

Arizona Center for Disability Law

Protection and Advocacy System for Arizona

Summary of Vocational Rehabilitation Rights: Evaluations

A SELF-ADVOCACY GUIDE

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Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

- This guide is available in alternative formats upon request.

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A. Introduction to CAP and this Guide

1. How the Arizona Center for Disability Law's Client Assistance Program Assists Vocational Rehabilitation (VR) Clients/Applicants with Disabilities

Sometimes people don't agree with decisions made by agencies. It can often be difficult to solve disagreements without help. The Arizona Center for Disability Law has a program to assist you with your vocational rehabilitation (VR) problems. The Client Assistance Program (CAP) offers help to clients and those applying for services under the Rehabilitation Act of 1973, as amended by the Rehabilitation Amendments of 1998. CAP is able to assist you by:

- ✓ informing you of available benefits under the Rehabilitation Act;
- ✓ advising you about ways to solve problems with your vocational rehabilitation counselor;
- ✓ providing training on your rights under the Rehabilitation Act; and
- ✓ as appropriate, representing you in negotiations with Rehabilitation Services Administration (RSA) and RSA service providers, and at administrative reviews, mediation, fair hearings and lawsuits under the Rehabilitation Act.

Information about the eligibility requirements and priorities are available from the Center upon request. Assistance is provided according to program eligibility requirements, priorities and staff availability.

Eligibility: If you are an individual with a disability and are currently a client or applicant for services under the Rehabilitation Act (VR services, independent living services, or services through a VR service provider), contact CAP if:

- ▶ You are denied the right to apply for services;
- ▶ You are found ineligible for services and you believe that you should be provided the services;
- ▶ You have a disagreement about your Individual Plan for Employment (I.P.E.) or a service or decision affecting your I.P.E.;
- ▶ You disagree with the decision by VR to close your case;

- ▶ You disagree with the decision by VR not to provide a Post Employment Service (P.E.S.); or
- ▶ You do not understand your rights or the services available to you under the Rehabilitation Act.

2. Glossary of Terms

The following is a list of the meaning of numerous words that relate to your VR services and appeal rights. Most of these terms are explained in more detail in this guide or in one of the Center's other guides on VR rights.

Administrative Review: An optional informal way to try and solve disagreements with your vocational rehabilitation counselor. The review is conducted by a supervisor that is not directly responsible for the work of your VR counselor or his supervisor. A written decision is issued. If you are not satisfied with that decision, you have the right to request a fair hearing. For more information about this way to resolve disputes, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Extended Evaluation: (See Trial Work Experience). There will be limited circumstances where an individual cannot participate in a trial work experience and in these cases, RSA must conduct an extended evaluation. This evaluation must be consistent with the rehabilitation needs of the individual and must be based on the informed choice of the individual.

Fair Hearing: A formal hearing conducted by an administrative law judge (or hearing officer) to hear and decide disputes between the RSA and clients and applicants. For more information about the fair hearing process, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Hearing Officer: An administrative law judge who will conduct the fair hearing and issue a decision after the fair hearing. For more information about the qualifications and powers of a

hearing officer, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Individual Plan for Employment (I.P.E.): A document that is agreed upon by the client and the vocational rehabilitation counselor which states the client's employment goal and the services necessary to reach that goal. For more information about the contents of an I.P.E., see the Center's guide, *Summary of Your VR Rights: The Individual Plan for Employment*.

Mediation: An informal way to try and resolve a dispute about your I.P.E. with the RSA. A mediation is conducted by an impartial and trained mediator who listens to both sides and tries to help the parties reach an agreement that both can be satisfied with. The mediator is not a decision maker. If the mediation is successful, a written mediation agreement is prepared. For more information about mediation, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Personal assistance services: The term "personal assistance services" means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

Rehabilitation Act: A federal law that was passed in 1973 and updated several times, including in 1998, which gives rights to clients and applicants of VR services to reach an employment goal. The Rehabilitation Act outlines the rights of clients and the responsibility of the state in providing vocational rehabilitation services for people with disabilities.

Rehabilitation Services Administration (RSA): The state agency created to provide vocational rehabilitation services to qualified people with disabilities. Sometimes VR and RSA are used to describe the same state agency. (In this guide, RSA will be used to refer to the state agency.)

