

DISABILITY RIGHTS NEW JERSEY

ADVANCING JUSTICE. ADVOCATING INCLUSION.

GWEN ORLOWSKI, EXECUTIVE DIRECTOR

March 20, 2026

Dr. Felicia Hopson
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Dr. Bernice Davis
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Via electronic mail

Dear Dr. Felicia Hopson and Dr. Bernice Davis:

Please allow this letter to follow-up on an issue Disability Rights New Jersey raised in our SRC reports to both the Division of Vocational Rehabilitation Services (DVRS) and the Commission for the Blind and Visually Impaired (CBVI), namely the issue of a significant discrepancy in the treatment of Initial Agency Decisions and Final Agency Decisions by both agencies. We believe this discrepancy has resulted from the confusion surrounding the expiration of the previous regulations governing Final Agency Decisions. We ask that DVRS and CBVI align their regulations and internal policies so that clients of both agencies have access to a clear appeals process that aligns with federal law. This letter first describes the relevant law, then summarizes two cases illustrating the effects of this issue. It concludes by providing a proposed resolution of this issue.

I. Relevant Law

A state's appeal process for its vocational rehabilitation services is governed by 34 C.F.R. § 361.57. This regulation requires that states establish processes for appeal of vocational rehabilitation services decisions. Two of these processes, mediation and impartial due process hearings, are mandatory; a state may choose whether it adopts an informal review process.¹

34 C.F.R. § 361.57(e) establishes the mandatory requirements for formal hearings on vocational rehabilitation services. The hearing must be conducted by an impartial hearing officer, who must issue a decision within 30 days.²

¹ 34 C.F.R. § 361.57 (c)-(e).

² 34 C.F.R. § 361.57(e)(3)(ii).

NEW JERSEY'S DESIGNATED PROTECTION AND ADVOCACY AGENCY.

Disability Rights NJ's concern arises from the following portion of the federal regulation, which governs the finality of the hearing officer's decision:

"The hearing officer's decision is final, except that a party may request an impartial review under paragraph (g)(1) of this section *if the State has established procedures for that review* [emphasis added], and a party involved in a hearing may bring a civil action under paragraph (i) of this section."³

Disability Rights NJ reads this federal regulation as specifying that a party may request an impartial review of the hearing officer's decision only if the state establishes such procedures. If the state has not established procedures for the impartial review via regulation, the decision of the impartial hearing officer is final, and a party's only appeal right is through civil action.⁴

For many years, both of New Jersey's vocational rehabilitation services agencies had an impartial review process of initial decisions established by regulation at N.J.A.C. 1:12C-18.2 (attached). The regulation provided that after the initial decision, "either party may request a review by the Commissioner [of the Department of Labor] within 20 days of its mailing to the applicant and to [the Director of the relevant VR agency]."⁵ If neither party requested a review within 20 days, the initial decision of the administrative law judge would "be deemed final."⁶ The regulation also provided that both parties would have "the opportunity to submit additional information relevant to a final review within 15 days of receipt of the request for review."⁷ The regulations further provided that the Commissioner apply a clear and convincing evidence standard in evaluating whether the initial decision was "clearly erroneous on the basis that it is contrary to the approved State Plan, the Workforce Investment Act..., Federal regulations implementing the Act, or State rules or policies that are consistent with federal requirements," and that the final decision be issued "no later than 30 days from receipt of the request for review."⁸

However, N.J.A.C. 1:12C-18.2 expired on March 17, 2008, and was not replaced. Per 34 C.F.R. § 361.57(e)(4), both DVRS and CBVI, as well as the Office of Administrative Law, should have defaulted to treating the ALJ's decision in impartial fair hearings as the final decision. However, this did not occur, resulting in confusion for vocational rehabilitation services participants for both agencies.

Two cases brought by Disability Rights NJ clients illustrate the effects of the confusion resulting from the expiration of N.J.A.C. 1:12C-18.2: the case of J.D., a CBVI client, and R.A., a DVRS client.

³ 34 C.F.R. § 361.57(e)(4).

⁴ Id.

