

2024

NAVIGATING YOUR RIGHTS TO VOCATIONAL REHABILITATION SERVICES

A Self-Advocacy Guide



**DISABILITY
RIGHTS**
NEW JERSEY

ADVANCING JUSTICE. ADVOCATING INCLUSION.

photo credit: Michael Mielcarz

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ABOUT

DISABILITY RIGHTS NEW JERSEY

Disability Rights NJ is the federally-funded, non-profit organization designated since 1994 to serve as New Jersey's protection and advocacy system for individuals with disabilities. This was granted pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, the Protection and Advocacy of Individuals with Mental Illness Act, the Protection and Advocacy for Individuals with Traumatic Brain Injuries Act, the Protection and Advocacy for the Beneficiaries of Social Security, The Protection and Advocacy for Voters Access, the Protection and Advocacy of Individual Rights, the Protection and Advocacy for Assistive Technology, and the Vocational Rehabilitation Act, where we serve as the Client Assistance Program (CAP) for Vocational Rehabilitation clients. Disability Rights NJ's mission is to advocate for and advance the human, civil and legal rights of residents of New Jersey with disabilities.

CAP is a federally funded program designed to assist individuals seeking or receiving Vocational Rehabilitation (VR) services who need assistance. If you have questions or concerns about your rights to VR services, or you disagree with VR service decisions, you may contact Disability Rights NJ.



photo credit: Michael Mielcarz

THIS ADVOCACY GUIDE IS DESIGNED TO HELP YOU UNDERSTAND YOUR RIGHTS TO VR SERVICES, AND TO WALK YOU THROUGH HOW TO REQUEST SERVICES, INCLUDING SPONSORSHIP FOR TUITION OR POST-SECONDARY TRAINING.

Photos included are stock photography unless otherwise noted.

FUNDING SOURCES

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YOUR RIGHTS TO VR SERVICES

Individuals with disabilities have a federal right to receive VR services. There are two statutes that govern these rights, the Rehabilitation Act of 1973, and the Workforce Innovation Opportunity Act (“WIOA”).

The Rehabilitation Act of 1973 was the first law that provided equal access to certain Federal services for individuals with disabilities, seeking to remove architectural, employment and transportation barriers. The Rehabilitation Act of 1973, as Amended (**Rehab Act**) prohibits discrimination based on disability in:

- Programs conducted by federal agencies (Sec. 501). These include any federal agency or program offered by the federal agencies.
- The employment practices of federal contractors (Sec. 503). These include any group or agency that accepts or operates under contract with the Federal government.
- Programs receiving federal financial assistance (Sec. 504). This includes universities and the VR agencies.

The Workforce Innovation and Opportunity Act of 2014 expanded these rights. WIOA requires that the VR agency have a unified plan for helping individuals with disabilities that have common goals of being employed. The WIOA also authorized the creation of the “one-stop” employment services system, which is another option available to help individuals with or without disabilities seeking employment. WIOA emphasizes working in and around the community, as the intended employment placement for all VR program participants, including those with the most significant disabilities.

Further, WIOA requires state VR agencies “to encourage eligible individuals to pursue advance training in the fields of science, technology, engineering, or mathematics (including computer science), law, medicine, or business.” 34 CFR 361.48(b)(6). This authorizes a VR agency to sponsor undergraduate and graduate tuition, if it is necessary to work in the individual’s chosen field, for an individual with disabilities.

NEW JERSEY STATE

VOCATIONAL REHABILITATION AGENCIES



New Jersey is an **Employment First State**. This means that employment in the general workforce should be the first and preferred option for individuals with disabilities receiving assistance from publicly funded systems. Simply put, Employment First means real jobs, real wages.

To aid this effort, the State Vocational Rehabilitation (VR) Services Programs are authorized by the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA). In the state of New Jersey, there are two VR agencies:


- **Division of Vocational Rehabilitation Services (DVRS)** and,
- **Commission for the Blind and Visually Impaired (CBVI).**

DVRS provides services to individuals with physical, mental, and other forms of disabilities in seeking employment services. CBVI provides services to individuals classified as blind, deaf-blind, or visually impaired. The goal of Vocational Rehabilitation Agencies is to maximize opportunities for individuals with disabilities in:

- 1) employment
- 2) self-sufficiency
- 3) independence, and
- 4) inclusion and integration into society.

To achieve these goals, there are several services available through DVRS/CBVI, including (but not limited to):

- Job coaching
 - Job accommodations
 - Transportation
 - College and vocational training
 - Physical and mental restoration services
 - Assistive technology
 - Other goods and services that are determined necessary for the individual with a disability to achieve an employment outcome.
- 34 C.F.R. § 361.48(b)(21)



PART ONE

OBTAINING VR SERVICES

ELIGIBILITY CRITERIA

Each VR agency has their own criteria for eligibility.

To qualify for VR services from DVRS, you must have a physical or mental impairment that is acting as a substantial impediment to employment, and you must require VR services to assist in preparing for, securing, maintaining, advancing in, or regaining employment.

To qualify for VR services from CBVI, you must be visually impaired or legally blind. You are visually impaired if, with the best correction, you have 20/70 vision in the strongest eye, which means you see at 20 feet what a person without a visual impairment sees at 70 feet. You are deemed to be legally blind if with the best correction your vision is 20/200 or less in the better eye, or that the person sees at 20 feet what a person without a visual impairment sees at 200 feet. Additionally, you are legally blind if you have a restricted visual field limitation of 20 degrees or less, meaning you see 20 degrees of all the objects in the field of vision when a person without a vision impairment would see 180 degrees.