Representative: A friend, family member, advocate, attorney, or person knowledgeable about your rights that assists you at any informal or formal hearing to appeal a dispute with RSA. For more information about your right to have a representative, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

State Reviewing Official: The Director of the Arizona Department of Economic Security who may, upon the request of either party who does not win the fair hearing, review and change the decision of the hearing officer. For more information about when and how a state reviewing official can change a hearing officer's decision, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Transition services: The term “transition services” means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. These services are primarily the responsibility of the school district, but RSA is a partner, where appropriate. For more information about the rights of students with disabilities regarding transition services, see the Center's guide, *Transition Services*.

Trial Work Experience: If there is a question about a client's ability to benefit from VR services, VR must develop a written plan for the purpose of exploring the client's abilities, capabilities, and capacity to perform in a realistic work situation called a trial work experience. This can include supported employment, on-the-job training, and experiences using realistic work settings. The experience must fit the client's abilities and needs and accommodate his/her needs. The outcome of the experience is to either provide evidence that the person can or cannot

benefit from VR services in terms of an employment outcome due to the severity of the person's disability.

Vocational rehabilitation (VR) services: Services that are available to a VR client who needs them to reach his/her employment goal on the I.P.E. including but not limited to assessment for eligibility, counseling and guidance, training, transportation, interpreters, readers, note takers, telecommunication aids and devices, job placement, job coaching, technology services, etc.

Vocational rehabilitation (VR) counselor: An individual assigned to assist you in developing your I.P.E. and obtaining the services necessary to reach the employment goal of your I.P.E., including vocational counseling.

Written notice: A letter or other written document that must be provided to a client when RSA closes a VR case or suspends, stops, or reduces a VR service. This letter must also be provided to an applicant when RSA refuses to provide services. See the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

3. List of Acronyms

AT:	Assistive Technology
ADA:	The Americans with Disabilities Act
CAP:	Client Assistance Program
IDEA:	Individuals with Disabilities Education Act
IPE:	Individualized Plan for Employment (formerly known as IWRP: Individualized Written Rehabilitation Plan)
RSA:	Rehabilitation Services Administration
SSDI:	Social Security Disability Insurance
SSI:	Supplemental Security Income
TWIIA:	Ticket to Work Improvement & Incentive Act
VR:	Vocational Rehabilitation
WIA:	Workforce Investment Act

B. Commonly Asked Questions about Evaluations Related to VR Services

1. Will I be required by RSA to get an assessment or evaluation?

There are two reasons you may be asked to get to an assessment or evaluation in the VR process. First, you may need an evaluation to establish you have a disability. To be found eligible for VR services, you must have evidence or proof of your disability. Usually, either you have access to your medical and/or psychiatric records, or your VR counselor can obtain them after you sign a release of information for these records. If VR is unable to verify that you have a disability or a need for VR services based on available records, you will be asked to go to an evaluation to prove disability. These types of evaluations include;

- ✓ diagnosing a physical or mental disability ,
- ✓ documenting loss in hearing and/or visual acuity, and
- ✓ diagnosing chemical dependency.

Second, if you have been found to have a disability, VR may then ask you to have an assessment or evaluation to help determine an appropriate employment goal, and the amount and type of vocational rehabilitation services you need to reach your employment goal. This type of assessment:

- ✓ is to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of you, the client;
- ✓ is limited to information **necessary** to identify the rehabilitation needs of the individual and to develop the IPE; and
- ✓ may be one to evaluate personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, employment opportunities of the individual, medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual client;
- ✓ may include a review of your patterns of work behavior and what services are

needed for you to obtain occupational skills like work attitudes, work habits, work tolerance, or social and behavioral patterns necessary for successful job performance. This assessment can include working in a real job situation, or trial work experiences in which you are provided appropriate supports and training;

- ✓ can be used to investigate your need for rehabilitation technology services or assistive technology.

Harlan used to be a construction worker until he was injured on the job and can no longer do that kind of work. He wants to be retrained as a school teacher. VR wants to determine whether Harlan can still do construction work before they agree to his request to go to college for a teaching degree. An assessment is arranged for Harlan with an orthopedic doctor to perform tests that will determine how much weight Harlan can lift and for how long, how much bending and kneeling he can do.

