



Your Appeal Rights for Disputes Regarding Vocational Rehabilitation Services

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 THE CLIENT ASSISTANCE PROGRAM

1. What is the Client Assistance Program (CAP)?

The Client Assistance Program (CAP) offers help to Vocational Rehabilitation (VR) applicants and clients under the Rehabilitation Act of 1973, as amended. In Arizona, CAP services are provided by the Arizona Center for Disability Law (ACDL).

CAP may provide assistance by:

- informing you of available services under the Rehabilitation Act; advising you about ways to solve problems with your VR Counselor;
- providing training on your rights under the Rehabilitation Act; and
- representing you in negotiations with VR about services, and at *Informal Resolutions/Administrative Reviews, Mediation, and Fair Hearings*.

2. Eligibility for CAP Services

If you are an individual with a disability and an applicant or client for services under the Rehabilitation Act (VR services, Independent Living Services, or services through a VR service provider), you may contact CAP regarding **any** disagreement you have with a decision made by VR that affects your services.

You may contact CAP if you:

- are denied the right to apply for services;
- are found to be not eligible for services;
- disagree with your Individualized Plan for Employment (I.P.E.);
- disagree with VR's decision to close your case; or
- do not understand your rights or the services available to you under the Rehabilitation Act.

B. APPEAL RIGHTS

1. When can I appeal a VR decision?

If you disagree with a decision by VR that affects your VR services, you have the right to appeal the decision.

Common decisions you may disagree with include:

- Not being eligible for VR services;
- Placement into an Order of Selection category;

- Requirement to get a medical, psychological or any other evaluation;
- VR not approving the employment goal you selected for your I.P.E.;
- Denial of a choice of a service provider;
- Refusal to allow you to pursue a self-employment goal;
- Refusal to provide a specific VR service, such as assistive technology;
- Decreasing, suspending, or terminating your VR service;
- Closure of your case; or
- Denial of Post Employment Service (PES)

2. How can I appeal a VR decision?

VR must send you a *written notice* that explains any VR decision affecting your VR service. The *decision letter* must include a *Request for Review of Determination* form. You must submit the formal *Request for Review of Determination* within **15 calendar days** from the date the *written notice* was mailed.

Be aware that if VR fails to provide you a *written notice*, you still have the right to file an appeal. If you do not receive *written notice* from VR, a formal written request, in letter or email form, would also be acceptable to file an appeal.

Formal written requests must include:

- a. the decision or the issue(s) you are appealing;
- b. the reason you are appealing the decision;
- c. client or client representative signature and date; and
- d. indication of the process you want to use to resolve the decision or issue(s) through *Informal Resolution (Administrative Review)*, *Mediation*, or *Fair Hearing*.

3. What is a *Written Notice*?

A letter or other written document that VR must provide to a client when there is a change to a service being provided, a denial of a service, or a plan to close a case. The *written notice* will contain information of client rights and appeals options.

VR must provide you with a *written notice* when VR:

- makes an eligibility decision;
- denies a service;
- intends to reduce, suspend, or terminate VR services; or
- intends to close your case.

The *written notice* must contain the following information:

- the decision;
- the reason(s) for the decision;
- notice about your appeal rights; and

- o a description-of services available through CAP.

VR must provide the necessary appropriate modes of communication to accommodate for your disability, such as American Sign Language or an electronic/audible copy of the notice. If your VR Counselor fails to give you *written notice*, you can request a *written notice* using the form in **Appendix A-1** of this guide.

4. Can VR lawfully stop or decrease my VR services while I am appealing a VR decision?

VR cannot legally stop or decrease your VR services while you are appealing a VR decision.

C. PROCEDURE FOR APPEALS

1. What should I expect when VR decides to close my case?

The VR must take the following actions **before** closing your case:

- a. First, VR must consult you or your representative about the decision;
- b. Second, VR must provide you with *written notice* or other necessary appropriate modes of communication about the decision.

