationships as they affect job performance; and*

*f. Work tolerance which shall refer to a person’s capacity to meet the demands of the workplace regardless of the work skills already possessed by the individual where limitations may be due to physical disability, stamina and fatigue, effects of medication, or psychological factors.*

*(c) The following shall apply to multiple rehabilitation services required to reduce the impact of limitations on employment:*

*(1) Only those services that are necessary, as a direct result of the disability, shall be included in the determination of the significance of disability, including:*

*a. Services that are provided by others as comparable benefits;*

*b. Specialized vocational training designed for individuals with disabilities;*

*c. Physical and mental restoration services;*

*d. Special transportation; and*

*e. Rehabilitation technology; and*

*(2) Assessment services, counseling and guidance, and job placement services are required by all individuals to meet a specific employment goal, but shall not be considered when determining significance of disability.*

*(d) A determination that services will be required for an extended period of time shall be made when required services are expected to last six or more months after eligibility has been determined.*

*(e) An individual who has a disability and is receiving supplemental security income (SSI) or social security disability insurance (SSDI) benefits, as determined by the social security administration (SSA), shall be automatically considered to have at least a significant disability. Further review by the NHVR counselor of the individual’s functional capacities may result in a determination that the*

*individual has a most significant disability and changes may be made any time information becomes available.*

***PART Ed 1008 INDIVIDUALIZED PLAN FOR EMPLOYMENT***

***Ed 1008.01 Individualized Plan for Employment (IPE); Generally.***

***(a) The IPE shall contain a written plan that identifies:***

***(1) The employment outcome, also referred to as the employment goal;***

***(2) The services that will be provided to achieve the employment goal and the time frames for those services; and***

***(3) The steps that will measure progress toward the employment goal.***

***(b) The IPE shall outline how the individual shall achieve a specific employment goal that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests and informed choice.***

***(c) The IPE shall contain the employment goal and specific NHVR services determined by the assessment of the individual's vocational rehabilitation needs.***

***(d) The individual shall be informed of his or her rights and responsibilities and the steps necessary to achieve an employment outcome during the process of developing the IPE.***

***(e) The NHVR counselor and the eligible individual shall agree on the criteria to evaluate progress toward the employment goal.***

***(f) Individuals with disabilities shall be active and responsible participants in their own rehabilitation programs, including making informed, practical, and realistic choices about the selection of their employment goal, the vocational rehabilitation services they receive, and the providers of those services.***

***Ed 1008.02 Timelines for IPE Development.***

***(a) The IPE shall be developed as soon as possible, within 90 days of the determination of eligibility.***

***(b) If the NHVR counselor anticipates the IPE development will be delayed, the eligible individual shall be informed of, and the NHVR counselor shall document in the record of services, the:***

***(1) Reasons for the delay;***

***(2) Steps necessary to complete the development of the IPE; and***

***(3) Date for which the IPE shall be completed.***

***Ed 1008.03 Basic Requirements of the IPE.***

***(a) The eligible individual and the counselor shall develop the IPE based on results of the planning that began during the assessment for determining eligibility.***

***(b) The IPE Shall be consistent with applicable policies and procedures, sound judgment and planning considerations, and the responsible use of public funds.***

***(c) An approved IPE shall confirm the agreement between the individual and the counselor regarding the employment goal and the VR services necessary to achieve that goal as follows:***

***(1) The IPE shall be agreed to and signed by the eligible individual and reviewed, approved, and signed by the counselor or supervisor before implementation of the IPE;***

***(2) Any amendments to the individual's employment goal, services provided, provider of services, or increase in the cost of services shall be considered a substantive or major change to an individual's IPE and shall be agreed to and signed as outlined in (1) above;***

***(3) To the maximum extent possible, a written copy of the IPE, including any amendments, shall be provided to the individual in the native language or mode of communication of the individual; and***

***(4) The IPE shall be reviewed as often as necessary, but shall be reviewed at least annually by the individual and the counselor.***

Ed 1008.084 Contents of the Individualized Plan for Employment.

***(a) The bureau NHVR shall comply with the provisions of 34 CFR 361.46 in developing the content of the individualized plan for employment IPE. Notwithstanding the content of the individualized plan for employment IPE set out in 34 CFR 361.46, the bureau shall not fund or assist in the funding of intensive hospitalization or surgery including, but not limited to, organ or bone marrow transplantations pursuant to Chapter 252:2 of the laws of 1993.***

***(b) The IPE shall contain information that is necessary for an individual to understand their rights, responsibilities, expected actions, service(s), service provider(s), and criteria to evaluate progress toward reaching the employment goal, including:***

***(1) The employment goal of the eligible individual based on assessments described in Ed 1005;***

***(2) Specific vocational rehabilitation services required and agreed to by the individual and the counselor to achieve the employment goal including the start and end dates for each service;***

***(3) A description of criteria to evaluate progress toward achievement of the employment goal such as timelines and a description of the steps or benchmarks to be reached by such timelines;***

***(4) The service provider(s);***

***(5) An explanation of the extent to which the individual and family are expected to contribute to the cost of services and the extent to which comparable benefits and services are available to the person receiving services;***

*(6) The responsibilities of the individual and the counselor to implement the IPE, such as the individual maintaining a particular attendance pattern during trainin, or contacting the counselor on an agreed upon schedule;*

*(7) Post-employment services that the individual is anticipated to need once employed;*

*(8) Information regarding the individual’s rights and how to express and resolve any dissatisfaction through due process as described in Ed 1018; and*

*(9) Information regarding the availability of the local client assistance program.*

Ed 1008.075 *Options for* Development of the Individualized Plan for Employment. The individualized plan for employment shall be developed in accordance with the provisions of 34 CFR 361.45.

*(a) As soon as possible after determining eligibility, not to exceed 15 days, the individual shall be notified in writing of the options available to the eligible individual for developing all or part of the IPE.*

*(b) The individual may combine any of the options, and take on a greater degree of responsibility for the IPE, or receive increased assistance from NHVR over the course of time. The individual shall choose one or more of the following methods to develop the IPE:*

*(1) Assistance from a NHVR counselor;*

*(2) Technical assistance from other sources such as independent living centers, school guidance counselors, parents, friends, or community rehabilitation programs; and*

*(3) Independently develop the plan, including an employment goal, the vocational rehabilitation services, and provider of services.*

*(c) Regardless of the option chosen in (b) above, the counselor shall be responsible for reviewing and approving all IPEs, including any proposed changes, and shall provide counseling and guidance to the eligible individual.*

*(d) The individual shall be informed of:*

*(1) The required content or components of the IPE, including NHVR forms that guide the development and are used to finalize the IPE;*

*(2) An explanation that the counselor shall review and approve the IPE and that the IPE shall be signed by both the counselor and the eligible individual prior to implementation;*

*(3) The financial commitments for the services on the IPE, including information about NHVR policies on economic need, comparable benefits, and service purchase;*

*(4) Additional information the eligible individual requests or NHVR determines to be necessary to complete an IPE;*

*(5) The rights and responsibilities of the individual in carrying out the IPE, including remedies available through due process; and*

*(6) The availability of the Client Assistance Program (CAP) and how to contact the CAP provider.*

***Ed 1008.06 Counseling and Guidance During IPE Development.***

*(a) The counselor shall facilitate the development of the IPE by engaging the eligible individual through counseling and guidance to identify the employment goal and the steps and services needed to reach that goal.*

*(b) The counselor shall be responsible for reviewing and approving all IPEs, including any proposed changes.*

*(c) NHVR shall be responsible for coordinating and monitoring the services provided under the IPE.*

*(d) When jointly developing the IPE with the consumer, the counseling and guidance shall focus on options including, but not limited to:*

*(1) Exploring the impact of the disability and options and resources which can allow the individual to achieve an employment goal;*

*(2) Engaging in assessment activities that identify the individual's rehabilitation needs and help the individual make informed choices about employment options and the employment goal;*

*(3) Using current labor market information to help identify a potential employment goal;*

*(4) Identifying an employment goal consistent with abilities, interests, rehabilitation goals and labor market information;*

*(5) Developing positive employment attitudes and behaviors;*

*(6) Explaining services available through various community resources;*

*(7) Identifying needed services and coordinating referrals as appropriate;*

*(8) Developing job-seeking and networking skills; and*

*(9) Monitoring post-employment adjustment to determine need for additional services.*

*(e) When the eligible individual chooses to independently develop the IPE, NHVR shall be available to provide substantial technical assistance related to IPE development which shall include:*

*(1) Explaining the IPE process, procedures, and requirements of NHVR rules;*

*(2) Advising the individual on where to obtain information about careers, labor market information, and demand occupations;*

*(3) Identifying other sources of technical assistance, services, and funding; and*

*(4) Recommending potential service providers and sharing available information about their performance outcomes.*

**Ed 1008.07 IPE Development by the Individual.**

***(a) If an individual chooses to develop the IPE independently, the NHVR counselor shall:***

***(1) Encourage the individual to develop the employment goal with the NHVR counselor;***

***FORM?***

***(2) Encourage the individual to develop and agree on the employment goal with the NHVR counselor prior to pursuing service providers;***

***(3) Provide the individual with information about the appeal process outlined in **ED 100*****

***(b) If an individual seeks approval of the employment goal, the NHVR counselor shall respond in writing within 10 business that either:***

***(1) The goal is approved, with final approval of the IPE contingent upon approval of the remainder of the IPE (form?); or***

***(2) The goal is not approved as presented and further information or a meeting shall be requested.***

***(c) An individual who receives approval of the employment goal shall complete the IPE development, or otherwise provide the necessary information, with or without assistance, and submit the IPE to NHVR for approval.***

***(d) Upon receipt of a completed IPE, either with or without prior approval of the employment goal, the NHVR counselor shall review the information and respond to the individual within 20 days that either:***

***(1) The plan is approved and the NHVR counselor will prepare the original IPE based on the information provided; or***

***(2) The plan is not approved as submitted, which shall be recorded in the case note, and further information or discussion is requested of the individual.***

**Ed 1008.08 Secondary Students with Disabilities.**

***(a) Students with disabilities shall be referred to NHVR by school districts when the school's assessment and planning process concerning the individual indicates that NHVR services shall be necessary, so long as the services are necessary for the students to successfully achieve employment, either immediately upon leaving school or following additional vocational training, postsecondary education, or other services.***

***(b) For students with disabilities who are not receiving special education services, NHVR staff shall work with school guidance counselors, nursing staff, or section 504 coordinators for appropriate referrals.***

***(c) Parents and students may directly apply for services from NHVR without a referral from the school.***

*(d) For students with disabilities receiving special education services who are determined eligible for vocational rehabilitation services, IPEs shall be developed prior to their exiting the secondary program.*

*(e) Students may require assessment services prior to identifying an employment goal and determining the specific vocational rehabilitation services in an IPE. In these circumstances, the NHVR counselor shall document the specific assessment activities and services conducted to develop the IPE and how this will affect the timeframe for IPE development.*

*(f) The IPE shall be developed, to the extent possible, during the annual review of the transition component of the individual education program (IEP). The IPE shall reflect transition services.*

*(g) While the school district is programmatically and financially responsible until a student leaves school, upon agreement by all parties, NHVR shall provide the specific VR services that are necessary for the student to achieve a post-school employment outcome.*

*(h) NHVR staff shall take the following steps in developing an IPE for a secondary student with disabilities:*

*(1) Review school information and reports to determine if there is transition information contained in the student's IEP, and if appropriate, include the information in the IPE, including, but not limited to:*

*a. Assessment information;*

*b. Employment goal; and*

*c. A description of vocationally-related services;*

*(2) Develop the IPE, to the extent possible, in conjunction with the annual review of the transition component of the individual education program (IEP);*