With both agencies, once you have applied for services, the VR agency will review your application to determine if you meet the eligibility criteria. After determining that you meet the eligibility requirements above, the VR agency will perform an eligibility assessment. If you receive Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI"), you are presumed to need vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment. You will not need to go through the eligibility assessment for VR services.



photo credit: Michael Mielcarz

OVERVIEW

OF THE VR PROCESS

To apply for VR services, there is a specific process that you will undergo. This guide will help you through the application process and development of the Individualized Plan of Employment (“IPE”), and how to seek tuition sponsorship if it is necessary to achieve your employment goals.

The general steps on how to apply for VR services are:

- 1) Complete the referral.
- 2) Meet with the VR agency and receive the application for services.
- 3) The VR agency will make an eligibility determination.
- 4) Development of the Individualized Plan of Employment (IPE).
- 5) VR services provided.
- 6) Obtaining employment, which will lead to closure of the VR case.
- 7) Post-Employment Services, if necessary to assist you with employment.



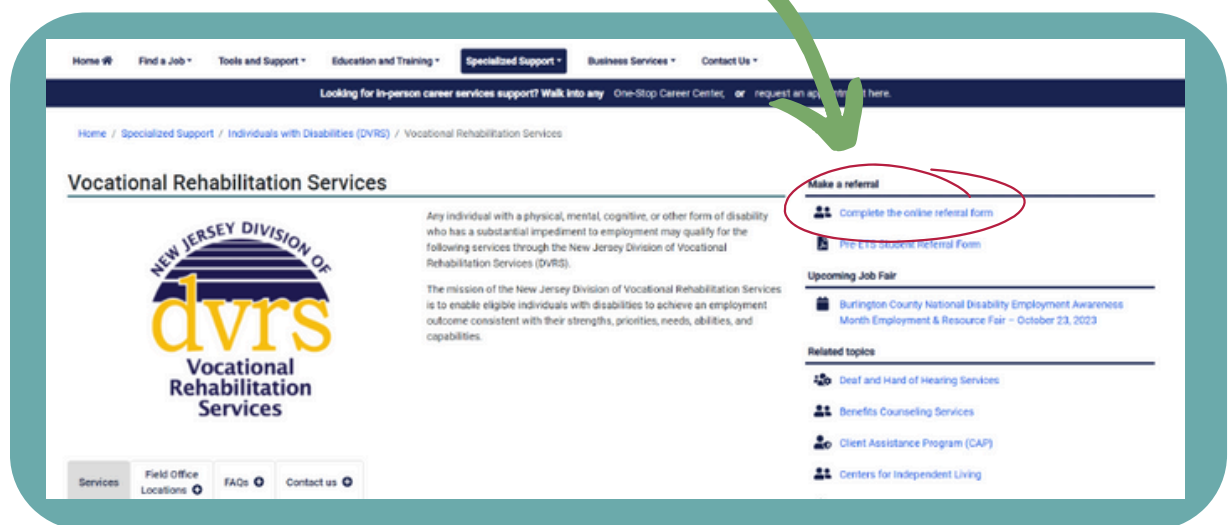
photo credit: Michael Mielcarz

APPLYING FOR SERVICES

Each agency has its own application process, which we will walk you through here.

DVRS PROCESS

DVRS has a referral form on its website that is the first step to applying for services. Although DVRS calls it a “referral form,” the form could be completed by anyone: the individual seeking services, a friend, a service provider, a doctor, etc. When you first enter the website on the right side, there will be a box that says “Complete the Online Referral Form.”



The DVRS website can be found at:

<https://www.nj.gov/labor/career-services/special-services/individuals-with-disabilities>

We are providing a copy of the referral form for you at the end of this guide so you can review and have the answers to the questions ready for when you complete the referral. The direct link for the referral form is:

<https://forms.office.com/pages/responsepage.aspx?id=0cN2UAI4n0uzauCkG9ZCpzVnFpBuuFNArhLYruJEYsRUM0FOTFkiUTNVOVIEOTBZT000Tk5HWKI5TCQIQCN0PW/cu>

Once you or someone on your behalf has completed the online referral, DVRS should contact you within 14 days to set up the intake interview. If you have not heard from DVRS within 14 days, please contact your local field office to follow up.

APPLYING FOR SERVICES

continued

CBVI PROCESS

For the Commission for the Blind and Visually Impaired, contact the central office for the referral. There are two numbers that you can reach CBVI through: (877) 685-8878 or (973) 648-3333. Either of these numbers will take you to the referral line. They will ask for some general information to complete the referral:

- Applicant's name and telephone number
- Applicant's address, including county of residence and zip code.
- Description of applicant's vision problem (optional)
- Description of services needed (optional)
- Name and address of eye doctor currently treating the vision problem (optional)

Additionally, you may need to provide current eye, ear and medical reports, financial information, and any other data CBVI needs to identify appropriate services.

The website for CBVI can be found at:

<https://www.state.nj.us/humanservices/cbvi/>

Once you speak with a representative of CBVI, they will inform you of any additional information and begin the eligibility analysis.