Sometimes cases are closed because clients are determined to be incapable of achieving an employment outcome due to the significance of his/her disability. You have the right to appeal this decision. You or your representative may also request that VR review the decision within 12 months, and annually thereafter. You should be prepared to provide documentation to VR that your disability has changed and that you are now capable of achieving an employment outcome.

2. How do I decide which informal/formal appeal process to request?

In your *Request for Review of Determination*, you have the option of appealing a VR decision through several informal and formal actions.

We recommend requesting the informal processes in the following order:

- a. *Informal Resolution* or also *Administrative Review*
- b. *Mediation*

If the informal process does not provide you with the outcome you want, you may then request a formal appeal in a *Fair Hearing*. In most cases, it is best to start with the informal processes, and request a *Fair Hearing* only **after** exhausting all informal actions.

3. Can I have a representative during appeal processes?

You have the right to use a parent, family member, guardian, or advocate as your representative

during any of the appeal processes, except during a lawsuit. During a lawsuit, your representative must be an attorney.

D. INFORMAL RESOLUTION

1. What is an *Informal Resolution*?

During an *Informal Resolution* (Administrative Review), VR will review the disagreement by having you or your representative meet with the VR Counselor's supervisor, and/or have the Program Manager try to resolve the issue.

2. How can I request an *Informal Resolution*?

If you wish to request an *Informal Resolution*, you must submit a *Request for Review of Determination* to the VR, and indicate the following:

- a. the decision you are appealing;
- b. the reason you disagree with the decision; and
- c. your choice to resolve the issue through *Informal Resolution*.

You have **15 calendar days** from the mailing date of the *written notice* from VR to request an *Informal Resolution/Administrative Review*.

3. What should I do after an *Informal Resolution*?

If your issue is resolved after the *Informal Resolution*, make sure any changes are added to your I.P.E. If you are not satisfied with the results of the *Informal Resolution*, you still have the right to a higher appeal. The results of the *Informal Resolution* will be given to you in writing and include another *Request for Review of Determination*. We recommend you proceed with a request for a *Mediation*.

E. MEDIATION

1. What is *Mediation*?

Mediation is a voluntary alternative for resolving disputes with VR. Both parties must agree to a *Mediation* in order for a *Mediation* conference to take place.

Mediation involves meeting with VR and an impartial and qualified mediator to try to resolve the dispute. The mediator is not an employee of VR. The mediator will help facilitate the meeting and help both parties consider solutions to resolve the disagreement, but the mediator does **not** make decisions for VR.

The *Mediation* must be scheduled in a timely manner and in a location that is convenient to you and/or your representative and the VR representative who will be attending. Discussions occurring and information provided during a mediation conference cannot be used as evidence in any subsequent due process hearing or civil proceeding. VR must pay for all fees relating to the *Mediation*.

2. How do I request a *Mediation*?

If you wish to request a *mediation*, you must submit a *Request for Review of Determination* to the VR, and indicate the following:

- a. the decision you are appealing;
- b. the reason you disagree with the decision; and
- c. your choice to resolve the issue through *Mediation*.

You have **15 calendar days** from the mailing date of the *written notice* from VR to request a *Mediation*.

3. What should I do after a *Mediation*?

If the parties (you and the VR representative) reach an agreement during the *Mediation*, the mediator will prepare a written mediation agreement for both parties to sign. A copy of the mediation agreement must be provided to both VR and you. Your VR case will be updated with the terms of agreement of the *Mediation* in the I.P.E.

If you did not reach an agreement with VR, you can proceed with a request for a *Fair Hearing*.

F. FAIR HEARING

1. What is a *Fair Hearing*?

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

2. How do I request a *Fair Hearing*?

If you wish to request a *Fair Hearing*, you must submit a *Request for Review of Determination* to the VR, and indicate the following:

- a. the decision you are appealing;
- b. the reason you disagree with the decision; and
- c. your choice to resolve the issue through a *fair hearing*.

You have **15 calendar days** from the mailing date of the *written notice* from VR to request a

Fair Hearing.