2. What are some examples of evaluations I might be asked to take?

- ✓ Psychological Examination – to evaluate behavioral & intellectual assets & liabilities.
- ✓ Vocational Evaluation – to evaluate employment related skills, abilities & interests.
- ✓ Audiological Examination – to evaluate hearing.
- ✓ Eye Examination – to evaluate vision.
- ✓ Technology – for use of assistive technology such as communication devices, and wheelchairs.
- ✓ Home Modification – for accessibility of your home; such as ramps, wider doorways, and lighting.
- ✓ Computer Access – hardware and software adaptations.
- ✓ Work Station Evaluation – for accessibility at work; such as a raised desk or quieter office.
- ✓ Physical Examination – a general medical evaluation.
- ✓ Nerve Conduction Test – for use in evaluating nerve damage.

3. Do I get a choice in who evaluates me?

Yes. You are entitled to make an informed choice about who evaluates you. Your VR counselor must provide you with a written list of their contracted evaluators and with information about each of these evaluators. You can pick one you would prefer to go to. If you don't know any of the names on the list, you can call and ask the evaluators any questions you may have. You can also ask your VR counselor for other sources of information about the evaluators, such as complaints, results of client satisfaction surveys, or names of consumer groups who may have given input to RSA about an evaluation.

4. What can I do if I disagree with my counselor's choice of evaluators?

As stated above, you have the right to choose the evaluator. If RSA denies you a choice of evaluators, or if they refuse to send you to the one you choose from their list, you are being denied a service and you have the right to appeal that decision by your counselor. RSA is required to provide clients with written notice, including appeal rights, any time a service is denied.

If after reviewing RSA's list and/or contacting the evaluator yourself, you still would prefer another evaluator, you can give RSA the name of the person you want to go to and the reasons why you want to go to this person. Ask RSA to contact your choice of evaluators and see if this person is willing to accept RSA's standard rate of payment they give their contracted providers. If your choice of an evaluator is willing to do this and is qualified to perform the necessary evaluation, RSA may permit your choice of evaluator to do the testing. If the evaluator is unwilling to accept VR's standard rate of pay, you may be able to pay the difference and use the evaluator.

5. What do I do if I disagree with my VR counselor's request for a specific evaluation?

Ask to discuss the reasons for this request for evaluation with your counselor and his/her supervisor. Present your reasons for not believing this evaluation is necessary and be ready to present supporting evidence from your doctors and others who know about your abilities and

capabilities. If, after this discussion, RSA still insists on the evaluation, you can ask that it be a limited evaluation, specific to only the certain issues RSA believes it must know before beginning your plan for employment. If you are unable to reach a compromise about this issue, and RSA still requires you to take the evaluation and you still choose not to do so, RSA may close your case for lack of cooperation. If RSA closes your case, you are entitled to receive this closure decision in writing and you may appeal this issue.

You have the right to appeal a denial of eligibility or VR service. See the Center's guide: *Your Appeal Rights For Disputes about VR Services*. If VR is using the results of an evaluation as a primary reason to deny eligibility or a service, you will need to provide evidence to prove you are eligible or need the specific service. You should consider getting another evaluation or have an expert opinion that would support your position. Experts, for example, can be doctors, therapists, vocational evaluators, independent living specialists and case managers. This may include obtaining a letter – or even live testimony if you go to a hearing – from your treating doctor or psychiatrist. You may also have other information, such as letters or reports from past employers, or from teachers you've had that can say how well you've done in their classes. As an alternative, you can also request that RSA send you to another evaluation. You can select the evaluator from a list of qualified evaluators who have contracts with the RSA. If your VR counselor does not offer you choices, ask for the list.

Cleo goes to VR with the employment goal of becoming a computer programmer. Her work history includes being an administrative assistant in a large law firm and co-owner of an antique shop. She is a college graduate. Due to a recent Traumatic Brain Injury, she prefers to work in a small office with a routine of tasks. VR requests that she submit to a neuropsychological evaluation to see if computer programming is a good employment choice. Cleo does not believe the evaluation is necessary because she has already been accepted in a computer training program based on an entrance exam and an in-person interview at the school. Cleo may appeal RSA's decision requiring an exam. She has enough information on her abilities to enter the computer program. In this situation, a neuropsychological evaluation may not be necessary.