*(3) A no-cost IPE shall be developed to reflect transition services even if the school district is programmatically and financially responsible, and this effort to coordinate the IPE with the IEP shall be described in the case note;*

*(4) The IPE shall reflect NHVR funded VR services if they contribute to the achievement of a post-school employment goal and are coordinated with the student's educational plan. The counselor shall determine that these services are required to enable the individual to achieve the post-school employment goal and that those specific VR services are not the program or fiscal responsibility of the school district; and*

*(5) The results of the planning by NHVR shall be made available to the school liaison, with signed release of information from the parent or adult student, as required. This coordination shall ensure that the student's IEP will contain school services that will contribute to the success of the student's plan.*

***Ed 1008.09 IPE and Supported Employment.*** *For individuals with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, the IPE shall also include the following:*

*(a) A description of the extended services needed, including natural supports when necessary;*

*(b) The source of extended services, or if not possible during the development of the IPE, an explanation of why there is reasonable expectation that such sources will be available; and*

*(c) Coordination of VR services with vocationally-relevant services provided under other individualized plans under related federal or state programs, which shall be documented in the record of services.*

***Ed 1008.10 IPE Documentation Requirements.*** *If the individual has completed any sections of the IPE Development Form, the form may be referenced as documentation. The following areas shall be documented in the case note, taking into account any opportunities that the individual has been afforded to exercise informed choice:*

*(a) Employment goal development, including, but not limited to:*

- (1) The employment goal selected by the individual in developing the IPE;*
- (2) The rationale for that goal, based on the employment factors, such as strengths, resources, priorities, concerns, abilities, capabilities, career interests and informed choice;*
- (3) The results of assessment services;*
- (4) The alternatives that were considered by or with the individual;*
- (5) If applicable, the coordination with the individual education program (IEP), or if coordination with the IEP cannot be realized in the IPE, the case note should contain the reason;*
- (6) The level of integration in the employment goal; and*
- (7) Discussion of rehabilitation technology, accommodations, support services, and transportation considerations as appropriate;*

*(b) Service options, including, but not limited to:*

- (1) The rationale that describes why the planned services are required to reach the employment goal;*
- (2) Vocational rehabilitation services;*
- (3) The cost effectiveness of the service selected;*
- (4) Service providers;*
- (5) The level of integration in the settings in which services will be provided;*
- (6) The need for extended services; and*
- (7) The need for post-employment services;*

*(c) Comparable benefits that indicates the availability of resources that may be used to help pay the costs of vocational rehabilitation services;*

*(d) An indication of the result of, or the exemption from, the financial need determination when services are to be provided contingent on financial need as described in **Ed***

*(e) Impact on financial benefits, including, but not limited to:*

*(1) A description of the availability of benefits counseling and work incentive planning and advisement resources, and the option for referral to these programs, as needed, concurrent with the implementation of the IPE;*

*(2) Employment earnings that may have an impact on supplemental security income (SSI), social security disability insurance (SSDI), temporary assistance for needy families (TANF), medicaid, medicare, housing subsidies, and other public benefits; and*

*(3) The availability of work incentive programs, including, but not limited to social security trial work period and on-going Medicaid coverage; and*

*(f) The need for the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services.*

**Ed 1008.11 Preparing the Original IPE.**

*(a) The original IPE is completed by NHVR based on the IPE Development Form, as completed in part or entirely by the individual, or on information recorded and documented in the record of services.*

*(b) The IPE, or explanation of the IPE, shall be provided in the primary language or mode of communication of the eligible individual.*

*(c) When completing the “New Hampshire Vocational Rehabilitation Individualized Plan for Employment” form, revised August 2020, the NHVR counselor shall adhere to the following guidelines:*

*(1) The original IPE date shall be on or after the eligibility date, and on or before the start of services;*

*(2) The employment goal shall be as specific as possible;*

*(3) The anticipated month, day, and year the eligible individual is expected to reach the employment goal shall include the 90-day employment period prior to case closure, typically the last day of the month in which the individual is expected to reach the goal;*

*(4) Planned services shall be discussed with the eligible individual and all services that the individual may need during the rehabilitation process shall be included in the IPE;*

*(5) For supported employment services, the extended services provider and the funding source shall be entered on the IPE in the types of services section, if known at the time. If a provider cannot be identified by the time the document is to be signed, but there is a reasonable expectation that such a provider will become available, then a description of the basis for concluding that there is a reasonable expectation that those sources will become available must be documented in the record of services in the IPE Development Case Note;*

*(6) The services section shall contain specific information about the individualized vocational rehabilitation services, including support services such as transportation,*

*interpreter services, and note taker services that shall be required to reach the employment goal. All services shall be provided, as appropriate, in the most integrated setting.*

*Vocational rehabilitation services or support services shall include:*

- a. Those provided directly by NHVR staff, such as counseling and placement services;*
- b. Those authorized to service providers;*
- c. Those received by the individual as a comparable benefit; and*
- d. Those received by the individual through other organizations such as independent living centers, community rehabilitation programs, mental health clinics, or other treatment services when they are regarded as necessary for the successful completion of the IPE;*

*(7) Identification of services on the IPE shall include:*

- a. The specific vocational rehabilitation or support service;*
- b. The service provider;*
- c. The start and end dates of the service;*
- d. NHVR responsibility, or the maximum amount NHVR shall be responsible for, or the phrase “as per contract” with the contract number;*
- e. The actual amounts known of comparable benefits;*
- f. Individual responsibility, which shall be the difference between the sum of the NHVR total and known comparable benefits, and the actual costs of the services; and*
- g. The actual cost of the services, except for services obtained through contracts or no cost services;*

*(8) Criteria to evaluate progress shall be clearly stated and outlined as steps in the IPE. Each step shall specify a behavior or action and the evaluation criteria for that step. An expected date of completion for each step shall not be required, however eligible individual responsibilities, such as “participate in treatment services” or “advise your counselor of any change of medication” shall be enumerated;*

*(9) The rights and responsibilities section of the IPE shall contain preprinted information regarding both the individual and NHVR’s role in achieving the IPE. This includes information concerning the **client assistance program**, administrative reviews, mediation, and impartial hearings; and*

*(10) The IPE shall allow for the individual to comment on the development or content of the IPE.*

**Ed 1008.12 Reviewing the IPE.**

- (a) The IPE shall be reviewed as often as necessary, but at least annually.*

*(b) The eligible individual or the NHVR counselor may initiate a review of the IPE at any time.*

*(c) The results of any review shall be recorded in the case note.*

*(d) If changes are initiated following a review, those changes shall be recorded in the IPE case note.*

*(e) 30 days prior to the date of the annual review, the NHVR counselor shall mail an IPE review letter to the eligible individual advising that the IPE shall be reviewed.*

*(f) If it appears to the NHVR counselor that the individual is making progress in achieving the IPE employment goal and that no changes are needed, the letter shall advise that the IPE is satisfactory, but that the eligible individual review the IPE and provide comments or changes, and if there are comments or changes, they shall be considered by the counselor.*

*(g) If the NHVR counselor finds that adequate progress in achieving the IPE employment goal is not being made, the IPE review letter shall request an appointment with the eligible individual.*

*(h) While the annual review can be conducted through telephone and written correspondence with the eligible individual, the record of services shall reflect that the counselor met with the eligible individual within the past year.*

*(i) If within 30 days of the date of the IPE review letter the eligible individual does not respond to a request for an appointment to review the IPE, the counselor shall make a determination whether to continue the IPE in its current form, amend the IPE, place the eligible individual in the category of services interrupted, or close the case.*

*(j) If the eligible individual files a written request for an administrative review, mediation, or impartial hearing to appeal the decision in (i) above, services currently being provided shall continue until the administrative review, mediation, or hearing process is completed.*

***Ed 1008.13 Changes to the IPE.***

*(a) Changes to the IPE shall occur at any time when agreed to by the eligible individual and the NHVR counselor.*

*(b) All changes shall be documented in the record of services.*

*(c) The IPE development for changes case note shall be completed to indicate how the individual was involved in developing the changes.*

*(d) When making changes to the IPE, the individual has the same options enumerated in Ed 1008.05(b).*

*(d) Major changes to an IPE shall include, but not be limited to:*

*(1) A change in the employment goal, which may affect a change in the anticipated date of employment which shall be modified accordingly;*

*(2) An increase in the level of individual participation in the cost of services, if, as a result of a change in the IPE, the total expenditure that the individual is expected to contribute*

*increases over the amount the individual contributed to the original IPE, or most recent major change if there was one;*

*(3) New services being added to the IPE; and*

*(4) A new provider of services.*

*(e) Minor changes to an IPE shall include, but not be limited to:*

*(1) Service start or end dates;*

*(2) The anticipated date of employment;*

*(3) The evaluation progress section of the IPE, which shall include the criteria to evaluate progress and any individualized consumer responsibilities that may be relevant;*

*(4) The types of services that the individual may need; and*

*(5) An increase in the cost of an authorized service that does not increase the level of consumer participation in the cost of services.*

***Ed 1008.14 IPE Approvals and Signatures.***

*(a) The NHVR counselor shall review and evaluate the proposed IPE and proposed changes to an IPE.*

*(b) The NHVR counselor shall evaluate the IPE to ensure:*

*(1) The employment goal is consistent with the individual's employment factors;*

*(2) The plan to reach the goal is feasible;*

*(3) Services are required to reach the employment goal;*

*(4) Services are cost effective; and*

*(5) NHVR policies and procedures are followed.*

*(c) If the IPE development is approved, NHVR shall prepare an original IPE or IPE Change Form as described in Ed 1008.11.*

*(d) Supervisory approval shall be required on the IPE if the IPE:*

*(1) Is developed by a NHVR counselor I;*

*(2) Includes services that require supervisory approval such as, but not limited to:*

*a. Graduate school training; or*

*b. Plans for self-employment; or*

*(3) Requires supervisory approval based on a plan for supervision.*

*(e) Once approved, the IPE or the IPE Change Form for major changes shall be signed by the counselor and supervisor, as required, and the individual.*

*(f) The individual shall be provided with a copy of the IPE and IPE Change Form within 10 days of the individual signing the document.*

*(g) The IPE and the IPE Change Form for major changes shall be signed by both the individual and the NHVR counselor and supervisor, as required, before the initiation of services, except in an emergency situation where a delay in obtaining a signature would cause a significant delay in services.*

~~Ed 108.0 Extended Evaluation for Certain Individuals with Significant Disabilities.~~

~~(a) If an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the designated state unit is able to make the determinations described in 34 CFR 361.42(e), the designated state unit shall conduct an extended evaluation to make these determinations.~~

~~(b) During the extended evaluation period, vocational rehabilitation services shall be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.~~

~~(c) During the extended evaluation period, the designated state unit shall develop a written plan for providing services necessary to make a determination.~~

~~(d) During the extended evaluation period, the designated state unit shall provide only those services that are necessary to make the determination and shall terminate extended evaluation services when the designated state unit is able to make the determination.~~

~~Ed 1008.0915 Record of Services. The bureau shall maintain for each applicant and eligible individual a record of services that complies with the provisions of 34 CFR 361.47.~~

~~Ed 1008.10 Scope of Vocational Rehabilitation Services for Individuals with Disabilities. The scope of vocational rehabilitation services for individuals with disabilities shall comply with the provisions of 34 CFR 361.48 however they shall not include services prohibited by Chapter 252:2 of the laws of 1993 as set out in Ed 1008.13.~~

~~Ed 1008.11 Provision of Services for Individuals with Disabilities. The provision of services for individuals with disabilities shall comply with the provisions provided in 34 CFR 361.50.~~

~~PART Ed 10049 ABILITY TO SERVE ALL ELIGIBLE INDIVIDUALS AND ORDER OF SELECTION~~

~~Ed 10049.01 Determination, Establishment, and Implementation. The provisions under 34 CFR 361.36 shall be used to determine the ability to serve all eligible individuals or an order of selection in addition to the following:~~

~~(a) The designated state unit shall comply with the provisions of 34 CFR 361.36 to either:~~

~~(1) Provide the full range of vocational rehabilitation services listed in 29 U.S.C. 723(a) and Ed 1010.16, as appropriate, to all eligible individuals; or~~

(2) In the event that vocational rehabilitation services cannot be provided to all eligible individuals who apply for the services, implement the order of selection established in Ed 1006 to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(b) The designated state unit shall consult with the state rehabilitation council established under 34 CFR 361.16 that meets the requirements of 34 CFR 361.17 regarding the:

- (1) Need to establish an order of selection, including any reevaluation of the need as provided in Ed 1006.01(b);
- (2) Priority categories of the particular order of selection;
- (3) Criteria for determining individuals with the most significant disabilities; and
- (4) Administration of the order of selection.