3. How do I prepare for a *Fair Hearing*?

I. Obtaining VR File Records and Documents

You are allowed to review, obtain, or copy any information in your VR file. If you are denied a copy of any specific information that is in your file, you or your representative may submit a written request to the hearing officer, requesting a copy of any specific records. However, some information, such as the results of a psychiatric evaluation, are not always provided to the client.

The written request for records and documents must include:

- a detailed description of the documents you want; and
- the name of the person and address of who is holding the documents.

II. Bringing and Preparing Witnesses

You can submit a written request (subpoena) to a hearing officer to require a witness to appear and provide testimony at the *Fair Hearing*.

The written request for witnesses must include:

- the name and address of the witness; and
- the information about what the witness will testify.

The hearing officer has the authority to exclude witnesses during the hearing. If you have several witnesses, the hearing officer can require them to sit outside the hearing room until after they have testified. This is to make sure that witnesses do not change their testimony to make their testimony the same as other witnesses. If the hearing officer does rule to exclude witnesses in the hearing room, the rule will also apply to the other party.

However, VR will be allowed to have one representative in the hearing room to help with the case. This is generally the VR Ombudsman. However, VR can only have one such representative and the others should remain outside the hearing room until their turn to testify. If VR does not follow this rule, you can ask the hearing officer to require VR's other witnesses to leave the hearing room. You should make this request at the beginning of the hearing, before a VR witness enters the hearing room.

4. What should I do after a *Fair Hearing*?

Federal regulation requires the hearing officer to provide you and VR with a full written report of the decision, findings and the reasons for the decision within **30 calendar days** from the date of the completion of the hearing.

The hearing officer's decision will become the final decision of VR if neither party asks for a review of the decision by a *State Reviewing Official*. Either party may appeal the hearing

officer's decision, and request for a review by a *State Reviewing Official*.

G. STATE REVIEWING OFFICIAL

1. What is a review by a *State Reviewing Official*?

If you appeal the *Fair Hearing* decision, a *State Reviewing Official* from the Arizona Department of Economic Security will conduct a review of the hearing judge/officer's decision. The *State Reviewing Official* must provide both you and VR with an opportunity to submit additional evidence and information to make a final decision. However, the *State Reviewing Official* is not required to conduct a hearing with additional witnesses.

2. How do I request a review by a *State Reviewing Official*?

The form letter for requesting a review by a *State Reviewing Official* is in **Appendix form A-2** in this guide. You must send the letter to request the appeal within **20 calendar days** from the *Fair Hearing* decision. The request must be made to the Director of Arizona Department of Economic Security, office of appeals.

3. What should I do after a review by a *State Reviewing Official*?

The *Fair Hearing* decision can be changed if the *State Reviewing Official* concludes that there is clear and convincing evidence that the hearing officer's decision was not based on state law, federal law and/or Arizona's state plan. The decision by the *State Reviewing Official* must be made within **30 calendar days** of receipt of the request for a review of the *Fair Hearing* decision.

If you are dissatisfied with the final decision of the *State Reviewing Official*, you can file a lawsuit in state or federal court.

H. LAWSUIT

1. How do I appeal the *State Reviewing Official's* decision?

If you wish to appeal the *State Reviewing Official's* final decision, you should seek immediate legal advice within **35 calendar days** from the date you were mailed the final agency decision. We advise you to seek legal advice as soon as possible.

2. Can the court change the final decision of the *State Reviewing Official*?

The court will review the records of the *Fair Hearing* and any new records provided to the *State Reviewing Official*. The court will also hear additional evidence at the request of the parties. After reviewing all of this information, the court has the authority to make a decision that the

court feels is appropriate based on the laws related to your case. The court will make a decision based on proof by a preponderance of the evidence, meaning that more than 50% of the evidence has to point towards their decision.

3. Can I file a lawsuit against VR without first going to a *Fair Hearing*?

If you have a disagreement regarding your VR services, then you must appeal VR's decision in a *Fair Hearing* before you can file a lawsuit.