APPLYING FOR SERVICES *continued*

POST REFERRAL PROCESS FOR DVRS

Please note the referral form is not an application for DVRS services. Once you complete a referral, DVRS will contact you, either requesting documents or to set up an intake interview. After this request for documents or initial interview, DVRS will begin the eligibility assessment.

As part of this initial interview, DVRS will ask you what brought you to their agency and what employment goal you are considering. They will ask you questions about your disability and what limitations or challenges it causes you. Finally, they will want to ask you questions about your past education or work experience. At that time, DVRS will provide you with the application and ask for documents from you. The documents are used by the VR agency to establish the nature of your disability, potential barriers to employment, and potential cost-sharing. Documents that they typically ask for are:

- Tax documents
- Social security award letter
- Social Security Card
- Photo Identification, for example a Driver's license or govt issued ID.
- Mental Health Evaluation
- Authorization to Release Documents
- High School Diploma
- Resume
- General Basic Medical Examination (form they will provide for you to send to your doctor)
- Authorization to Release Documents from your doctor or school.
- Proof of Address
- FAFSA (Free Application for Student Aid) Student Aid Report (if seeking tuition sponsorship)
- Any other documents that will assist to move the case forward.

Once you return the signed application and the requested documents to the VR agency, the VR agency has 60 days (about 2 months) to make an eligibility determination.

ONCE YOU ARE FOUND ELIGIBLE

After you have been found eligible to receive services, the VR agency will assign a counselor to be your primary contact with the agency. The counselor will contact you to schedule a meeting to discuss your Individualized Plan of Employment, or IPE. The VR agency has 90 days (about 3 months) from the date of eligibility or the date that you request services to develop an IPE. At the IPE meeting, you and the VR counselor will discuss your employment goal, what supports you are looking for, what supports the counselor recommends, and you will establish a plan of services to help you to achieve your goals. If you have a career goal that requires additional training beyond high school, such as becoming a teacher, be prepared to discuss training options and locations to help you achieve that goal. The IPE meeting may take place either in person or virtually and would be a date agreed upon by you and your counselor. You will have the opportunity to invite others to be part of your meeting with notice to the VR counselor.

The VR agency may be able to pay for college or advance degree(s) if your employment goal requires it. This is called [tuition sponsorship](#). We would like to note, to gain financial sponsorship for tuition, your career goal must require a degree, for example a teacher, a psychologist, a doctor, an accountant, etc. We will walk you through how to request tuition sponsorship in another section.



THE IMPORTANCE OF THE IPE

The IPE is an important document that defines the services the VR agency agrees to provide you. The IPE is not a contract, but it is particularly important if disagreements occur between you and the VR agency. The IPE must be reviewed by you and your VR counselor at least annually and, if necessary, amended if there are significant changes to the employment goal, the VR services to be provided, or the service providers. Any changes made to the IPE do not take effect until agreed to by both you and the VR counselor. Both sides must agree on the services provided.

The most important part of the IPE is the statement of the employment goal, which should reflect your choice for employment. The services provided in the IPE must be designed to assist you in achieving that goal. The VR counselor may discuss the goal with you and propose alternatives or suggestions, but remember, the IPE is for you.

Once you have the employment goal established, all services and supports that the VR agency should or will provide are set forth in the IPE. Services can include such things as a job coach, assistive technology, training, transportation, personal assistance services. In addition, the IPE sets the timeline for services, the vendor responsible for providing the services, and the cost that the VR agency will be paying for the services and supports. Please note, you have the right to question and investigate any of the providers suggested to provide your support, and you have the right to discuss additional vendors with the VR agency.




POTENTIAL CONCERNS

WITH IPE DEVELOPMENT

When developing the IPE, there are some situations that may arise to be aware of. An IPE is supposed to be developed with a career objective for every individual. Now sometimes, the IPE generated is for “guidance and counseling” to help the individual determine the proper employment goal. This is problematic because it gives the VR agency additional time to create an IPE that is appropriate for you. “Guidance and counseling” is a way of saying that they want to explore other career opportunities with you or send you for evaluations to determine what may be a good option for you, but the evaluations are supposed to be complete before the IPE is written. If the counselor feels they need additional information, you as the client can agree in writing to extend the 90-day timeline, to allow the evaluations to go forward.

In the same vein, when you receive the IPE from your VR counselor, carefully read it over. There have been several instances where the career objective listed was not selected by the client. Typically, when this happens you will see that the job goal or career objective listed is “production worker,” or “retail sales,” or “general maintenance worker.” You as a VR client have an right to informed choice, including the ability to have a say and choose an employment goal, in consultation with the VR counselor. A common concern though is the VR agency may seek to change a career objective to meet their plan rather than what you are seeking.



You can object to an IPE and refuse to sign it. You have the right to request corrections and ask for clarification of any item on your IPE. If you do not agree with any of the information contained in your IPE, **DO NOT SIGN IT**. Once you sign it, and the VR agency countersigns it, you are bound by what you have signed. If you have any questions about your IPE or any items contained in it, you can always contact the Client Assistance Program to go over the IPE and what you are seeking.

TUITION SPONSORSHIP

If your job goal requires advanced training, whether it is vocational school, trade school, an undergraduate degree or even a graduate degree, you can seek VR support and funding for this goal. This is called tuition sponsorship. **Please note, the VR agency will not pay tuition if a college degree is not a required credential for your chosen career goal.** Be sure that you discuss your career path and job goals with your VR counselor at your IPE meeting. If it is a field that requires this training, do not be afraid to ask for tuition support. Even if you are already attending school, you may not be able to get support for the semester that you are currently completing, but you may be able to get support for future semesters. The IPE will set forth the supported semesters and the rate that the VR agency will pay.



photo credit: Michael Mielcarz

COMPARABLE BENEFITS

WHAT ARE COMPARABLE BENEFITS?