(c) If the bureau determines that it does not need to establish an order of selection, the bureau shall reevaluate this determination in accordance with 34 CFR 361.36(b)(2).

(d) If the designated state unit establishes an order of selection, but determines that it does not need to implement that order at the beginning of the fiscal year, the designated state unit shall continue to meet the requirements of Ed 1005.01(c). If the designated state unit does not continue to meet the requirements of Ed 1005.01(c) it shall implement the order of selection by closing one or more priority categories.

(e) If, in accordance with 34 CFR 361.36, a determination is made that the bureau is unable to provide the full range of services to all eligible individuals, the designated state unit shall implement an order of selection for eligible individuals according to the following priority categories:

- (1) Priority one shall include individuals who are determined to be eligible for services prior to the effective date of the implementation of the order of selection in accordance with 34 CFR 361.36, and individuals who are determined to be eligible for services after the effective date of the implementation of the order of selection and who are individuals with a most significant disability;
- (2) Priority 2 shall include individuals with a significant disability and public safety officers as defined in RSA 507:8-h, II who are disabled in the line of duty in law enforcement or protection of life or property and who are not included in priority one; and
- (3) Priority 3 shall include all other eligible individuals who do not have a significant disability.

#### PART Ed 1005 COMPARABLE SERVICES AND BENEFITS

Ed 1005.01 Comparable Services and Benefits. The bureau shall comply with the provisions of 34 CFR 361.53 in the determination and use of comparable services and benefits.

#### PART Ed 1006 PARTICIPATION OF INDIVIDUALS IN COST OF SERVICES BASED ON FINANCIAL NEED

Ed 1006.01 Financial Needs Assessment.

(a) The bureau shall consider the financial need of eligible individuals or of individuals who are receiving services through trial work experiences under 34 CFR 361.42(e) or during an extended evaluation under Ed 1010.08. The financial needs assessment shall be used for determining the extent of the individual's participation in the costs of vocational rehabilitation services.

(b) The financial needs assessment shall:

(1) Explain the method for determining the financial need of an eligible individual as follows:

- a. The method shall be a review of the person's financial status; and
- b. The method shall compare income and resources to determine the amount of monthly resources that shall be utilized for specific vocational rehabilitation services; and

(2) Specify the types of vocational rehabilitation services from the following services for which the bureau has established a financial needs test:

- a. Physical and mental restoration;
- b. Vocational and other training services;
- c. Maintenance;
- d. Transportation;
- e. Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome;
- f. Supported employment services;
- g. Post-employment services;
- h. Occupational licenses, tools, equipment, initial stocks, and supplies;
- i. Rehabilitation technology, including vehicular modification, telecommunications, sensory, and other technological aids and devices;
- j. Transition services; and
- k. Technical assistance and other consultation services to conduct market analyses, develop business plans and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment.

Ed 1006.02 Services Exempt from Financial Needs Assessment. The bureau shall not apply a financial needs assessment or require the financial participation of the individual as a condition for furnishing the vocational rehabilitation services enumerated in 34 CFR 361:54(3).

PART Ed 1007 INFORMATION AND REFERRAL SERVICES

Ed 1007.01 Referring Individuals Under an Order of Selection. The department shall comply with 34 CFR 361.37 to implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the agency's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, are provided accurate vocational rehabilitation information and guidance.

#### PART Ed 1009 STANDARDS FOR PROVIDERS OF SERVICES

Ed 1009.01 Standards for Facilities and Providers of Services. The bureau shall comply with the provisions of 34 CFR 361.51 regarding the standards for facilities and providers of services including accessibility of facilities, affirmative action, and special communication needs personnel.

#### PART Ed 1010 INFORMED CHOICE

Ed 1010.01 Informed Choice. The bureau shall comply with the provisions of 34 CFR 361.52 to assist applicants and recipients of services in exercising informed choice throughout the rehabilitation process.

#### PART Ed 1011 SEMI-ANNUAL AND ANNUAL REVIEW

Ed 1011.01 Semi-Annual and Annual Review. The bureau shall comply with the provisions of 34 CFR 361.55 when conducting semi-annual and annual reviews.

#### PART Ed 1012 REQUIREMENTS FOR CLOSING THE RECORD OF SERVICES OF AN INDIVIDUAL WHO HAS ACHIEVED AN EMPLOYMENT OUTCOME

Ed 1012.01 Closing the Record of Services. The record of services of an individual who has achieved an employment outcome may be closed only if all of the requirements of 34 CFR 361.56 are met to include employment outcome achieved, employment outcome maintained, satisfactory outcome, and post-employment services.

#### PART Ed 1013 SUPPORTED EMPLOYMENT SERVICES PROGRAM

Ed 1013.01 Purpose. The purpose of Ed 1013 is to develop and implement a collaborative program with appropriate entities, consistent with state and federal law, to provide a program of supported employment services for individuals with the most significant disabilities who require supported employment services to enter or retain competitive employment.

Ed 1013.02 Definitions. Except where the context makes another meaning manifest, the definitions in 34 CFR 363.6 have the meaning indicated when used in Ed 1015:

Ed 1013.03 Eligibility for Services. In order to be considered for services under the state supported employment services program, an individual shall:

(a) Be eligible for vocational rehabilitation services in accordance with the provisions of 34 CFR 361.42 and Ed 1010.03;

(b) Be an individual with the most significant disabilities; and

(c) Have supported employment identified as the appropriate rehabilitation objective for the individual on the basis of a comprehensive assessment of rehabilitation needs, including an evaluation of rehabilitation, career, and job needs.

Ed 1013.04 Authorized Activities. Activities authorized by the state supported employment services program shall include the following:

(a) A particularized assessment that is needed to supplement the assessment for determining eligibility and vocational rehabilitation needs done under 34 CFR 361.42 and that is provided subsequent to the development of the IPE in accordance with 34 CFR 363.4(a);

(b) Development of and placement in jobs for individuals with the most significant disabilities; and

(c) Supported employment services that are needed to support individuals with the most significant disabilities in employment including but not be limited to the following:

(1) Intensive on-the-job skills training and other training provided by skilled job trainers, co-workers, and other qualified individuals, and other services specified in the Act, 29 USC 701.103(a), in order to achieve and maintain job stability;

(2) Follow-up services, including regular contact with employers, trainees with the most significant disabilities, parents, guardians or other representatives of trainees, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; and

(3) Discrete post-employment services following transition that are unavailable from an extended services provider and that are necessary to maintain the job placement, such as job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

Ed 1013.05 Developing Collaborative Agreements.

(a) The designated state unit shall enter into one or more written cooperative agreements or memoranda of understanding with other state agencies, private nonprofit organizations, and other available funding sources to ensure collaboration in a plan to provide supported employment services and extended services to individuals with the most significant disabilities.

(b) A cooperative agreement or memorandum of understanding shall, at a minimum, specify the following:

(1) The supported employment services to be provided by the designated state unit with funds received under a federal grant for the state supported employment services program;

(2) The extended services to be provided by state agencies, private nonprofit organizations, or other sources following the cessation of supported employment services under Ed 104513;

(3) The estimated funds to be expended by the participating party or parties in implementing the agreement or memorandum; and

(4) The projected number of individuals with the most significant disabilities who will receive supported employment services and extended services under the agreement or memorandum.

Ed 1013.06 Information Collection and Reporting Requirements.

(a) The designated state unit shall collect and report information as required under the Act, 29 USC 701.13, for each individual with the most significant disabilities served under the supported employment services program.

(b) The designated state unit shall collect and report separately information for:

- (1) Supported employment clients served under the supported employment services program; and
- (2) Supported employment clients served under.

Ed 1013.07 Coordinating Services and Activities. The designated state unit shall coordinate the services provided to an individual under Ed 1013 and under 34 CFR 361.48 and 34 CFR 361.49 to ensure that the services are complementary and not duplicative.

Ed 1013.08 Transition of an Individual to Extended Services. The designated state unit shall provide for the transition of an individual with the most significant disabilities to extended services no later than 18 months after placement in supported employment, unless a longer period is established in the IPE, and only if the individual has made substantial progress toward meeting the hours-per-week work goal provided for in the IPE, the individual is stabilized in the job, and extended services are available and can be provided without a hiatus in services.

Ed 1013.09 Requirements for Successfully Rehabilitating an Individual in Supported Employment. An individual with the most significant disabilities who is receiving supported employment services shall be considered to be successfully rehabilitated if the individual maintains a supported employment placement for 90 days after making the transition to extended services.

Ed 1013.10 Client Assistance Program. The designated state unit shall advise applicants for or recipients of services under Ed 1015, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the Client Assistance Program established in New Hampshire under the Act, 29 USC 701.112, including information on seeking assistance from that program.

#### PART Ed 1014 GENERAL PROVISIONS FOR INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM

Ed 1014.01 Purpose. The purpose of these rules is to provide uniform application of 45 CFR 1329 regarding state independent living services and centers for independent living.

Ed 1014.02 Definitions. The words defined in 45 CFR 1329.4 and 34 CFR 77.1, except where the context makes another meaning manifest, have the meaning indicated when used in Ed 1014:

Ed 1014.03 Requirements for Processing Referrals and Applications. The service provider shall apply the standards and procedures established by the designated state unit under Ed 1015.04 to handle referrals and applications for independent living (IL) services from individuals with significant disabilities.

Ed 1014.04 Requirements for Determining Eligibility.

(a) Before or at the same time that an applicant for IL services may begin receiving IL services funded under Ed 1014, the service provider shall determine the applicant's eligibility and maintain

documentation that the applicant has met the basic requirements specified in ~~34 CFR 364.40~~ relative to assuring that any individual with a significant disability is eligible to receive IL services.

(b) The documentation for eligibility shall be dated and signed by a staff member of the service provider.

Ed 1014.05 Requirements for Determining Ineligibility.

(a) If a determination is made that an applicant for IL services is not an individual with a significant disability, the service provider shall provide documentation of the ineligibility determination that is dated and signed by a staff member.

(b) The service provider shall determine an applicant to be ineligible for IL services only after full consultation with the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, or after providing a clear opportunity for this consultation.

(c) The service provider shall notify the applicant in writing of the action taken for the ineligibility determination and inform the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, of the applicant's rights and the means by which the applicant may appeal the action taken.

(d) The service provider shall provide a detailed explanation of the availability and purposes of the Client Assistance Program established in New Hampshire under the Act, 29 USC 701.112, including information on how to contact the program.

(e) If appropriate, the service provider shall refer the applicant to other agencies and facilities, including the designated state unit.

Ed 1014.06 Review of Ineligibility Determination.

(a) If an applicant for IL services has been found ineligible, the service provider shall review the applicant's ineligibility at least once within 12 months after the ineligibility determination has been made and whenever the service provider determines that the applicant's status has materially changed.