However, if you had a claim against a VR Counselor or other state employee for some conduct or action that was not about your VR services (i.e. sexual harassment), you may be able to file a lawsuit without first going to a *Fair Hearing*.

If you have a **state claim** against VR or a VR employee, then you generally have one year to bring a claim against a state employee or state agency. Additionally, you must first file a notice of claim with the state agency within 180 days from the date your claim arises. A copy of the state law which explains the requirements of the notice of claim is in **Appendix A-4** of this guide.

If you have a **federal claim** against VR or a VR employee, this claim procedure may not apply, but you will have other deadlines.

I. HOW CAP CAN HELP YOU WITH YOUR APPEAL

CAP provides a variety of legal and advocacy services, including training, information and referral, advice, and in selected cases representation in negotiations, and administrative appeal procedures.

Here are some examples of issues in which CAP may assist you with your appeal:

- You were denied eligibility for VR services because VR says you cannot benefit from VR services.
- You were denied VR services necessary to achieve a goal consistent with your abilities and interests.
- You disagree with a denial of a specific service and need more information about whether VR is required to provide the service.
- You were not provided *written notice* regarding a decision.
- You were not provided *written notice* containing all of the necessary information.
- Your VR services were reduced, suspended or terminated even though you filed an appeal.
- You were denied an accommodation that you needed to be able to participate in an *Informal Resolution, Mediation, or Fair Hearing*.
- Your *Informal Resolution, Mediation, or Fair Hearing* was not provided in a location

accessible to you.

Here is a list of general advice to help you with any appeal process:

- Have all requests for appeals, hearings, etc. in writing.
- Date and keep a signed copy of all written requests.
- Send all requests by certified mail.
- Keep your address and telephone number up to date with all agencies.
- Be aware of all deadlines.

If you have any questions regarding any of the appeal processes, and/or if you would like to determine if CAP could assist you, please contact our intake line during the following hours:

Monday, Tuesday, Thursday and Friday, between 9:00 am to 1:00pm.

J. GLOSSARY OF TERMS

Comparable Benefits: alternative services or benefits that are provided or paid for by agencies other than VR, or health insurance, or employee benefits.

Evaluation: In the limited circumstances where an individual cannot participate in a *trial work experience* (See Trial Work Experience), VR 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.

Economic Need: A process that determines whether the client will contribute to the cost of the client's VR services.

Fair Hearing: A formal hearing conducted by an administrative law judge (or hearing officer) to hear and decide disputes between the VR and clients/applicants.

Hearing Officer: An administrative law judge that works for the Arizona Department of Economic Security Office of Appeals who will conduct the *Fair Hearing* and make a decision after the *Fair Hearing*.

Individualized Plan for Employment (I.P.E.): A document that is agreed upon by the client and the VR Counselor, which states the client's employment goal and what services VR will provide the client to reach that goal. For more information about an I.P.E., see the Center's guide, *A Summary of Your Vocational Rehabilitation Rights: Individualized Plan for*

Employment.

Informal Resolution: An informal way to try and solve disagreements about your vocational rehabilitation services. The review is conducted by a supervisor or program manager that is not directly responsible for the work of your VR Counselor or his/her supervisor. A written decision is made following the *Informal Resolution*, also known as an *Administrative Review*.

Mediation: An informal way to try and resolve a dispute about your VR services. 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 can satisfy both parties. If the *Mediation* is successful, a *Mediation* agreement is written.

Ombudsman: A VR staff member whose duties include assisting the applicant, or client-and VR in investigating and addressing complaints. The Ombudsman guides the client and agency through the complaint resolution process.

Personal Assistance Services: 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 first passed in 1973. The purpose of the law is to provide training and services to help people with disabilities 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. The latest amendment to the Rehabilitation Act is known as the Workforce Innovation and Opportunity Act (WIOA). For more information about the specific rights of clients and applicants, see the Center's guide, *A Summary of Your Vocational Rehabilitation Rights*.