⁵ N.J.A.C. 1:12C-18.2(a) (expired March 17, 2008).

⁶ Id.

⁷ N.J.A.C. 1:12C-18.2(b) (expired March 17, 2008).

⁸ N.J.A.C. 1:12C-18.2(c) and (d)(expired March 17, 2008).

II. J.D.

J.D. is a man with a degenerative vision disability who applied for and was approved for financial assistance toward the cost of his college education by CBVI.⁹ In 2019, a dispute arose between J.D. and CBVI when CBVI refused to pay a campus fee for J.D.¹⁰

At hearing, J.D. maintained that under the federal regulations, the A.L.J.'s decision should be treated as the final decision.¹¹ CBVI, in contrast, argued that the A.L.J.'s decision should be treated as an initial decision, providing the parties with the option to request review by the Commissioner.¹² Acknowledging the expired regulation at N.J.A.C. 1:12C-18.2 and analyzing both 34 C.F.R. § 361.57(e)(4) and the New Jersey Administrative Procedures Act, the ALJ nonetheless determined that the OAL was authorized to issue an initial decision, which could be reviewed by the Commissioner on the request of either party.¹³

Prior to the entry of a Final Agency Decision, the parties discovered that J.D.'s college had paid the fee using CARES Act funds. As the underlying issue was moot, the parties entered into a settlement, and the issue of whether the Initial Agency Decision should have been considered a Final Agency Decision was not considered by a higher court.

Notably, CBVI's Vocational Rehabilitation Services Handbook does not include any information regarding the treatment of a Final Agency Decision.¹⁴ However, CBVI maintains a short list of Final Agency Decisions on its website, all three of which reflect a two-step process in which the Commissioner of CBVI reviews the ALJ decision.¹⁵

III. R.A.

R.A. is a man with multiple disabilities who began receiving services from DVRS on March 9, 2022.¹⁶ On February 23, 2023, DVRS denied R.A.'s request to pay for the auditing of classes

⁹ Initial Decision, *J.D. v. New Jersey Commission for the Blind and Visually Impaired*, OAL Dkt. No. HCB 15347-19, May 1, 2020, at 2. *See attached*.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 14-15.

¹² *Id.* at 15.

¹³ *Id.* at 18.

¹⁴ NEW JERSEY COMMISSION FOR THE BLIND & VISUALLY IMPAIRED, VOCATIONAL REHABILITATION SERVICES HANDBOOK, June 2020, available at <https://www.nj.gov/humanservices/cbvi/publications/vocbook/Attachment%204%20-%20VR%20Handbook%20-%20June%202020%20PDF.pdf> (last accessed February 25, 2026).

¹⁵ *CBVI Final Agency Decisions*, NEW JERSEY COMMISSION FOR THE BLIND & VISUALLY IMPAIRED, <https://www.nj.gov/humanservices/cbvi/info/> (last accessed February 25, 2026).

¹⁶ Initial Decision Granting Summary Decision, *R.A. v. New Jersey Division of Vocational Rehabilitation Services*, New Jersey Department of Labor and Workforce Development, OAL Dkt No. LVR 08026-23, November 18, 2024, at 2. *See attached*.

through his university as part of a program called “InclusiveU.”¹⁷ Represented by Disability Rights NJ, R.A. filed for a Fair Hearing, and DVRS transmitted the case to the OAL on August 21, 2023.¹⁸ DVRS filed for summary decision on April 24, 2024, and after motion practice and oral argument, the Administrative Law Judge granted DVRS’s motion for summary decision in its November 18, 2024, decision, which it termed an Initial Agency Decision.¹⁹ Citing expired N.J.A.C. 1:12C-18.2(a), the Initial Agency Decision further provided that the Director of the Division of Vocational Rehabilitation Services was “authorized to make a final decision in this matter,” and that if the Director did not elect to review the initial decision within “twenty days of the date of the mailing of the decision,” the recommended decision would become a final decision.²⁰