(b) The review shall not be conducted in situations where the applicant has refused the review, the applicant is no longer present in New Hampshire, or the applicant's whereabouts is unknown.

Ed 1014.07 Requirements for an Independent Living Plan.

(a) Unless the individual who is to be provided IL services under Ed 1014 signs a waiver in accordance with Ed 1014.07(b), the service provider, in collaboration with the individual with a significant disability, shall develop and periodically review an IL plan for the individual in accordance with the requirements in Ed 1014.08-Ed 1014.11.

(b) The requirements of Ed 1014.07 with respect to an IL plan shall not apply if the individual knowingly and voluntarily signs a waiver stating that an IL plan is unnecessary.

(c) Subject to Ed 1014.07(b), the service provider shall provide each IL service in accordance with the IL plan.

Ed 1014.08 Initiation and Development of an Independent Living Plan.

(a) Development of an individual's IL plan shall be initiated after documentation of eligibility under Ed 1014.04(a) and shall indicate the goals or objectives established, the services to be provided, and the anticipated duration of the service program and each component service.

(b) The IL plan shall be developed jointly and signed by a staff member of the service provider and the individual with a significant disability or, if the individual chooses, by the individual's guardian, parent, or other legally authorized advocate or representative.

(c) A copy of the IL plan, and any amendments, shall be provided in an accessible format to the individual with a significant disability that uses appropriate modes of communication consistent with the informed choice of the individual.

Ed 1014.09 Review.

(a) The IL plan shall be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of vocational rehabilitation services under ~~Ed 1010.15 and Ed 1010.16~~ 34 CFR 361.48 and 34 CFR 361.50 or to any other program of assistance.

(b) Each individual with a significant disability or, if consistent with state law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative, shall be given an opportunity to review the IL plan and, if necessary, jointly redevelop and agree by signature to its terms.

Ed 1014.10 Coordination with Vocational Rehabilitation, Developmental Disabilities, and Special Education Programs. The development of the IL plan and the provision of IL services shall be coordinated to the maximum extent possible with any individualized:

(a) Written rehabilitation program for vocational rehabilitation services for that individual;

(b) Habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act, 42 USC 15001; and

(c) Education program for the individual prepared under part B of the Individuals with Disabilities Education Act, 34 CFR 300 and 303.

Ed 1014.11 Termination of Services. If the service provider intends to terminate services to an individual receiving IL services under an IL plan, the service provider shall follow the procedures in Ed 1014.05(c)-(e) and Ed 1014.06.

Ed 1014.12 Maintaining Records for the Individual.

(a) For each applicant for IL services other than information and referral and for each individual receiving IL services other than information and referral, the service provider shall maintain a service record that includes:

(1) Documentation concerning eligibility or ineligibility for services;

(2) The services requested by the applicant or individual;

(3) Either the IL plan developed with the applicant or individual or a waiver signed by the applicant or individual stating that an IL plan is unnecessary;

(4) The services actually provided to the applicant or individual; and

(5) The IL goals or objectives:

a. Established with the applicant or individual, whether or not in the applicant's or individual's IL plan; and

b. Achieved by the applicant or individual.

(b) A service record for an applicant and an individual shall be maintained either electronically or in written form, except that the IL plan and waiver shall be in writing.

Ed 1014.13 Durational Limitations on Independent Living Services. The service provider shall not impose any uniform durational limitations on the provision of IL services, except as otherwise provided by federal law or regulation.

Ed 1014.14 Standards for Service Providers. In providing IL services to individuals with significant disabilities, service providers shall comply with:

(a) The written standards for IL service providers established by the designated state unit pursuant to Ed 1017.05; and

(b) All applicable state or federal licensure or certification requirements.

Ed 1014.15 Use of Personal Information by Service Providers.

(a) All personal information in the possession of the service provider shall be used only for the purposes directly connected with the provision of IL services.

(b) Information containing identifiable personal information shall not be shared with advisory or other bodies that do not have official responsibility for the provision of IL services.

(c) In the provision of IL services or the administration of the IL program under which IL services are provided, the service provider shall only obtain personal information from other service providers and cooperating agencies under assurances that the information shall not be further divulged, except as provided under Ed 1014.16 and Ed 1014.17.

Ed 1014.16 Release of Personal Information to Recipients of Independent Living Services.

(a) Except as provided in Ed 1014.16(b) and (c), if requested in writing by a recipient of IL services, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative.

(b) Medical, psychological, or other information that the service provider determines may be harmful to the individual shall not be released directly to the individual, but shall be provided through a qualified medical or psychological professional or the individual's legally authorized representative.

(c) If personal information has been obtained from another agency or organization, it shall be released only by, or under the conditions established by, the other agency or organization.

Ed 1014.17 Release of Personal Information for Audit, Evaluation, and Research.

(a) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities subject to the provisions of Ed 1014.17(b).

(b) Personal information shall be released only if the organization, agency, or individual assures that:

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

Ed 1014.18 Release to Other Programs or Authorities.

(a) Upon receiving the informed written consent of the individual or, if appropriate, the individual's legally authorized representative, the service provider shall release personal information to another agency or organization for the latter's program purposes only to the extent that the information is released to the involved individual under Ed 1014.16 and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.

(b) Medical or psychological information shall be released under Ed 1014.18(a) only if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(c) The service provider shall release personal information if required by federal laws or regulations.

(d) The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, and in response to judicial order.

(e) The service provider also shall release personal information to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

Ed 1014.19 Review Procedures Available to Individuals.

(a) The review procedures in Ed 1021 shall be available to an individual to request and receive a timely review of any adverse decision made by the service provider concerning the individual's request for IL services or the provision of IL services to the individual.

(b) Each service provider shall inform each individual who seeks or is receiving IL services from the service provider about the review procedures required by Ed 1014.19(a). The information about the review procedures shall be in an accessible format that uses appropriate modes of communication consistent with the informed choice of the individual.

PART Ed 1015 INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

Ed 1015.01 Purpose. The purpose of the independent living (IL) services for older individuals who are blind program is to support projects that:

- (a) Provide any of the IL services to older individuals who are blind that are described in 34 CFR 367.3(b);
- (b) Conduct activities that will improve or expand services for older individuals who are blind; and
- (c) Conduct activities to help improve public understanding of the problems of older individuals who are blind.

Ed 1015.02 Definitions. Except where the context makes another meaning manifest, the definitions in 34 CFR 367.5 have the meaning indicated when used in Ed 1015:

Ed 1015.03 Services for Older Individuals Who Are Blind. For the purposes of Ed 1015.01(a), IL services for older individuals who are blind shall include:

- (a) Services to help correct blindness that include:
  - (1) Outreach services;
  - (2) Visual screening;
  - (3) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and
  - (4) Hospitalization related to these services;
- (b) The provision of eyeglasses and other visual aids;
- (c) The provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;
- (d) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;
- (e) Guide services, reader services, and transportation;
- (f) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services; and
- (g) IL skills training, information and referral services, peer counseling, and individual advocacy training;

Ed 1015.04 Administering the Program.

- (a) The designated state unit shall administer the program in Ed 1015 in order to carry out the purposes listed in Ed 1015.01 either directly or through:

- (1) Grants to public or private nonprofit agencies or organizations; or
- (2) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(b) Notwithstanding Ed 1015.04(a), the designated state unit may enter into assistance contracts with public or private nonprofit agencies or organizations.

(c) Notwithstanding Ed 1015.04(a), the designated state unit shall not enter into procurement contracts with public or private nonprofit agencies or organizations.

#### PART Ed 1016 NEW HAMPSHIRE BUSINESS ENTERPRISE PROGRAM

Ed 1016.01 Purpose. The purpose of the New Hampshire Business Enterprise Program (BEP) is to support self-employment for individuals who are legally blind through career opportunities in cafeteria, snack bar, and vending services. The New Hampshire department of Education, through the BEP of the office of services for blind and visually impaired,(SBVI) is the state licensing agency (SLA) for legally blind individuals who operate food and vending service facilities on federal, state, and other properties.

Ed 1016.02 Definitions. Except where the context makes another meaning manifest, the definitions in 34 CFR 395.1 have the meaning indicated when used in Ed 1016.

#### Ed 1016.03 Issuance of Vending Facility Licenses.

(a) SBVI shall license qualified candidates to operate vending facilities on federal, state, and other property in accordance with Ed 1016.04.

(b) Licenses shall be issued only to qualified individuals who are legally blind and on the roster.

#### Ed 1016.04 Licensing Procedure.

(a) The licensing procedure shall be as follows:

(1) SBVI shall maintain a roster of blind persons who are eligible and who desire to qualify as vending facility operators;

(2) Preference shall be given to qualified candidates who:

a. Are in need of employment;

b. Are residents of the state of New Hampshire; and

c. Have the experience and training for the location on which they are bidding; and

(3) In selecting a candidate who is deemed appropriate to enter the BEP training program, SBVI shall focus on the candidates' individual skills, abilities, and personal qualifications especially suited to the operation of a vending facility as determined by materials submitted by the individual and/or VR counselor if applicable, including but not limited to evaluation reports, educational background, work experience, and resumes. The candidate shall also meet with the committee chair and administrator of SBVI during the initial interview phase of the acceptance process.

(b) Candidates, who have been accepted and have satisfactorily completed the training program in Ed 1016.15, shall be placed on a roster.

(c) When a location becomes available for bid, an individual on the roster may bid along with the licensed operators.

(d) There shall be a probationary period not to exceed 6 months for candidates taken from the roster when awarded a first location.

(e) At the end of the probationary period a candidate who is acceptable to SBVI and wishes to remain in the program shall be issued a license based on the following criteria:

(1) The candidate receives satisfactory evaluation reports as acknowledged by SBVI, and these reports have been reviewed with the VR counselor if applicable and the committee chair; and

(2) The evaluation reports attest that the candidate effectively demonstrates the ability to:

- a. Provide good customer service;
- b. Maintain proper food service sanitation standards;
- c. Understand the principles of:
  1. Product inventory control;
  2. Daily cash control;
  3. Banking procedures;
  4. Proper licensing procedures; and
  5. Submission of city, state and federal taxes; and
- d. Maintain the required monthly profit and loss reports.

(f) A candidate whose performance is not acceptable to SBVI shall not be licensed by SBVI and shall be removed from the program when the candidate fails to meet the criteria listed in Ed 104916.07(b) during the training or the probationary periods.

(g) Licenses shall be issued to the operator by SBVI for an indefinite period. Licenses shall be subject to termination as provided in Ed 1016.05.

(h) SBVI shall select operators for vending facilities. Generally one operator will be selected, however, 2 operators may bid jointly on a location. Two co-operators may be selected by SBVI when a facility has sufficient earning power to adequately support more than one operator. Such selection shall be approved by a majority vote of the licensed operators in the state. Preference for a bid shall be towards a single operator unless it is deemed the location will be more adequately serviced by joint operators or an operator and assistant.

(i) Operators selected shall be compatible and mutually acceptable to each other, with compensation determined on a profit-sharing basis agreeable to the operators concerned and SBVI.

(j) Candidates, who have satisfactorily completed the probationary period and who have completed the training program in Ed 1016.15, shall be issued a license.

(k) The administrative appeal of any licensing decision made under this section shall be pursuant to Ed 1016.18 (a),(2).

Ed 1016.05 Partnerships.

(a) An operator may enter into a partnership with a private vendor only when the following criteria are met:

(1) The operator initiating a partnership shall have made a qualified bid on the location in response to a bid notification by SBVI; and

(2) The operator shall demonstrate his or her active role in the partnership as the person responsible for all reports and accountabilities under applicable federal and state laws and regulations.