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 refer to the same state agency. (VR will be used in this guide.)

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 VR.

Request for Review of Determination: A form provided to the client, or their representative, which serves as a *written notice* of appeal rights regarding decisions made by VR.

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.

Transition Services: 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 VR is a partner where appropriate. For more information about the rights of students with disabilities for transition planning and 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 *trail work experience* for the client. This is a written plan to explore the client's abilities, capabilities, and capacity to perform in a realistic work situation. This can include supported employment, on-the-job training, and experiences using realistic work settings. The experience must fit the client's abilities, and accommodate his/her needs. The outcome of the experience is to either provide evidence that the client can or cannot benefit from VR services to achieve an employment outcome with respect to the client'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. For more information about the type of services that may be available to VR clients and applicants, see the Center's guide, *A Summary of Your Vocational Rehabilitation Rights: VR Services*.

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 VR must provide to a client when VR makes a change to a client's service, denies a service, or plans to close a case. The *written notice* will contain information of client rights and appeals options.

K. ACRONYMS

AT:	Assistive Technology
ADA:	The Americans with Disabilities Act
CAP:	Client Assistance Program
IDEA:	Individuals with Disabilities Education Act
ILRS:	Independent Living Rehabilitation Services
IPE:	Individualized Plan for Employment (formerly known as IWRP: Individualized Written Rehabilitation Plan)
VR:	Rehabilitation Services Administration
SSDI:	Social Security Disability Insurance
SSI:	Supplemental Security Income
TWWIIA:	Ticket to Work and Work Incentives Improvement Act
VR:	Vocational Rehabilitation
WIOA:	Workforce Innovation and Opportunity Act

L. APPENDIX

**Appendix A-1: Form Letter Requesting Written Notice About A VR
Counselor's Decision**

[Date]

(Name of Vocational Rehabilitation Counselor)
DES Rehabilitation Services Administration

Re: Request for Written Notice

Dear Mr./Ms. _____:

On _____ you told me that you had made the following decision about my VR services: (e.g. close my case, not provide a specific service, refuse to open a VR case, refuse to provide a Post Employment Service, reduce a maintenance payment, not provide maintenance, etc.). However, you did not provide me with written notice regarding the decision. Please provide me with written notice about this decision as required by 34 C.F.R. § 361.43, including information about the decision, the basis for the decision and information about my appeal rights.

Please provide the written notice by _____.

Sincerely,

Client or Applicant's Name
Address
Telephone Number

Appendix A-2: Form Letter Requesting Review By *State Reviewing Official*

[Date]

Office of the Director
Arizona Department of Economic Security
1717 West Jefferson (if hand-delivered)
P.O. Box 6123
Phoenix, AZ 85005

Re: Request for Review of Hearing Officer Decision by *State reviewing official*
DES Appeal No. _____
(Rehabilitation Services Administration)

Dear Mr./Ms. _____:

I am a client/applicant of Rehabilitation Services Administration. I went to a *fair hearing* to appeal the following action that was taken about my case: _____
(e.g. close my case, discontinue, reduce or suspend a vocational rehabilitation service, deny eligibility for services). The hearing officer reached a decision on _____. Please consider this a request for an administrative review of that decision by the chief official of the designated state agency pursuant to 34 C.F.R. § 361.57 (g).

Sincerely,

Client or Applicant's Name
Address
Telephone Number

cc: Arizona Department of Economic Security
Office of Appeals

(Hearing officer assigned to appeal)

Appendix A-3: Contact Information for RSA Administration Office and Legal Resources

RSA CONTACT INFORMATION

RSA Administration Office

1789 W. Jefferson 2 NW
Phoenix, AZ 85007
Phone: 602 542-3332

RSA Ombudsman

Mark Kendall, M.Ed. CRC

ATTORNEYS / LEGAL HELP REFERRAL

State Bar of Arizona (Attorney Referral)