Ted has a long history of working construction. His disability is rheumatoid arthritis and chronic back pain. The employment goal he presents to RSA is to work as a long distance truck driver. VR requests that he submit to a medical evaluation to determine if he could physically meet the job requirements of driving a truck. Ted may appeal, but a hearing officer would likely find that this type of evaluation is necessary.

Albert is hearing impaired but his hearing has not been tested in ten years. He wants RSA to provide him with a new hearing aid to help him get a job as a security guard. RSA requires that Albert go to a clinic to get a new audiogram for which RSA will pay. This is probably a necessary evaluation to determine if Albert can benefit from a service by RSA – fitting and purchase of a hearing aid.

Luis is a VR client with the goal of becoming a history teacher. He becomes frustrated with the VR process because it takes so long and he misses registration for the fall semester of college. He gets upset at a VR meeting and leaves before the meeting is over. VR wants Luis to submit to a psychological evaluation now because of his level of frustration and how they think this might affect his abilities to handle the stress of a classroom. The request for a psychological evaluation makes Luis even more upset. The evaluation is probably not necessary under these facts. Luis can “appeal” the decision for the need for the evaluation. If he does not win, he will need to get the evaluation by a qualified evaluator of his choice from the RSA list.

6. Must RSA treat the results of any evaluation done at VR’s request as confidential?

Yes. The results of an evaluation or assessment remain confidential and a part of your VR file. RSA may only use the evaluation results for assessment. The results cannot be provided to other agencies with which you may be working without your written approval. The evaluation cannot be provided to your family members (unless you are a minor and then only to your parent or guardian) or other VR clients. The results of the evaluation should only be given to you and your VR counselor. A common practice of RSA is to have a face-to-face meeting between you, your VR counselor and the evaluator to go over the conclusions and recommendations of the evaluator.

Normally, “current” information is defined as records less than three (3) years old. It is

always best to have the most up-to-date information you have and make it available to RSA. This is especially true if your disability changes or there are new accommodations or assistive devices you are requesting from RSA. If all your medical information is three years old or older, expect RSA to request that you submit to new evaluations. However, in some cases, a disability remains unchanged and is not the type of disability to change. A re-evaluation might not be necessary for eligibility in this case.

Madelon comes prepared to her first appointment at RSA with a letter just written by her psychiatrist. The letter states that she has a Post Traumatic Stress Disorder (PTSD) diagnosis, what her medications are, and what her treatment plan consists of. The letter also contains the psychiatrist's specific recommendations for services RSA should provide Madelon while she attends the community college for the legal assistant program. The psychiatrist recommends that RSA (1) provide Madelon with bus training until she becomes comfortable taking the public bus to and from classes, (2) arrange with the school for Madelon to be able to take exams in a quiet room by herself, and (3) pays for a yoga class for relaxation purposes. This should be sufficient information to find Madelon eligible for VR services.

Jorge sustained a spinal cord injury in a car accident 11 years ago and now uses a wheelchair. When he comes to his appointment with VR, he brings only the hospital records from the time of the accident. His VR counselor believes Jorge should be evaluated by a rehabilitation specialist hoping to learn about what current assistive technology there is to help Jorge use his computer for his studies in business administration. It would benefit Jorge to submit to this evaluation because his documentation is out-dated. However, Jorge does not need a current evaluation if the one issue is eligibility. With a counselor's observation and record of a permanent spinal cord injury, it is clear Jorge has a physical disability.

7. Does RSA have to consider outside evaluation results I may already have had done?

Yes, RSA is required to review and weigh all information you have to show them. If your evaluation is old and your condition, functioning level, or needs have likely changed, RSA may require a more updated evaluation. It is important for you to gather as much information as you can that supports that you have a disability, your ability to benefit from VR services, your choice of an employment goal, and the specific services you desire.

8. Can I receive other VR services during the evaluation process?

This depends on the reason you are being evaluated. If you are obtaining an evaluation to determine if you are eligible for VR, you will not receive other services. If you are obtaining an evaluation to assist in determining whether you should receive a particular service, such as what assistive technology you may need, or what kind of training program would best suit your needs, you should receive other services on your Individual Plan for Employment (I.P.E.).