When seeking services, especially tuition, the VR agency will review for comparable benefits that you may receive from other sources such as need-based scholarships and grants, insurance sponsorship of Assistive Technology or Personal Assistance provided through the Division of Disability Services. The IPE and its supporting budget should specifically outline what those comparable benefits are, the amount that they will provide, what costs are being covered by the VR agency, and what, if any, costs are to be covered by you. If a comparable benefit exists, the VR agency will provide less sponsorship and payment as all or part of the service is provided through another source.

There are two things that are **NOT** comparable benefits that you should be aware of:

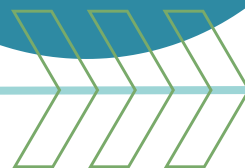
The first is MERIT-based scholarships. These are scholarships awarded based on academic merit, as opposed to financial need. By federal regulation, the VR agency cannot consider them a comparable benefit. Second, student loans are not a comparable benefit. The VR agency cannot list that you will be receiving Stafford Loans or private education loans on your IPE as a comparable benefit.

The VR agency cannot require you to take out any loan to fund the services they provide. But, if the cost of your services, such as your tuition, exceeds the amount of funding available through the comparable benefits and VR sponsorship, you may be required to find alternative sources of funding, which may include student loans. Please note, however, that utilizing student loans should only be a consideration after you have received the breakdown of funding from the VR agency and have signed the IPE.



photo credit: Michael Mielcarz

COMPARABLE BENEFITS *continued*



THE FINANCIAL NEEDS TEST

Generally, VR agencies are NOT required by federal law to have a financial needs test; however, many do. In New Jersey, both DVRS and CBVI use financial needs tests to determine if an individual needs to contribute to the cost of their VR services based on a sliding scale by income. This is why it is so important that the IPE sets forth how much VR will be funding for each service so that you know how much of the cost you must pay.

When determining the financial needs test, you may be wondering what income the VR agency considers. For a student under age 22, the VR agency will consider the student's income and their parents' income in making its calculation. On January 1 of the year after the client turns 22, the VR agency can only consider the income of the client and spouse, if married. The income limits, based on household size, for DVRS are set forth below:

B) Allowable income and liquid assets will be as follows:

| Number in Family | Annual Income** | Weekly Income | Liquid Asset Allowance |
|------------------|-----------------|---------------|------------------------|
| 1 | \$45,080 | \$867 | \$40,000 |
| 2 | \$60,970 | \$1,173 | \$45,000 |
| 3 | \$76,860 | \$1,478 | \$50,000 |
| 4 | \$92,750 | \$1,784 | \$55,000 |
| 5 | \$108,640 | \$2,089 | \$60,000 |
| 6 | \$124,530 | \$2,395 | \$65,000 |
| 7 | \$140,420 | \$2,700 | \$70,000 |

As with the eligibility determination, there is a difference for individuals who receive SSI/SSDI benefits due to their disability. SSI/SSDI beneficiaries are EXEMPT from and NOT subject to a financial needs test pursuant to federal law. This means that if you are 18 and you are an SSI/SSDI recipient, you are automatically eligible for services and are NOT required to financially contribute for your VR services no matter what your family income is.

When you are seeking tuition sponsorship, please keep the two timelines in mind. The VR agency has 60 days (about 2 months) from the date of the application to determine if you are eligible for services, and then 90 days (about 3 months) from the date of eligibility to develop an IPE. This means it could be a combined 150 days or about 5 months, from the application to signing the IPE. If you are looking to start school in August, and are seeking VR sponsorship, it would be wise to begin the process in January or February before you intend to start school.

COMPARABLE

BENEFITS

continued

COMMON PROBLEMS YOU MAY RUN INTO

While this guide was created to help you with the application and IPE development process, we do want to make you aware of some potential issues that could arise while you are going through the process.

Long wait times during the application process

As we said before, the VR application process begins with the online referral. Unfortunately, however, there may be a prolonged period between submitting the referral and having your intake interview. There is supposed to be a written policy to address the timeline, however DVRS does not have a policy in place, and your wait may be unreasonably long. If you have not heard from anyone, and it has been more than two weeks since you submitted your referral, please contact your local field office to follow up. In addition, if you are not making progress with your local DVRS office, contact CAP, and we will be able to assist you in the process.

Improper requests for medical clearance

In addition, the VR agency may request a certification from your doctor that you are ready and able to work. However, whether you are ready and able to work is a determination made by the VR counselor. Rather, your doctor can provide information about your disability and what limitations it may cause. If the VR counselor asks you to get that letter from your doctor, ask the VR counselor if the doctor could provide a list of your limitations. Ask your doctor to provide your records and any letter directly to you, rather than the VR agency. You will then have to submit the information to your VR counselor.

photo credit: Michael Mielcarz



COMPARABLE

BENEFITS *continued*

MORE COMMON PROBLEMS YOU MAY RUN INTO...