Thirteen days after the initial decision, R.A., through Disability Rights NJ, filed exceptions and a request that the Director review the decision; however, the Director issued a Final Agency Decision upholding the Initial Agency Decision before receiving R.A.’s request.²¹ On December 19, 2024, the Director of DVRS issued a letter in which she announced that she was rescinding her decision and the Initial Agency Decision was the Final Agency Decision.²²

Through Disability Rights NJ, R.A. appealed to the Superior Court, Appellate Division on December 30, 2024. On February 7, 2025, the Appellate Division requested that the parties provide their positions as to whether the court had jurisdiction of the appeal.²³ Disability Rights NJ provided a letter to the court on February 21, 2025, and the Attorney General, representing DVRS, filed a letter on February 27, 2025.²⁴

Relying on the federal regulation, the Attorney General’s letter acknowledged the existence of expired N.J.A.C. 1:12C-18.2(a), but stated that the court did not have jurisdiction under 34 C.F.R. 361.57(g).²⁵ However, before the court could make a determination as to the jurisdiction issue, R.A. decided he was no longer interested in pursuing the appeal, and through Disability Rights NJ, withdrew the case.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 6.

²⁰ The ALJ’s interpretation of expired N.J.A.C. 1:12C-18.2(a) was incorrect; as noted previously, expired N.J.A.C. 1:12C-18.2(a) permits twenty days for the parties to request that the Director review the Initial Agency Decision.

²¹ February 27, 2025 Letter to the Court, New Jersey Attorney General, R.A. v. New Jersey Division of Vocational Rehabilitation Services, Docket No. A-1222-24T4 at 4. *See attached.*

²² Id.

²³ Id. at 1.

²⁴ See generally February 27, 2025 Letter to the Court, New Jersey Attorney General, R.A. v. New Jersey Division of Vocational Rehabilitation Services, Docket No. A-1222-24T4.

²⁵ Id. at

Significantly, the DVRS Case Services Policy Manual describes a two-step hearing process in which the ALJ's decision at an impartial fair hearing serves as the initial decision and may be reviewed by the Commissioner of the Department of Labor and Workforce Development.²⁶

IV. Proposed Resolution

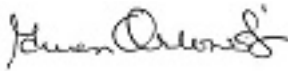
As evident from the cases of J.D. and R.A., the expired regulation on Final Agency Decision has created substantial confusion for clients of both agencies, administrative law judges, and even the Appellate Division. Disability Rights NJ therefore requests that DVRS and CBVI align their policies with the relevant law and issue new regulations and policy guidance explaining the appeals process, including the treatment of Final Agency Decisions.

Disability Rights NJ does not have a strong preference as to whether DVRS and CBVI choose to enact regulations creating a 2-step process as in expired N.J.A.C. 1:12C-18.2(a), or a one-step process in which an OAL decision from an impartial fair hearing serves as the final decision; the agency does not have enough data to determine which option would best serve the clients of both agencies, as well as the agencies themselves. Rather, Disability Rights NJ solely requests that the policies of both agencies be aligned and also be clearly communicated to stakeholders through regulations and relevant guidance.

Thank you for the opportunity to explain this issue and provide feedback. Please do not hesitate to reach out to me if you have any questions or would like to discuss further.

Very truly yours,

Disability Rights New Jersey

By: 

Gwen Orlowski
Executive Director

Attached:

N.J.A.C. 1:12C-18.2 (expired March 17, 2008).

Initial Decision, J.D. v. New Jersey Commission for the Blind and Visually Impaired, OAL Dkt. No. HCB 15347-19, May 1, 2020.

²⁶ NEW JERSEY DIVISION OF VOCATIONAL REHABILITATION SERVICES, CASE SERVICES POLICY MANUAL, June 17, 2021, at 15.

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Initial Decision Granting Summary Decision, R.A. v. New Jersey Division of Vocational Rehabilitation Services, New Jersey Department of Labor and Workforce Development, OAL Dkt No. LVR 08026-23, November 18, 2024.

February 27, 2025, Letter to the Court, New Jersey Attorney General, R.A. v. New Jersey Division of Vocational Rehabilitation Services, Docket No. A-1222-24T4.