Vivian has been found eligible for VR services and she is enrolled in college to become an accountant. She finds it difficult to read the notes on the board in class. VR schedules an eye evaluation for her to see if she needs glasses or contacts. During this time, VR continues to support Vivian in college with providing her with assistance in purchasing books and paying her gas mileage to and from school.

9. If I need an accommodation at an evaluation because of my disability, does RSA need to provide it?

Yes. You have the right to ask for and receive an accommodation when submitting to requested evaluations, tests and/or assessments by RSA. You can tell your VR counselor what you need and both of you can arrange for the accommodation, or you can contact the evaluator yourself and request the accommodation. Examples of accommodations during evaluations include but are not limited to:

- ✓ extended time to take the test or evaluation
- ✓ sign language interpreter during evaluation or an evaluator who is fluent in sign language
- ✓ alternative format of the test or evaluation - on audio tape, large print
- ✓ alternative accessible location of the evaluation
- ✓ scheduled breaks during assessment
- ✓ assessment scheduled over several days due to fatigue

If there is an additional cost for providing you an accommodation for this process, RSA or the evaluator is responsible for the cost and not you. RSA and the evaluator should have an agreement that covers who pays for accommodations.

10. What is a trial work period?

Most VR applicants and clients will not be required to do a trial work experience because the regular evaluation is usually sufficient. The trial work experience, however, is used when VR needs to determine if you can benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of your disability. During the trial work experience, RSA must conduct an exploration of your abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not you can benefit from their services. Trial work experiences are to be provided in the most integrated setting possible. If RSA decides you cannot benefit from their services, they must be able to prove it with clear and convincing evidence.

Trial work experiences include:

- ✓ supported employment
- ✓ on-the-job training
- ✓ other experiences using realistic work settings.

11. What is an extended evaluation?

You will only be required to be placed in extended evaluation if you cannot take advantage of trial work experiences or if after trial work experiences, there is not enough information to determine if you are eligible for VR services. If you are in an extended evaluation, the evaluation must be provided in the most integrated setting possible, with your having input as to the content of the setting. During this stage you will, however, only receive services from RSA that are necessary to make the eligibility determination.

Alma wants to become a graphic designer and requests VR services. She has cerebral palsy (CP) and uses a Liberator to communicate. VR is not convinced that Alma can do graphic design work because of the paralysis caused by her CP. For her trial work experience, VR arranges for Alma to go to an architect's office and work as an apprentice. Alma has a great number of computer skills so her limited mobility is not a problem, and she shows VR she has the capabilities to do graphic design work as her employment goal. She is found eligible for VR and services begin.

Shana is moderately mentally retarded. She wants to work in food service in a cafeteria. The first step her VR counselor takes is to place Shana in a sheltered workshop to see if she has good work habits. This is an extended evaluation and should not have been done until there was a trial work experience and, in any case, a trial work experience or extended evaluation should be done in a more integrated placement if possible.

C. Protect Your Rights

For many VR applicants, the process goes smoothly without any problems. However, if any of the following happens to you, you should call CAP for advice or get legal advice from another source:

- ✓ If a VR counselor does not give you a choice in evaluators;
- ✓ If a VR counselor does not provide you with a list of evaluators and information about how to contact the evaluators for additional information;
- ✓ If RSA makes you ineligible without a trial work period or extended evaluation;
- ✓ If RSA does not provide you with an accommodation at an evaluation because of a disability;
- ✓ If you believe a particular evaluation is unnecessary and your VR counselor does not agree with you;
- ✓ If VR refuses a necessary service including assistive technology while in a trial work period or extended evaluation;
- ✓ If RSA provides your extended evaluation in a segregated setting;
- ✓ If RSA provides your trial work experience in a segregated setting;
- ✓ If you disagree with the results of your evaluation;
- ✓ If RSA refuses to make you automatically eligible with proof of SSI/SSDI eligibility (See the Center's guide, *Summary of Vocational Rehabilitation Rights: Eligibility*);
- ✓ If RSA does not keep your evaluation records confidential; or
- ✓ If you have any other problems related to VR evaluations.