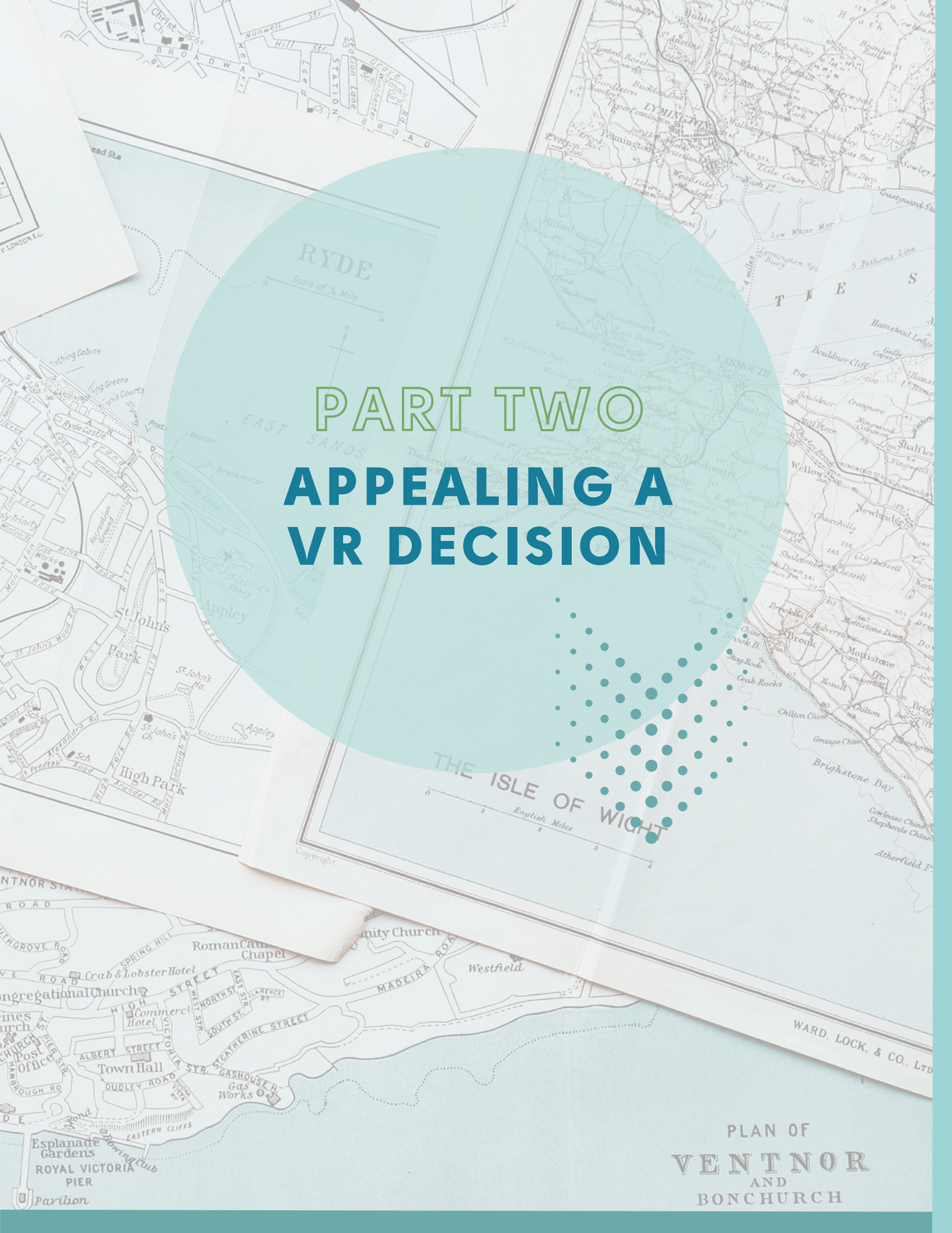
Closure without written notice

Another frequent problem is that VR may close your case without informing you. The VR agency may close your case if they think you have not responded to their requests or provided sufficient information. This may happen before you complete the full application for services. This is a problem because the VR agency's requirement to provide written notice of the closure is only after you have completed the application. If the VR agency closes your case before you complete the application, they may not inform you of the closure and you may not realize the agency closed your case. It is recommended that you stay connected with your VR counselor for updates.

Another frequent problem is that the VR agency does not send written notification of closing your case even if you do complete the full application for services. The written notice must include certain things like appeal rights, including the right to seek review from the Manager of the VR office, the Executive Director of the VR agency, or to pursue a Fair Hearing with the Office of Administrative law. Without the written notification, people often do not realize they can fight the closure of their case.

What can you do if there is a problem?

What can you do when a problem occurs? First, contact your VR counselor for an update. They would have the most current information on where they are in the process. Second, if you do not get a response from them, you can contact the manager of the VR office with whom you are working. Each VR agency has a supervisor and an office manager that you can contact for additional information. If that fails, or they cannot assist you, please contact Disability Rights NJ's Client Assistance Program for assistance.



PART TWO

APPEALING A VR DECISION

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APPEALING

A VR AGENCY'S DECISION

Embedded in the Rehabilitation Act and WIOA is the right to seek a review or appeal any adverse decision. You have the right to appeal whenever the VR agency takes one of the following actions:

- Denies eligibility for VR services when you first apply;
- Terminates your eligibility for VR services;
- Reduces or terminates a specific VR service in your IPE or
- Denies your request to add a new service to your IPE.

This guide is designed to help you appeal a decision from the VR agency that you disagree with.