(b) If no other qualified single or joint operator bid has been submitted, the development of a partnership agreement with another entity by the single bidder shall be considered for approval by SBVI.

Ed 1016.06 Vending Routes.

(a) Individual vending routes may be established when deemed appropriate by SBVI, only when accepted by the state committee of licensed operators by a simple majority vote.

(b) A proposal for the establishment of a vending route may be brought to SBVI and/or the committee by individual operators or other interested parties.

(c) Once a vending route has been established it shall remain an intact route. In the event that the operator no longer wishes to, or cannot, serve one or more of the locations on the established vending route the vending route as a whole shall go out to bid as a single vending location. To alter the composition of a vending route requires the submission of a new proposal consistent with this section.

Ed 1016.07 Termination of Licenses.

(a) Written notice shall be given to any operator whose license is to be terminated or who is in jeopardy of losing the license, including a statement of the reason. Such notice shall also inform the operator of the operator's right to request an administrative review, an evidentiary hearing, and arbitration under Ed 1016.15.

(b) A license issued to an operator shall be terminated after affording the operator an opportunity for an administrative review, an evidentiary hearing, and arbitration under Ed 1016.15, when one or more of the following conditions apply:

(1) When vision is improved so that the operator no longer meets the definition of an individual who is legally blind;

- (2) When there is extended illness with medically documented diagnosis of prolonged incapacity of the operator to operate the vending facility in a manner consistent with the needs of the location or other available locations in the vending facility program;
- (3) When SBVI finds that a vending facility is not being operated in accordance with the Ed 1016;
- (4) When the operator does not comply with the terms and conditions contained in the licensing agreement between the operator and SBVI;
- (5) When the operator does not comply with terms and conditions of the vending facility's contract SBVI and the manager of the property on which the vending facility is located; and
- (6) When the operator withdraws from the program.

Ed 1016.08 Vending Facility Equipment and Initial Stock. The following procedures shall apply to vending facility equipment and initial stocks of merchandise:

(a) SBVI shall furnish each vending facility with adequate, suitable equipment and initial stocks of merchandise sufficient for the establishment and operation of the facility for an initial 2 week period. If the operator obtaining the agreement to operate the location is on the roster or in a probationary period per Ed 1016.04 he or she shall not be eligible to obtain additional locations or inventory until a license has been obtained.

(b) If a licensed operator is provided with initial inventory for a new location it shall be sufficient to operate the location for no more than a 2 week period. The funds used shall be as an interest free loan from the set aside account. SBVI shall establish a monthly payment plan to begin 3 months after the operator has begun providing full service at the location.

(c) The right, title to and interest in the equipment of each vending facility used in the program and in the initial stocks of merchandise shall be vested in accordance with the laws of the state in either the name of SBVI or the operator.

Ed 1016.09 Maintenance and Replacement of Equipment. The following procedures shall apply to the maintenance and replacement of equipment:

(a) Except as provided in Ed 1016.07(b), (c), and (d), SBVI shall not be responsible for repair and maintenance of equipment after such equipment is furnished to the vending facilities;

(b) SBVI shall be responsible for repair and maintenance of equipment for the first 4 months after such equipment is furnished to the vending facilities when:

- (1) A new operator begins operating a vending facility;
- (2) An operator transfers to a different vending facility; or
- (3) An operator adds a new vending facility;

(c) The operators shall bear the responsibility for repair and maintenance of equipment in their respective facilities after the time limits in Ed 1016.07(b) expire;

(d) SBVI shall review repairs and maintenance that exceed \$500.

(e) The final decision shall be based upon funds available and the following criteria:

- (1) If it is deemed to be more cost effective to repair, SBVI shall do so; or
- (2) If it is more efficient to replace the unit, SBVI shall cover the full expense of the replacement;

(f) SBVI shall repair and maintain or cause to be repaired and maintained any equipment in need of repair and maintenance in order to keep the facility operable and in an attractive condition, after reasonable notice if the operator fails to do so under Ed 1016.09(d)(1);

(g) The operators shall be assessed the amounts needed to repair and maintain equipment when SBVI has undertaken the responsibility in (d)(2) above; and

(h) SBVI shall replace equipment that it determines to be worn out or obsolete. If the licensed operator feels that equipment should be replaced, the operator shall make a request to this effect. SBVI shall fulfill requests based on priority and urgency of all requests.

Ed 1016.10 Operator Ownership of Vending Facilities.

(a) If the operator desires to purchase part of the operator's own equipment and retain title thereto, the operator shall be responsible for repair and maintenance of such equipment to assure that the vending facility shall be kept operational and in an attractive condition.

(b) If the operator-owner ceases to be an operator or transfers to another vending facility site, ownership of the equipment shall become vested in SBVI and transferred to a successor operator subject to an obligation on SBVI's part to pay to such operator-owner or the operator's estate the fair value of the operator-owned equipment.

(c) The operator-owner, operator's personal representative or next of kin shall be entitled to an opportunity for an administrative review and an evidentiary hearing under Ed 1016.15 with respect to the determination of the amount to be paid by SBVI for an operator's ownership in the equipment. When the operator-owner is dissatisfied with any decision rendered as a result of the evidentiary hearing, the operator-owner may file a complaint with the Secretary under 34 CFR 395.13 to request the convening of an ad hoc arbitration panel.

(d) If an operator desires to retain title to vending facility equipment which the operator has purchased SBVI shall enter into a written agreement with such operator-owner delineating conditions of ownership.

(e) No person shall be denied the opportunity to become an operator because of their unwillingness or inability to purchase the vending facility equipment or the initial stock.

Ed 1016.11 Setting Aside of Funds.

(a) SBVI shall set aside funds from the net proceeds of the operation of vending facilities and vending machine income to the extent necessary for the following purposes:

- (1) Maintenance and replacement of equipment;
- (2) Purchase of new equipment;

(3) Management services such as but not limited to:

- a. Ongoing training;
- b. Upward mobility training;
- c. Food service related education;
- d. Liability insurance; and
- e. Annual dues in vending and food service organization; and

(4) Retirement and pension funds, health insurance contributions, paid sick leave and vacation time if it is determined by a majority vote of the operators licensed by SBVI to contribute and use funds set aside for these purposes after SBVI provides each operator information on all matters relevant to such funds.

(b) The charge for each purpose listed in Ed 1016.11(a) shall be determined by SBVI with the active participation of the state committee of licensed operators and shall be designed to prevent, so far as is practicable, a greater charge than is reasonably required. SBVI shall maintain adequate records to support the reasonableness of the charges, including any reserves necessary to assure that these purposes can be achieved on a consistent basis.

(c) The amount of funds set aside Ed 1016.11(a) shall:

- (1) Be assessed monthly; and
- (2) Be a percentage of net proceeds of the monthly profit and loss statement provided that:
  - a. The operator has net proceeds before set aside of over \$1,700 for that month; and
  - b. Either:
    1. The set aside charge does not reduce the net proceeds below \$1,700; or
    2. In order to assure a fair minimum return to operators, any set aside assessment which lowers an operator's net proceeds below \$ 1,700 for that month shall be reduced by the amount required to raise the net proceeds to \$1,700.

(d) The percentage in Ed 1016.11(c) shall be 10% of net proceeds assessed in Ed 1016.11(a) and shall be reviewed every 2 years by SBVI with the active participation of the committee of licensed operators. The new percentage shall be set utilizing the running average balance of the set aside account over the previous 2-year period, the Consumer Price Index and projected needs.

Ed 1016.12 Distribution and Use of Income from Vending Machines on Federal Property.

(a) Vending machine income from vending machines on federal property which has been disbursed to SBVI by a property managing department, agency or instrumentality of the United States under 34 CFR 395.32 shall:

(1) Accrue to each operator operating a vending facility on such federal property in New Hampshire in an amount not to exceed the average net income of the total number of operators within the state, as determined each fiscal year on the basis of each prior year's operation; and

(2) Not accrue to any operator in any amount exceeding the average net income of the total number of operators in the United States.

(b) No operator shall receive less vending machine income than an operator was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under Ed 1016.12 as provided in 34 CFR 395.8(a).

(c) No limitation shall be imposed on income from vending machines, combined to create a vending facility, when the facility is maintained, serviced, or operated by an operator.

(d) Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to SBVI in excess of the amounts eligible to accrue to operators in accordance with Ed 1016.12 shall be retained by SBVI.

(e) SBVI shall disburse vending machine income to operators within the state on at least a quarterly basis.

(f) Vending machine income which is retained by SBVI under Ed 1016.12 shall be used for:

(1) The establishment and maintenance of retirement or pension plans;

(2) Health insurance contributions; and

(3) The provision of paid sick leave and vacation time for operators, if it is so determined by a majority vote of operators licensed by SBVI, after SBVI has provided to each operator information on all matters relevant to such purposes.

(g) Any vending machine income not necessary for the purposes in Ed 1016.12(f) shall be used by SBVI for maintenance and replacement of equipment, purchase of new equipment, management services, and assuring a fair minimum return to operators.

Ed 1016.13 Operating Agreement Between SBVI and Operator. To obtain a license to operate one or more vending locations, the operator shall agree to the rules in Ed 1016 as well as the terms and conditions under which the license is issued in accordance with the following:

(a) The terms and conditions shall take the form of an agreement between the operator and SBVI stating what responsibilities the operator has and what responsibilities SBVI has.

(b) The agreement shall include:

(1) The operator's name;

(2) The vending facility name and location;

(3) The hours of operation for the vending facility;

(4) The articles to be sold at the vending facility;

- (5) The insurance requirements for the vending facility;
- (6) The financial records that must be kept by the operator; and
- (7) The rights and obligations of the operator and SBVI relative to assignments, subcontracts, and default.

(c) The agreement shall contain but not be limited to the following items adapted to the individual conditions applying to the specific location:

- (1) The duties of the operator and the performance of such duties in accordance with standards prescribed by:
  - a. SBVI and developed with the active participation of the state committee of operators;
  - b. Applicable health laws and regulations;
  - c. Terms of the permit granted by, or the contract entered into with, the federal or other agency or organization in control of the site of the vending facility; and
  - d. Security clearance requirements for the vending facility such as the process to obtain access cards. This may include background checks and security clearance applications for the operator and their employees or partners. If a licensed operator cannot receive clearance for a particular location, the location be released from the operator and put out to bid;
- (2) The responsibilities of SBVI to provide management services to the operator including assistance and supervision, and the ways in which such responsibilities shall be carried out;
- (3) A statement that operator shall receive the net proceeds from the vending facility that the operator operates;
- (4) The responsibility of the operator to furnish:
  - a. A monthly profit and loss statement that includes payment for assessed set asides no later than the last day of the month following the close of the previous month's accounting period;
  - b. One copy each of business liability insurance and workers compensation insurance; and
  - c. One copy of automobile collision and liability insurance in the case of operators with vending delivery vehicles;
- (5) The right of the operator to terminate the operating agreement at any time;
- (6) The termination of the operating agreement upon termination of the permit or contract; and

(7) The termination or revocation of the operating agreement upon the failure of the operator to operate the vending facility in accordance with the operating agreement or applicable federal, state, or local laws or regulations.

(d) The operator and the administrator of SBVI shall both sign the agreement.

Ed 1016.14 Transfer and Promotion of Operators. The following procedures shall apply to transfer and promotion of operators:

(a) A selection committee shall be convened by the administrator of SBVI when new opportunities become available for promotion or transfer. The selections committee shall include a representative of the state committee of licensed operators assigned by the chair or co-chairs, the BEP coordinator, the program assistant coordinator, and a counselor from the designated state agency's office of SBVI. The duties of the committee shall be to oversee and manage the provisions of Ed 1016.14(b)-(f) relative to the transfer and promotion of operators.