(602) 252-4804 Local
(866) 482-9227 Toll Free
(602) 271-4930 FX
<http://www.azbar.org>

Lawyer Referral Service

(602) 257-4433 Maricopa County Bar Assn.
(520) 623-4625 Pima County Bar Assn.
\$40 for 30 minute legal consult (no fee for personal injury/workers comp cases)
Hours: M-F 8:30AM-5PM

Community Legal Services

(602) 258-3434 Phx PH
(800) 852-9075 Phx Toll Free
Serving Maricopa, Mohave, LaPaz, Yavapai & Yuma Counties
Volunteer Lawyers Program
<http://www.clsaz.org>
<http://www.clsaz.org/site/what-we-do/legal-practice-areas>

Southern Arizona Legal Aid

(800) 640-9465 Toll Free
For New Applicants: (520) 623-9461 or
(800) 248-6789 Toll Free
Serving Pima, Pinal, Santa Cruz, Cochise, Granham, Greenlee, Apache, Gila, Navajo Counties
<http://www.sazlegalaid.org>
<http://www.sazlegalaid.org/services.html>

Arizona Legal Help Center

(866) 757-6949
<http://arizonalegalhelpcenter.com>

AZ Law Help
(866) 637-5341
<http://www.azlawhelp.org/index.cfm>

U.S. Armed Forces Legal Assistance Center
<http://legalassistance.law.af.mil/index.php>

LAWS and LAW LIBRARIES

Arizona Secretary of State's Office
(602) 542-4285
http://www.azsos.gov/public_services/table_of_contents.htm

US Government Publishing Office – Code of Federal Regulations
National Archives and Records Administration
(866) 512-1800 Toll Free

US Government Publishing Office (202) 512-1800
<http://www.gpoaccess.gov/CFR/>

US Government Publishing Office – United States Code
National Archives and Records Administration
<http://www.gpoaccess.gov/uscode/>

Maricopa County Superior Court Self-Service Center
(602) 506-7353
<http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter/index.asp>

Appendix A-4: Notice of Claim Statute

A.R.S. 12-821.01

All actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward.

A. Persons who have claims against a public entity or a public employee shall file claims with the person or persons authorized to accept service for the public entity or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues. The claim shall contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Any claim which is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon.

B. For purposes of this section, a cause of action accrues when the damaged party realizes he or she has been damaged and knows or reasonably should know the cause, source, act, event, instrumentality or condition, which caused or contributed to the damage.

C. Notwithstanding subsection A, any claim which must be submitted to a binding or non-binding dispute resolution process or an administrative claims process or review process pursuant to a statute, ordinance, resolution, administrative or governmental rule or regulation, or contractual term shall not accrue for the purposes of this section until all such procedures, processes or remedies have been exhausted. The time in which to give notice of a potential claim and to sue on the claim shall run from the date on which a final decision or notice of disposition is issued in an alternative dispute resolution procedure, administrative claim or review process. This provision shall not be construed to prevent the parties to any contract from agreeing to extend the time for filing such notice of claim.

D. Notwithstanding subsection A, a minor or an insane or incompetent person may file a claim within one hundred eighty days after the disability ceases.

E. A claim against a public entity or public employee filed pursuant to this section is deemed denied sixty days after the filing of the claim unless the claimant is advised of the denial in writing before the expiration of sixty days.

F. This section shall apply to all causes of action that accrue on or after July 17, 1994

G. If a genuine issue of material fact exists as to whether the requirements of this section have been complied with, the issue shall be resolved before a trial on the merits and at the

earliest possible time.

H. This section does not apply to any claim for just compensation pursuant to chapter 8, article 2.1 of this title.

Appendix A-5: VR's Request for Review of Determination Form

Any applicant or eligible individual may request a timely review of any decision that affects the provision of services. If you have any questions about the decision, you should contact your counselor. If you are not comfortable with contacting your counselor, you may contact their supervisor or the RSA Ombudsman.