NOTICE REQUIREMENTS:

The VR statutes require the VR agencies to notify you in writing about any adverse decision about your services. The notice must clearly state the action the agency is taking and the reason for the action. The notice should come with instructions about your right to appeal, and how to contact the Client Assistance Program for assistance.

A written notice is supposed to provide you with the information you need to understand an action and how to appeal if you disagree with it, whether administratively or through one of the formal appeal processes.

Common Problems with Notice

A VR agency may take action without providing written notice, or sometimes without telling you at all. While this situation is common, it is unlawful for the agency to take action without a written notice. Without the written notification, people often do not realize they can appeal a decision they disagree with. Because this happens frequently, you might not get a written notice when the VR agency makes a decision about your case. Check in regularly with your VR counselor to make sure you know about any adverse actions that might impact your services.



**EVEN IF THE VR AGENCY FAILS TO NOTIFY YOU IN WRITING,
YOU STILL HAVE THE RIGHT TO APPEAL ADVERSE DECISIONS.**

STEPS IN THE APPEAL PROCESS



THE INFORMAL REVIEW

The first level of an appeal is an informal review. When you work with your Vocation Rehabilitation Counselor, they should inform you of who their supervisor is, and the name of the office manager for their location. If they don't provide you with this information, feel free to ask for it.

The first step to appealing a decision is to ask the supervisor and manager to review the decision. This request is typically made in writing by email to your counselor, the supervisor and the manager, asking them to please review the decision. You can send a formal letter if you would like, but for this level an email is fine and appropriate. This could be as simple as an email stating: "I disagree with the decision about _____, and ask that it be reviewed by your manager."

This is the most informal and casual of the review options. This is simply asking for another two sets of eyes on your case with the VR agency, reviewing your needs, employment goal, and the requested service or services being currently provided to evaluate whether they are needed or if the service is being removed.

It is always best to start with an informal review. This helps to build the client/counselor relationship, lets your feelings and needs be heard, and should start a discussion about your services and need for support. It may also begin a discussion about what supports are necessary to help support you in your career pursuit or plans, as long as it matches your Individualized Plan of Employment ("IPE").

You may still disagree with the VR agency's decision after the informal review. The supervisor and manager may agree with the VR counselor about the service being reduced or denied. You should receive an email with the results of the informal review from either your counselor, the supervisor or manager, informing you of their decision. In many cases, they do not provide any additional information about what the next steps would be, and it may often seem like that is the end of the line for appeals.



IF YOU STILL DISAGREE WITH THE DECISION AFTER INFORMAL REVIEW, YOU CAN CONTINUE YOUR APPEAL.



STEPS IN THE APPEAL PROCESS *continued*

There are **three levels of appeal** beyond the informal review. While we present them from least formal to most formal, you are not required to go through every level of appeal, or to go in order. You could seek to go to an administrative review before going to a Fair Hearing in the Office of Administrative Law. Or you could go straight to the formal Fair Hearing. We are presenting all three options to make you aware of them and provide information about what would occur at each level of review.

THE ADMINISTRATIVE REVIEW

This is often the first formal review that you can seek. Like any other appeal, however, it is not required. It can be a good place to start though, because it can be one of the quicker ways to get a decision. If the administrative review is in your favor, you can quickly receive an updated IPE with the service or support you are seeking.

What is it?

An administrative review is a review by a panel of staff from the VR agency. Typically for DVRS this panel will be your counselor, their manager, the supervisor of the office, as well as the two field chiefs for DVRS. For CBVI it will be a panel of three counselors and managers who are not part of your counselor team. Administrative reviews are typically held in person at the VR agency office in the county or regional office that you work with. The administrative review will result in a formal written decision that is reviewed and approved by the agency Executive Director.

How to Request an administrative review

You can request an administrative review in writing to your VR counselor. It is recommended that you make this request in a formal letter that is both emailed and mailed to your counselor. Once it receives your written request, the VR agency will contact you within about two weeks to schedule the administrative review.

This request can be simple or more detailed. You could request the review by stating “I disagree with the decision about _____, and that it be scheduled for an administrative review,” or you could write a longer letter stating your reasons why you feel the decision was inappropriate, and that you are requesting the review. Either will work for beginning the scheduling process.

STEPS

IN THE APPEAL PROCESS *continued*



How to prepare for the Administrative Review

Come into the meeting with a written list of the reasons you disagree with the VR agency. This will be useful when you are opening the review by stating why you are there, and why the VR agency should have decided in your favor. You will be able to have this list or any other document you want with you as a reference. Creating a list can also help prepare you for the review meeting by helping you think ahead about your arguments and points to raise. Dress appropriately for this meeting, it is advisable not to dress in sweats or clothing with holes in it.

The conduct of the administrative review is fairly informal. You will be able to start by presenting the service or support that you are seeking, such as eligibility for VR overall, or specific services like tuition funding, a job coach, or an AT assessment. Next, set forth the reasons why you feel that this is necessary to help prepare you for your chosen career. You can bring documentation with you. If you have statistics for employment growth, reports from your doctors, prescriptions from your providers, or any other document that shows the VR agency made the wrong decision, bring those to the review. Bring extra copies for yourself and the review panel. You can bring supporters to help you during the review, and witnesses who can speak to your need for the services in question. The VR staff present will have the opportunity to ask you questions about the service or support and will review the documentation that you provide. You have the right to review any documents that they bring as well.