(b) Each operator shall be given every possible opportunity by way of the bidding process for promotion to facilities of greater earning capacity or more convenient location or both, as the knowledge skills and abilities of the individual are developed.

(c) When experience has proven that an operator is assigned to a location or locations beyond the operator's capacities, the operator shall be given opportunities for training. However if training does not result in improved operation, an assignment to a location commensurate with the operator's ability shall be made pending the availability of such a location or locations. Alternatively the number and nature of the facilities that the operator manages shall be reviewed and modified accordingly.

(d) When an opportunity to bid on a location is announced an operator may bid or not bid without prejudice to future consideration if another opportunity occurs that will be advantageous to the operator.

(e) An operator shall not be assigned to a facility of lesser income or convenient location without an explanation and an evidentiary hearing if requested by the operator.

(f) Promotion to facilities of greater capacity and earning power shall be applied using the following criteria:

- (1) Past performances at vending locations; and
- (2) Active participation in such things as training events, ongoing training opportunities, committee meetings, bid reviews; and
- (3) Seniority.

Ed 1016.15 Training Program.

(a) All operator candidates shall complete a training program in accordance with the training plan developed by SBVI. The training program shall include evaluation and training in blind/low vision rehabilitation as well as formal classroom instruction and on the job training on an individual basis.

(b) The training program will generally be no less than 6 months but may take longer if individual situations require, provided that the candidate is showing successful progress.

Ed 1016.16 Election, Organization and Functions of State Committee of Licensed Operators.

(a) The operators licensed by the state shall comprise the membership of the state committee of licensed operators.

(b) The committee chairperson shall be elected by a majority vote of committee members. The chairperson shall be elected every 2 years and serve 2 years. The chairperson shall not succeed him or herself. The election shall also include an election for an alternate chair that may succeed him or herself. The alternate chair shall assume the responsibilities of the chair if the chair is unable to attend to his or her duties.

(c) Quarterly meetings shall be held between the committee and SBVI to discuss policy administrative changes affecting the program provide a training opportunity and carry on other business of the committee and/or SBVI.

(d) Between the regular meetings individual committee members shall be designated, or sub-committees established, by the chair(s) to carry on the functions of the committee.

(e) All written material pertaining to the administration of the program shall be provided to the chairperson of the committee by SBVI in a format that is accessible by the chairperson(s). When policy or administrative changes that have been discussed with the committee members cannot be adopted, the chairperson(s) of the committee shall be notified in writing stating the reasons therefore. The committee shall receive and transmit to SBVI grievances at the request of operators and serve as advocates for such grievances.

Ed 1016.17 Administrative Reviews, Evidentiary Hearings, and Arbitration of Operator Complaints. If an operator is aggrieved by any action of SBVI with regard to the administration of the program the operator may file a written complaint to resolve the matter as follows:

(a) If the blind operator and SBVI agree, the dispute may be submitted to the designated state unit's administrator for policy and law for review and decision using the following criteria:

(1) The decision to elect informal dispute resolution shall not preclude the blind operator from seeking an evidentiary hearing if the informal dispute resolution process does not resolve the matter to the operator's satisfaction;

(2) The decision from an informal dispute resolution session may not be used in an evidentiary hearing;

(3) In the case of disputes involving candidates for a license, pursuant to Ed 104916.04, the parties shall submit the dispute to said administrator. The decision rendered shall represent the final administrative remedy for issues arising out of the licensing process;

(4) A request for an administrative dispute resolution session shall be filed with SBVI within 15 business days of action out of which the dispute arises;

(5) Within 10 business days, the administrator shall set a date and time for the parties to present their case. The hearing itself shall be held within 30 days of the request having been made;

(6) The administrator shall render a decision in writing in the matter within 14 calendar days of the completion of the hearing;

(7) The decision shall include:

- a. The facts and law relied on to make the decision; and
- b. A rationale for the decision, based on the information submitted; and

(8) An operator aggrieved by the administrator's decision may request an evidentiary hearing within 10 business days from the receipt of the administrator's report.

(b) Evidentiary hearings shall comply with the following:

(1) The operator shall make written application for an evidentiary hearing to the office of legislation and hearings and state the reasons for such application, within 15 days after the occurrence of the condition which caused the operator to file the request for an evidentiary hearing, or as prescribed in Ed 1016.17,(a)(8) when appealing the decision of an informal dispute resolution process;

(2) The operator shall be advised of the following:

- a. The date, time, and place the hearing will be held;
- b. That the hearing will be held within 15 days after receipt of application and at a time and place reasonably convenient to the operator;
- c. The right to be represented or accompanied at the hearing by counsel, friends, and witnesses;
- d. The right to adequate opportunity to present the operator's case;
- e. The right to give evidence pertinent to the issue involved;
- f. The right to cross examine witnesses appearing against the operator; and
- g. The request for a full evidentiary hearing indicates consent by the operator for the release of information necessary for the conduct of the hearing;

(3) The hearing shall be conducted by a hearing officer, assigned by the office of legislation and hearings within the department of education pursuant to Ed 200;

(4) Within 15 working days of completion of the hearing, the hearing officer shall prepare an official written report and recommendations to the director of the designated state unit;

(5) The director of the designated state unit, within 5 working days of receipt of the report, shall review the report and make a final decision which shall constitute the official action in regard to the subject of the hearing. The decision shall be:

- a. In writing and shall set forth the issue, the relevant facts brought out at the hearing, the pertinent provisions in law and the division policy, and the reasoning that led to the decision; and
- b. Forwarded to the operator immediately upon its issuance and a copy shall be furnished to the designated state unit; and

(6) Reasonable accommodations for disability(ies) shall be arranged by the designated state unit for the operator at the operator's request.

(c) Persons aggrieved by a decision of the designated state unit in an evidentiary hearing under Ed 1016.15(b) may appeal as follows:

(1) In accordance with RSA 541 for causes of action arising out of the action or operation of the program pursuant to RSA 186-B:13, I; or

(2) In accordance with 20 U.S.C. §107d-2 for causes of action arising out of the action or operation of the program pursuant to 20 U.S.C. §107e (3) or 23 U.S.C. §111.

Ed 1016.18 Access to Program and Financial Information. Each operator shall be provided access to all financial data of SBVI relevant to the operation of the program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable federal or state laws pertaining to disclosure of confidential information. At the request of an operator, SBVI shall arrange a convenient time to assist in interpretation of such financial data.

Ed 1016.19 Operator and SBVI Responsibilities.

(a) Each operator shall submit to SBVI a monthly operating statement along with the set aside assessment detailing, among other things, gross sales, purchases, operating costs, and net profits. Forms for this purpose shall be furnished to each operator by SBVI. SBVI shall retain complete access to the operator's records.

(b) The operator shall:

(1) Perform faithfully and to the best of operator's ability the necessary duties in connection with the operation of the vending facility in accordance with the department's rules;

(2) Cooperate with officials and duly authorized representatives of SBVI in connection with their official program responsibilities;

(3) Operate the vending facility in accordance with all applicable health laws and regulations, as well as the regulations of the agency controlling property upon which the facility is located; and

(4) Furnish such reports as SBVI may from time to time require.

(c) SBVI shall assume responsibility for providing to operators such supervision and assistance as may be necessary to insure the operation of each vending facility in the most productive and efficient manner possible.

Ed 1016.20 State Licensing Rules. SBVI shall furnish a copy of the state licensing rules to each candidate or operator in addition to all written documents pertaining to the administration and management of the program.

PART Ed 1017 INTERPRETER CLASSIFICATION SYSTEM

Ed 1017.01 Purpose. The purpose of the classification system program shall be to evaluate competency skills of sign language interpreters, to maintain records of interpreter classification, and to maintain records of continuing education units required for maintenance of classification.

Ed 1017.02 Program Designation. This program shall be designated “The New Hampshire Interpreter Classification System” (NHICS).

Ed 1017.03 Classification. An individual who applies for and meets the requirements for classification under Ed 1017.10 shall be qualified as a sign language interpreter by the program for the deaf and hard of hearing of the department.

Ed 1017.04 Applicability; Administration of Classification System Program. These rules shall apply to the classification process for sign language interpreters as conducted and managed by the program for the deaf and hard of hearing, division of career technology and adult learning, vocational rehabilitation, department. The classification system program shall be managed by a coordinator appointed by the director of the division of career technology and adult learning.

Ed 1017.05 Definitions. The following terms are defined for the purposes of part Ed 1017:

(a) “Deaf Interpreter” means a person who is deaf and provides interpreting services as defined in section (e), below

(b) “Director” means the director of the division of career technology and adult learning.

(c) “Classification system program” means the New Hampshire interpreter classification system operated by the coordinator.

(d) “Coordinator” means the person appointed by the program for the deaf and hard of hearing, division of career technology and adult learning, vocational rehabilitation, department to coordinate the classification.

(e) “Interpreting” means the process of converting spoken English into American Sign Language (ASL) and the process of converting ASL into spoken English.

(f) “Rater” means an individual who has successfully completed training approved under Ed 1017.12 by the program for the deaf and hard of hearing in the evaluation of interpreter skills.

(g) “State classification test” means the test administered under Ed 1017.08 for the purposes of determining an interpreter’s classification as a qualified interpreter under Ed 1017.10.

(h) “Rater stipend” means the appropriate level payment made to the rater for their work.

Ed 1017.06 Administration of State Classification Test; Classification Fees.

(a) The state classification test for the purpose of classifying interpreters shall be administered at least once every 6 months, unless there have been no requests for a test. If 3 or more individuals request a test, a test shall be scheduled at a date sooner than the next regularly scheduled test.

(b) The fee for the state classification test shall be \$225.00.

(c) A re-test fee of \$140 shall allow a retake of the performance test by an applicant for initial classification within one year after passing the structured interview portion.

(d) Applicants shall obtain a refund for a scheduled state classification test when providing at least 30 days' advance written notification of cancellation to the coordinator. Otherwise, test fees shall be nonrefundable.

(e) The coordinator or designee shall collect fees and maintain receipt records and invoices from raters and expenses incurred by the program for:

- (1) Rater and interviewer stipends for the evaluation of candidates
- (2) The cost of the interpreter for the deaf or hard of hearing rater during the testing process; and
- (3) Testing equipment.

Ed 1017.07 Application Process.

(a) Applicants shall contact the program for the deaf and hard of hearing for an information packet which contains:

- (1) A description of the classification process;
- (2) An application form;
- (3) A description of the fee charged for testing; and
- (4) A description of the appeal procedure.

(b) Each applicant shall submit an application and the fee for the test. Individuals shall not take the test until payment and a complete application are received, and the application is approved as complete by the coordinator or designee.

(c) The coordinator or designee shall notify each applicant who has submitted an application approved as complete of the scheduled date, time, and place for the test.

Ed 1017.08 State Classification Test.

(a) The state classification test shall consist of 2 sections. Section one shall be a structured interview scored by a minimum of 4 raters. Section 2 shall be a pass/fail performance test scored by a minimum of 4 raters.

(b) The structured interview shall be pass/fail and demonstrate the following:

- (1) Knowledge of and ability to make practical use of the code of professional conduct of the RID;
- (2) Knowledge of the role and responsibilities of an interpreter;
- (3) Understanding of professional business practices, including the limitations of an interpreter's role, diplomacy required of an interpreter, and the need for attire that enhances the background for signing such as plain clothing and jewelry that does not distract from the interpreting process;

- (4) Communication skills in ASL and English; and
  - (5) The interpreter’s overall professional presentation.
- (c) The performance test shall consist of an interpreting dialogue, preceded by a warm-up.
- (d) Each applicant’s performance on sections 1 and 2 of the test shall be videotaped.
- (e) The performance test scoring sheet shall consist of a numerical rating covering the following areas:
- (1) The rater’s ability to comprehend the applicant, based on the applicant’s clarity, use of grammar, level of discourse, and use of classifiers;
  - (2) The message equivalency transmitted by the applicant, including:
    - a. Message accuracy;
    - b. Accurate use of morphology;
    - c. Use of affect and register of the original message; and
    - d. The amount of information transmitted;
  - (3) The interpreting process, including:
    - a. Phrasing; and
    - b. Process management; and
  - (4) The applicant’s professionalism, including:
    - a. Composure; and
    - b. Objectivity.