- If you are satisfied with the decision made by RSA staff, no further action is required.
- If you are not satisfied with a decision you must inform RSA staff within 15 calendar days, complete, and submit this form.

The completed form can be sent to:

- Your Counselor _____;
- Office Supervisor _____;
- RSA District Staff _____; or
- RSA Ombudsman _____

I, _____, disagree with the RSA decision regarding my case. I am appealing this decision.

I am appealing the following decision:

I disagree with this decision because:

I can be contacted at the following contact information regarding this request:

Phone:

Alternate Phone:

Email:

Address:

Indicate how you want to resolve this issue by providing your initial next to your choice of the following processes:

Process 1

Informal Resolution/Administrative Review

I agree to extend the 60 day timeframe for a Formal Due Process Hearing in order to resolve this review informally.

- I understand a supervisor or program manager will review the decision and my appeal and make decision.
- I understand I continue to have the right to Mediation and a Formal Due Process Hearing if I am not satisfied with the results of this Informal Resolution/Administrative Review.

Process 2

Mediation

I agree to extend the 60 day timeframe for a Formal Due Process Hearing in order to resolve this review informally.

- I understand an impartial mediator will meet with me, any representatives I choose to have present, RSA staff who made the decision, and the RSA Ombudsman.
- I understand I continue to have the right to Mediation and a Formal Due Process Hearing if I am not satisfied with the results of this Informal Resolution/Administrative Review.

Process 3

Formal Due Process Hearing with an impartial Hearing Officer

Client Signature:

Date:

The applicant or eligible individuals (or, if appropriate, the individual's representative) may request clarification or explanation of any of the above information.

- You may ask someone to help you complete this request.
- You may also request the information be provided in an alternate format if needed.

For Office Use Only

For a mediation request, the counselor or designated RSA staff must agree to participate and complete the following information.

I agree to participate in mediation

I do not wish to participate in mediation

Counselor/RSA staff Signature:

Date:

Information Regarding Requests for Review of Counselor Determination

1. The applicant or eligible individuals (or, if appropriate, the individual's representative) must be informed about the availability of the Client Assistance Program (CAP) and provided with a brochure.
2. Any applicant or eligible individual who is not satisfied with any decision that affects the provision of services, that was made by RSA staff, may request (or, if appropriate, may request through the individual's representative) a timely review of that decision.
 - Timely means that a formal request for review of a counselor decision must be made by the client with 15 calendar days of the final counselor decision.
 - The final decision date is indicated by the official notification to the client of decision.
3. Any applicant or eligible individual has the option to informally resolve the issue with a supervisor or manager; and/or use an impartial mediator before have a formal Due Process Hearing.
4. Use of an Informal Review/Administrative Review will not delay the individual's access to a formal Due Process hearing. A hearing by an impartial hearing officer will be held within 60 days of this request for review, unless an informal resolution or mediation agreement is achieved prior to the 60th day or the individual agrees to a specific extension of time.
5. RSA will not suspend, reduce, or terminate the disputed services already being provided under an IPE/ILP before there is a final determination of the review.
 - The individual may request to suspend, reduce, or terminate services at any time.
 - RSA may suspend, reduce, or terminate services at any time if RSA has evidence that the disputed services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the individual's part.
6. The applicant or eligible individual (or, if appropriate, the individual's representative) may be present at any meetings to resolve the issue which includes mediation sessions, informal review, and formal hearings.
7. If the individual chooses mediation, the individual has the right to review and approve the mediator who is assigned and request an alternate if they do not agree with the assigned mediator.
8. In the event of a formal Due Process Hearing, the applicant or eligible individuals (or, if appropriate, the individual's representative) may:
 - Present additional evidence, information or witnesses to an impartial hearing officer;
 - Be represented by counsel or other appropriate advocate; and
 - Examine all witnesses and other relevant sources of information and evidence.
9. The hearing officer who conducts the formal Due Process Hearing will be selected on a random basis from among a pool of persons qualified to be an Impartial Hearing Officer.