The administrative review will give you the opportunity to have a discussion with the VR staff about your needs, the support or service in question, and why you feel it would be appropriate or help you. There is no average length of time for these reviews, as it truly depends on the service or support at issue and any information that you bring with you to review. Be prepared to speak openly and honestly about your needs and wishes and answer any question that is raised by the VR staff in the review.

STEPS IN THE APPEAL PROCESS *continued*

➤ Getting a decision from the Administrative Review

You will not receive a decision on the same day as the review. With DVRS, the panel will review their notes and the documents you provided before sending a recommendation to the Assistant Executive Director and Director for review. For CBVI, an initial finding will be drafted and sent by the panel to you and to the Executive Director. After the recommendations are sent to the Executive Director. The Executive Director will send you a decision in writing explaining the outcome and any next steps. If the administrative review is in your favor, your counselor will reach out to you to schedule a new IPE meeting to create the formal plan implementing the decision. If the administrative review decision finds against you, you have the option of appealing that decision further.



right only photo credit: Michael Mielcarz

STEPS

IN THE APPEAL PROCESS *continued*

MEDIATION

Mediation is a more formal proceeding, with a Mediator appointed to listen to both sides to try and help reach a resolution. The Mediator is an outside person who is agreed to by both you and the VR agency and is not affiliated with either of you, to act as an unbiased decision-maker in the process. Participation in Mediation is voluntary, meaning that the VR agency may, but is not required, agree to Mediation. If the VR agency says no to participating in a Mediation, you would appeal to the Office of Administrative Law, which we will cover for you below.

VR agencies are not required to participate in Mediation, and both VR agencies typically decline to participate.

➤ How to request Mediation

You must request a Mediation in a formal writing. This is a letter sent to the VR agency asking that your case be transferred to a Mediator for decision. Send a mediation request to either the DVRS or CBVI, whichever one provides your VR services.

DVRS

Assistant Director, Field Services
New Jersey Department of Labor and
Workforce Development
Division of Vocational Rehabilitation Services
John Fitch Plaza, 12th Floor
Trenton, New Jersey 08625-0398

CBVI

Attention: Administrative Office
re: Appeals
New Jersey Commission for the Blind &
Visually Impaired.
153 Halsey Street, 6th Floor
Newark, New Jersey 07102

Once Mediation has been requested and agreed to by the VR agency, the agency must retain a Mediator within 30 days of the written request. If the VR agency is unable to identify or secure a Mediator, the VR agency must notify you within 30 days of your initial request that mediation will not take place. The Mediation itself will be scheduled to be heard within 20 days of a Mediator being appointed.

STEPS

IN THE APPEAL PROCESS *continued*

Mediations are a more formal proceeding than the administrative review. These are typically held in the office of the Mediator, though you may select another location with the agreement of the VR agency. You will want to dress nicely for the Mediation, while it is not a “Court” proceeding, it is still a formal practice. Dress nicely, you do not need to wear a suit or a formal dress, but you should not dress in jeans or sweats for the Mediation.

A Mediation will begin with you and the VR agency meeting in one room with the Mediator. In some cases, the Mediator will ask for both you and the VR agency to submit your positions in writing before meeting with them, in other cases you will be making your initial statements in this joint meeting. Each of you will tell the Mediator why you are there, and what you believe the end results should be. The Mediator will then direct you to one room and the Agency representative to another room, and will proceed to go back and forth between the two rooms to discuss the pros and cons of the service you are requesting, and see if they can help you reach an agreement that both sides are ok with.

➤ **Preparing for Mediation**

When going to the Mediation it may be helpful to prepare a list for your own reference of your points and reasons the VR agency made the wrong decision. This will be useful when you are opening the Mediation by stating why you are there, and why you are seeking that support or service. You can refer to your list throughout the mediation to stay on track. Creating this list can also help prepare you for the Mediation, helping you refine your arguments and points to raise.

➤ **Getting a decision**

The Mediation will end either with an agreement with the VR agency or without an agreement. If you reach an agreement with the agency, you and the VR agency will draft a written agreement for both of you to sign. This agreement will act as the new contract and set forth the action or service to be provided by the VR agency regarding your request. If you end mediation without an agreement, or if the VR agency will not agree to mediation, you can still use the other methods of appeal.

STEPS

IN THE APPEAL PROCESS *continued*

FAIR HEARING

A Fair Hearing is a proceeding filed with the Office of Administrative Law, and is the most formal of the appeals. While you are allowed to go to a Fair Hearing without an attorney, it would be wise to at least speak with an attorney or the Client Assistance Program before going forward. There are several steps in the Fair Hearing process that can be confusing or intimidating if you are not familiar with them.

➤ How to request a Fair Hearing

To request a Fair Hearing, you must write a letter to the VR agency. The letter only needs to say that you disagree with the VR agency's decision and contain your name, address, and contact information, you do not need to put in every grievance or concern that you have. The following language would be enough to request a Fair Hearing.

My name is _____, and I live at _____. My phone number is _____. I disagree with the decision of the VR agency regarding (name of service), dated (date), and request that this be referred to the Office of Administrative Law for a Fair Hearing as a contested matter.