Ed 1017.09 Administration of State Classification Test.

- (a) The coordinator or designee shall videotape section 1, the interview, and section 2, the performance portion, of the test.
- (b) The coordinator or designee shall send the rater scoring packet to 4 qualified raters within one week of the taping. The coordinator shall make sure each packet includes a copy of the candidates tape, scoring sheets and the rater instruction information.
- (c) Candidates who pass both the performance section and the interview section will be state classified and notified.
- (d) Candidates who successfully pass the performance portion of the test but do not successfully pass the interview portion of the test shall not be considered for state classification. They shall need to retake both sections of the test.

(e) The coordinator shall mail to each applicant who has completed the performance test written notice of the test results within one month of the date of the test.

(f) A person who fails either the structured interview or the performance test may request from the coordinator, in writing, copies of the raters' scoring sheets. The coordinator shall supply such sheets, upon written request.

(g) Applicants for initial classification not passing the performance test may retake the performance portion of the test, within one year after passing the structured interview portion.

Ed 1017.10 Classification of Interpreters. An applicant shall be classified as a qualified sign language interpreter who:

- (a) Has a high school diploma or its equivalent;
- (b) Is 18 years of age or older; and
- (c) Receives a score of 75% or more on the performance test.

Ed 1017.11 Maintenance of Classification.

(a) "Continuing education units," for the purpose of this rule means:

- (1) Participation in professional workshops sponsored by a post-secondary interpreter training program, the RID, the National Association of the Deaf (NAD) or the state chapters of such organizations, or any other professional training organization which focus on issues related to the deaf community and/or the interpreting process;
- (2) Conventions/conferences of either deafness or interpreting organizations;
- (3) Tutoring sessions, if such sessions are qualified under paragraph (b); and
- (4) For the 20% required in areas not related to deafness or interpreting, participation in a course, workshop, or training session on a topic unrelated to deafness, but which has an impact on the interpreter's activities as a sign language interpreter.

(b) To qualify, a tutoring session shall be provided by RID certified interpreters those who hold their NIC, Certificate of Interpretation (CI) or NAD level V.

(c) Classification as a qualified interpreter under Ed 1017.10 shall be valid for 6 years from date of issue.

(d) All state-classified interpreters shall earn CEU's. The number of CEU's earned shall be the same number of hours as those required by RID over each 4 year period, 80% of which shall be deafness/interpreting related, and 20% of which shall be either deafness/interpreting related or in other areas as defined in Ed 1017.11(a)(4). CEU hours shall be awarded based on clock hours of participation and shall require documentation from such training programs such as an agenda, conference packet, or syllabus. No one convention, workshop or course shall be used to satisfy the entire requirement.

(e) Determination of compliance with Ed 1017.11(e) shall be made by the coordinator of the program for the deaf and hard of hearing.

(f) An individual's classification shall lapse for an individual who fails to obtain national certification before the expiration of the 6-year classification period. The individual shall no longer be:

- (1) Listed in the department of education's directory of interpreters for the deaf; and
- (2) Considered a licensed interpreter by the state of New Hampshire.

Ed 1017.12 Raters.

(a) Each team of raters shall be comprised of 2 raters who can hear and 2 raters who are deaf or hard of hearing. Raters who can hear shall possess a valid certification from RID or the NAD level V. The program for the deaf and hard of hearing shall solicit applicants from certified interpreters and the deaf community. Selection shall be made by the program for the deaf and hard of hearing based on skill level, availability and experience.

(b) The program for the deaf and hard of hearing shall provide rater training for new raters. New raters shall complete the rater training, which shall consist of instruction and materials on the principles of interpreter classification evaluation, practice tapes, and inter-rater reliability data.

(c) A rater shall not have a conflict of interest regarding the person to be rated. A conflict of interest shall be deemed to exist if the person to be rated is a member of the rater's immediate family. "Immediate family" means the rater's spouse, parent, mother-in-law, father-in-law, sibling, sister-in-law, brother-in-law, or child, or anyone related to the rater by blood or marriage and living in the same household as the rater. The rater shall disclose any other circumstances which create a conflict of interest as to a particular person, and shall withdraw as a rater for that person. The rater shall also disclose to the coordinator any circumstances likely to create the appearance of a conflict of interest.

(d) Scoring by raters shall be done as follows:

- (1) For the part I-interview portion of the test, the applicant shall be rated by both deaf and hard of hearing raters and raters who can hear; and
- (2) For the part II- performance portion of the test, the raters who can hear shall score primarily the ASL-to-English components of the evaluation and the deaf or hard of hearing raters shall score primarily the English-to-ASL components of the evaluation.

(e) Raters shall receive the rater stipend from the interpreter classification fund for scoring each applicant. To receive payment, raters shall submit an invoice, which shall include the rater's name, address, name of applicant, and date of rating.

(f) All documents, paperwork and digital media (CD), shall be sent back to the coordinator for record keeping. This process shall ensure confidentiality of the applicant. A breach in this process could create the need for a review and recommendation of the situation and possible removal as a rater by the director.

Ed 1017.13 Publication of Directory of Interpreters for the Deaf. The name and date of award of each individual classified under the classification system program shall be published by the department of education in a directory of interpreters for the deaf, which shall be printed at least biennially. The directory shall also include name, source of national certification, state of NH licensure status, and date of certification for any interpreter certified by the RID or the NAD who wishes to be included in the directory. Contact information shall be included at the option of the interpreter. The primary source for this document shall be located on the designated state unit's website and an annual printing will occur.

Ed 1017.14 Retention of Test and Directory Data. The program for the deaf and hard of hearing shall keep the following data in confidential files for a period of at least 7 years:

- (a) Correspondence with individual applicants;
- (b) Records of scores of individual tests for each applicant tested, whether the applicant was successful or unsuccessful;
- (c) Records of CEU's for each interpreter who has completed the state classification process;
- (d) The original digital media (CD) of each applicant's interview and performance test;
- (e) The date classification under Ed 102317.10 was awarded; and
- (f) Name, address, and telephone number for each state classified and nationally certified interpreter listed in the department of education directory of interpreters for the deaf.

Ed 1017.15 Appeal. An applicant aggrieved by a decision of the program relating to classification may file a petition for reconsideration along with supporting documentation to the Director within 20 working days after receipt of the decision regarding classification. If the petition for reconsideration is denied, the applicant may appeal the Director's decision pursuant to RSA 21-N: 11, III and Ed 200. Any person may file a written complaint charging a person qualified as a deaf interpreter with misconduct pursuant to the process set forth in INT 205.

#### PART Ed 1018 REVIEW PROCEDURE

##### Ed 1018.01 Review Procedures.

- (a) Review procedures shall comply with 34 CFR 361.57 and New Hampshire law.
- (b) An individual who is dissatisfied with any determination made by personnel of the designated state unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination.
- (c) The designated state unit shall make reasonable accommodation for the individual's disability in conducting hearings and mediation procedures. Reasonable accommodation shall include using appropriate modes of communication consistent with the informed choice of the individual.

##### Ed 1018.02 Notification of Right to Mediation and Hearings.

- (a) The designated state unit shall provide an individual or, as appropriate, the individual's representative, notice of:
  - (1) The right to obtain review of designated state unit determinations that affect the provision of vocational rehabilitation services through a hearing under Ed 1018.07 and Ed 1018.15;
  - (2) The availability of informal dispute resolution under Ed 1018.03
  - (3) The right to pursue mediation under Ed 1018.05 with respect to determinations made by designated state unit personnel that affect the provision of vocational rehabilitation services to an individual;

(4) The names and addresses of department of education personnel with whom requests for mediation or hearings may be filed;

(5) The manner in which a neutral mediator or hearing officer is selected; and

(6) The availability of the client assistance program, established under 34 CFR 370, to assist the individual during neutral evaluation, mediation sessions or hearings.

(b) The notice required in Ed 1018.04(a) shall be provided by using the appropriate mode of communication consistent with the informed choice of the individual:

(1) At the time the individual applies for vocational rehabilitation services;

(2) At the time the individual is assigned to a category in the order of selection, if an order of selection is established under Ed 1006;

(3) At the time the individualized plan for employment is developed; and

(4) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated;

(c) Determinations for which a review may be requested include the designated state unit's failure to release harmful information directly to the individual.

#### Ed 1018.03 Informal Dispute Resolution.

(a) An individual, or a representative of the individual, seeking review of a determination shall file a complaint with the administrator for policy and law at the bureau of vocational rehabilitation, in the designated state unit.

(b) Filing a complaint shall not prevent the individual from requesting mediation or a due process hearing in the case where the complaint is not resolved to the individual's satisfaction.

#### Ed 1018.04 Mediation.

(a) Mediation shall be voluntary and available to individuals in accordance with 34 CFR 361.57(d), and Ed 205.

(b) If mediation as described in Ed 205.03 is selected by the parties and resolution is not achieved, the individual selected as a mediator shall not be the same individual who is subsequently appointed as a hearing officer to preside at a hearing in the same matter pursuant to Ed 1018.10(c).

(c) Inconsistencies between mediation procedures in Ed 205.03 and Ed 1018.05 shall be resolved in favor of the provisions of Ed 1018.05.

#### Ed 1018.05 Mediation Procedure.

(a) An individual shall have the option of using mediation to resolve disputes involving designated state unit determinations that affect the provision of vocational rehabilitation services. Mediation shall be made available, at a minimum, whenever an individual or, as appropriate, the individual's representative requests a hearing. Mediation may also be requested without filing a complaint or requesting a hearing.

(b) Mediation shall not be used to deny or delay the individual's right to pursue resolution of the dispute through a hearing held within the 60 day time period for holding hearings required by 34 CFR 361.57(e). At any point during the mediation process either the individual or the mediator shall have the option of electing to terminate the mediation. In the event mediation is terminated, the individual shall have the option of pursuing resolution through a hearing.

(c) An individual may be represented during mediation sessions by counsel or another advocate selected and paid for by the applicant or individual.

(d) Mediation sessions shall be conducted by a qualified and impartial mediator. The mediator shall be chosen at random from a pool of mediators who are knowledgeable about vocational rehabilitation services.

(e) Mediation sessions shall be arranged by the office of legislation and hearings in the designated state agency. Mediation shall be scheduled within 30 days from the date a written request for mediation is received by the designated state unit.

(f) Discussions that occur during the mediation sessions shall be kept confidential and shall not be used as evidence in any subsequent hearings or civil proceedings. The parties to the mediation sessions shall sign a confidentiality pledge prior to the commencement of the sessions.

(g) An agreement reached by the parties to the dispute in the mediation sessions shall be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement shall be sent to both parties.

(h) The costs of the mediation process shall be paid by the designated state unit.

Ed 1018.06 Scheduling of Mediation, Prehearing Conference, and Hearing.

(a) At the time of the filing of a request to initiate a hearing under Ed 1021.07, the parties shall notify the office of legislation and hearings in the designated state agency of whether they wish to pursue mediation prior to a prehearing conference and a hearing.

(b) If the parties choose not to engage in mediation the office of legislation and hearings in the department of education shall schedule the prehearing conference and hearing based on hearing officer availability, as provided in Ed 1018.10.

(c) The scheduling shall allow for the following:

- (1) A day for an alternative dispute resolution, if the parties so decide;
- (2) A half day for a prehearing conference; and
- (3) A minimum of 2 days for a hearing.

Ed 1018.07 Initiation of Hearing by Applicant or Individual.

(a) An individual who is dissatisfied with any determination made by personnel of the designated state unit that affects the provision of vocational rehabilitation services shall notify the office of legislation and hearings in the designated state agency, in writing, if he or she wishes to request a due process hearing. The written request for a hearing shall be made within 30 days after the designated state

unit notifies the individual of its determination or completion of an alternative dispute resolution procedure.

(b) The written request required to initiate the hearing process shall include:

- (1) The full name and address of the individual;
- (2) A description of why the individual is not satisfied with the determination; and
- (3) The desired outcome of the complaint or mediation procedure, if applicable.

(c) When providing a written request for a hearing is a burden to the individual because of the individual's disability, the office of legislation and hearings shall accept a request in the appropriate mode of communication that is consistent with the informed choice of, and used by, the individual in order to promote the fair, accurate, and efficient resolution of issues.

Ed 1018.08 Commencement of Hearing Process. The hearing shall be held no later than 60 days after the office of legislation and hearings receives a request for the hearing under Ed 1018.07, unless an agreement is reached prior to the 60th day, or unless the parties agree to a specific extension of time.

Ed 1018.09 Denial, Dismissal, or Withdrawal of Request for Hearing.

(a) The office of legislation and hearings in the department of education shall not deny or dismiss a request for a hearing unless the individual:

- (1) Withdraws the request in writing;
- (2) Is held by the hearing officer to be in default for failure to appear at the hearing without good cause that constitutes illness, accident, or any other circumstances beyond the control of the individual; or
- (3) The hearing officer grants a motion to dismiss.

(b) An individual may withdraw a request for a hearing without prejudice until such time as he or she retains legal counsel.

(c) When withdrawing a request for a hearing in writing is a burden to the individual because of the individual's disability, the office of legislation and hearings shall accept requests in the appropriate mode of communication that are consistent with the informed choice of, and used by, the individual in order to promote the fair, accurate, and efficient resolution of issues.

Ed 1018.10 Scheduling Mediation Proceedings and Hearings.

(a) The office of legislation and hearings in the department of education shall schedule mediation, if requested, and a prehearing conference and a hearing as follows:

(b) As soon as the mediation, if any, the prehearing conference, and the hearing have been scheduled, the office of legislation and hearings shall notify the parties in writing of:

- (1) The date, time and place of the requested mediation and the prehearing conference;
- (2) The date, time, place, and nature of the hearing;

- (3) Legal authority under which the hearing is to be held;
  - (4) The particular sections of the statutes and rules involved, including a copy of Ed 100418;
  - (5) A short and plain statement of the issues involved; and
  - (6) The party's right to have an attorney present to represent the party at the party's expense.
- (c) The name and address of the hearing officer who will preside at a hearing shall be selected:
- (1) From a list of hearing officers, who have knowledge of state and federal vocational rehabilitation law, that is maintained by the office; and
  - (2) On a random basis.

Ed 1018.11 Elements of a Hearing. A hearing shall include the following elements:

- (a) A prehearing conference, governed by Ed 1018.13;
- (b) A hearing, governed by Ed 1018.15, that shall, except for good cause shown, be limited to 2 days; and
- (c) A hearing officer's decision under Ed 1018.16(a) shall be considered the final decision of the designated state unit.

Ed 1018.12 Prehearing Procedures. The prehearing conference required by Ed 1018.10(a) shall be conducted by a hearing officer and governed by the following:

- (a) Parties shall be prepared to discuss the issues described in RSA 541-A:31, V(c);
- (b) Parties shall exchange, and provide to the hearing officer, witness lists including a brief description of each witness's testimony, and documentary evidence at least 5 business days before the hearing. Documentary evidence exchanged shall be legibly labeled in the upper right-hand corner with consecutive Arabic numerals as either "Individual Exhibit (number)" or "designated state unit (number)", as appropriate. An index, by title, of all exhibits submitted shall also be exchanged;
- (c) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, each party shall submit a statement of facts;
- (d) The party who has initiated the hearing shall present his or her case first unless the hearing officer determines that the change in the order of presentation would not materially prejudice any party's right to a full and fair hearing and:
  - (1) The hearing would proceed in a more timely manner if the party not initiating the hearing presents his or her case first; or
  - (2) The hearing would proceed in a more efficient manner if the party not initiating the hearing presents his or her case first.

Ed 1018.13 Voluntary Production of Information.

(a) Each party shall attempt in good faith to make a complete response to requests, as soon as practicable, for the voluntary production of information.

(b) When a dispute between parties arises concerning a request for the voluntary production of information, releases, or documents, any party may file a motion to compel the production of the requested information under Ed 1018.14.

Ed 1018.14 Motion to Compel Production of Information.

(a) Any party may file a motion requesting that the hearing officer compel the parties to comply with information requests. The motion shall be filed at least 15 days before the date scheduled for the hearing, or as soon as possible after receiving the notice of hearing. Any objection to the motion to compel shall be filed within 5 days of the date receipt of the motion.

(b) The moving party's motion shall:

- (1) Set forth in detail those factors which it believes justify its request for information; and
- (2) List with specificity the information it is seeking to discover.

(c) When a party has demonstrated that such requests for information are relevant to the issues described in the hearing notice and might be necessary for a full and fair presentation of the evidence at the hearing because they have the potential to affect the outcome of the hearing, the hearing officer shall grant the motion to compel.

Ed 1018.15 Hearing Procedures. The hearing shall be conducted by a hearing officer, governed by the following:

(a) All hearings shall be electronically recorded by the hearing officer or his or her designee. The hearing officer's recording shall be the official record of the hearing unless a party requests and pays for stenographic recording of such hearing. If a party requests and pays for a stenographic recording of the hearing, the stenographic record shall be under the control of the hearing officer and shall be the official record;

(b) Any party to a hearing shall have the right to:

- (1) Be accompanied and advised by counsel, who shall be an attorney, or by an individual with special knowledge or training with respect to vocational rehabilitation services and whose services shall be paid for by the party retaining counsel;
- (2) Present evidence and confront and cross-examine witnesses;
- (3) Request that the hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the first day of the scheduled hearing;
- (4) Obtain a verbatim record of the hearing, at any point during the hearing or afterwards;
- (5) Obtain written findings of facts and decisions; and
- (6) Record the hearing;

(c) At the conclusion of the hearing an applicant, eligible individual, or previously eligible individual may request, at no cost, a verbatim record of the hearing in either electronic or written format and written findings of fact and decisions at no cost for the first copy of each item. Any additional copies or copies of any of the items in the case file shall be available at the department's cost to produce them;

(d) An applicant, eligible individual, or previously eligible individual shall have the right to open the hearing to the public. However, if a hearing is open to the public, the hearing officer shall seat the members of the public and position their equipment in such a way that the public and equipment do not interfere with the proceedings;

(e) Each party shall have a maximum of one day to present its case, unless additional time is necessary for a full, fair disclosure of the facts necessary to arrive at a conclusion;

(f) The hearing officer shall limit the number of additional witnesses to eliminate redundant, cumulative, or irrelevant testimony; and

(g) The hearing officer shall limit examination of a witness by either party to avoid redundant, cumulative, or irrelevant testimony.

Ed 1018.16 Agreement Prior to Hearing.

(a) If the parties reach an agreement prior to the hearing, both parties shall sign a written statement requesting the cancellation of the hearing.

(b) When signing a written statement requesting the cancellation of the hearing is a burden to the applicant, eligible individual, or previously eligible individual because of the individual's disability, the office of legislation and hearings shall accept such requests in the appropriate mode of communication that is consistent with the informed choice of and used by the applicant, eligible individual, or previously eligible individual in order to promote the fair, accurate, and efficient resolution of issues.

Ed 1018.17 Continuance of Hearing.

(a) A hearing officer shall grant extensions of time beyond the period set out in Ed 1018.15(e) for specific periods of time at the request of either party if:

(1) The party's vocational rehabilitation services would not be jeopardized by the delay;

(2) The party would not have adequate time to prepare and present the party's position at the hearing in accordance with the requirements of due process; and

(3) The need for the delay is greater than any financial or other detrimental consequences likely to be suffered by a party in the event of delay.

(b) A hearing shall not be continued by the hearing officer because of the hearing officer's schedule.

Ed 1018.18 Decision.

(a) The hearing officer shall issue a final decision not later than 30 days after the hearing is completed. The final decision shall be consistent with RSA 541-A:35. The final decision shall be based on the provisions of the approved state plan, the Act, federal vocational rehabilitation regulations, and state rules that are consistent with federal requirements.

(b) The hearing officer shall provide to the individual or, if appropriate, to the individual's representative, and to the designated state unit a full written report of the findings and grounds for the final decision within 30 days after the hearing is completed.

(c) A copy of the final decision shall be sent by certified mail to each of the parties.

Ed 1018.19 Impact on Provision of Services During Proceedings.

(a) The designated state unit shall not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and individualized plan for employment development, pending resolution of a request for review of a determination through mediation or pending a decision by a hearing officer unless:

(1) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services;

(2) The designated state unit has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative; or

(3) The individual or the individual's representative engages in delaying tactics to avoid a determination of the issue for the purpose of continuing services the designated state unit believes are inappropriate or inconsistent with the program or the employment aptitudes and interests of the individual. In the case of apparent delaying tactics, the following shall apply:

a. Any case that remains open after 180 days shall be presumed to be a case where delay tactics are being employed; and

b. In any case open longer than 180 or whenever the hearing officer believes a party is hindering the prosecution of the case, the hearing officer shall require the offending party to show good cause pursuant to Ed 206.04(a) why the hearing officer should not dismiss the case with prejudice.

(b) If a party brings a civil action under Ed 1018.20 to challenge the final decision of the hearing officer made under Ed 1018.18(f), the final decision of the hearing officer shall be implemented pending review by the court.

Ed 1018.20 Civil Action. Any party who disagrees with the findings and decision of the hearing officer may bring a civil action to appeal that decision in a state or a United States district court of competent jurisdiction as provided in 34 CFR 361.57(i).

**Appendix I**

<b>Rule</b>	<b>Statute or Federal Regulation Implemented</b>
Ed 1001	34 CFR 361; RSA 200-C:1
Ed 1002	34 CFR 361.5
Ed 1003	34 CFR 361.38
Ed 1004	34 CFR 361.36
Ed 1005	34 CFR 361.53
Ed 1006	34 CFR 361.54
Ed 1007	34 CFR 361.37
Ed 1008.01	34 CFR 361.41

Ed 1008.02	34 CFR 361.41(b)
Ed 1008.03	34 CFR 361.42
Ed 1008.04	34 CFR 361.42(e)
Ed 1008.05	34 CFR 361.43
Ed 1008.06	34 CFR 361.44
Ed 1008.07	34 CFR 361.45
Ed 1008.08	34 CFR 361.46
Ed 1008.09	34 CFR 361.47
Ed 1008.10	34 CFR 361.48
Ed 1008.11	34 CFR 361.50
Ed 1009	34 CFR 361.51
Ed 1010	34 CFR 361.52
Ed 1011	34 CFR 361.55
Ed 1012	34 CFR 361.56
Ed 1013.01-.06	RSA 200-C:23; 34 CFR 363.6; 34 CFR 361.42
Ed 1013.07-.10	RSA 200-C:23; 34 CFR 361.48; 34 CFR 361.49
Ed 1014	RSA 200-C:26; 45 CFR 1329.4; 34 CFR 77.1
Ed 1015	RSA 200-C:20; 34 CFR 367.3
Ed 1016	34 CFR 395
Ed 1017	RSA 200-C:20
Ed 1018	RSA 541-A:30-a