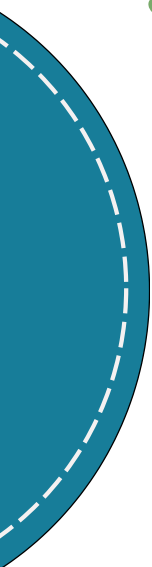
This letter should be sent to your VR agency:

DVRS

Assistant Director, Field Services
New Jersey Department of Labor and
Workforce Development
Division of Vocational Rehabilitation
Services
John Fitch Plaza, 12th Floor
Trenton, New Jersey 08625-0398

CBVI

Attention: Administrative Office
re: Appeals
New Jersey Commission for the Blind &
Visually Impaired.
153 Halsey Street, 6th Floor
Newark, New Jersey 07102



STEPS

IN THE APPEAL PROCESS *continued*

Once the VR agency has received your request for a Fair Hearing, they are to review the request and refer it to the Office of Administrative Law as a Contested Action. An Administrative Law Judge, or ALJ, will be assigned after the referral. Once an ALJ has been assigned, the judge's clerk will write to you to let you know when the hearing is scheduled.

Before the hearing

During the Fair Hearing, the VR agency will be represented by a lawyer from the Office of the Attorney General. Any inquiries or correspondence with the agency regarding the proceeding must go through their lawyer. You will be provided written notice of the VR agency's lawyer through a Notice of Representation they send to the Court and to you.

Your first meeting with the Court will be in a status conference, which will typically be held by phone. This will be your opportunity to briefly discuss your issues with the ALJ, why you are there, why you disagree with the VR agency's decision, and a brief description of how you got to that point. At the status conference, the Court will ask if either side would like to conduct discovery. Discovery is the process of requesting documents and information from the other side that may help your case or provide you with more information about the VR agency's decision. If either side requests discovery, the Court will set a schedule and may then set another status conference to check on how the exchange is going.

If neither side requests discovery, the Court will work with both sides to set a date or dates that everyone would be available to proceed to the Fair Hearing.

At any point before the actual hearing starts, you can always enter into an agreement with the VR agency about the service, which would then end the Fair Hearing. This process is called settlement, and would be documented in a formal, written agreement between you and the VR agency. The settlement agreement will usually lead to the development of a new IPE. This would then end the hearing process, and you would not need to proceed to the formal hearing.

STEPS

IN THE APPEAL PROCESS *continued*

> At the hearing

On the day of the hearing, your case will be heard by an Administrative Law Judge (ALJ) that is assigned to your case. You will not have a jury. The ALJ's job is to hear the evidence from both sides, create a complete record of the appeal, and issue a recommended decision. Both sides begin by providing opening statements: what decision the VR agency made, what service or support is in dispute, and what each side would like to happen. You might give a broad overview of why the VR agency made the wrong decision, and the VR agency would have the opportunity to say why their decision was correct. Dress nicely, you do not need to wear a suit or formal dress, but do not dress in sweats or clothing with holes in it for an in-person hearing.

After the opening statements are completed, you will be able to present your case. This means that you would be able to provide testimony (statements made by you and other people under oath) and evidence such as documents to the Court to help them make its decision. You can call other people to testify on your behalf, typically this would be doctors or prescribers, assistive technology professionals, school staff, someone who can explain to the judge why the VR agency made the wrong decision. Before selecting someone to be a witness for you, make sure you know what they have to say about the service or support you want and how it would benefit you. Once you present all of your witnesses and documents to the ALJ, the VR agency will have the opportunity to ask your witnesses questions. You will have the chance to ask questions of any witness brought by the VR agency as well. The ALJ may also ask questions of any witness during the proceeding if there is any additional information that the ALJ wants to know.

After you and the VR agency have finished presenting your cases, the ALJ may ask if you want to make a closing statement. A closing statement is a short summary of the information both sides presented during the hearing and why it shows that the VR agency made the wrong decision. You do not have to make a closing statement if you do not want to. You can ask to make a spoken closing statement at the end of the hearing, or you can request to submit a closing statement in writing. The VR agency will likely request to submit their closing in writing.

STEPS

IN THE APPEAL PROCESS *continued*

➤ Getting the decision after a Fair Hearing

Once the ALJ receives any closing statements, the record will officially close. The ALJ has 30 days to issue an initial decision from the date that the record is closed, but they may take more time if needed. **The initial decision is not the final decision.**

The ALJ will submit the decision back to the Agency and the Department that it sits in, the Department of Labor for DVRS and the Department of Human Services for CBVI. The decision will be reviewed by the Director of the Agencies or someone they designate. The Agency may agree with the ALJ, disagree entirely, or agree to part of the decision and disagree with part of it. The Agency will then issue what is called a Final Agency Decision, which will become the final determination on your Fair Hearing. This Final Agency Decision will tell the VR agency what to do with the decision you appealed.

If you disagree with the Final Agency Decision, you can appeal to the New Jersey Superior Court, Appellate Division or to the District Court of New Jersey. Going to the Appellate Division or the District Court can be expensive, complicated, and difficult if you do not have a lawyer. If you want to take an appeal to the Appellate Division we highly recommend having a lawyer represent you. You can contact the Client Assistance Program to see if we can provide representation or help you find a different lawyer.

Any VR applicant or recipient can contact the Disability Rights New Jersey Client Assistance Program at any step in the process. We can answer your questions, provide legal advice to help you understand your rights, and may be able to provide legal representation at no cost to help you through the appeal process. Please do not hesitate to contact us for assistance. We are here to help.

Contact Disability Rights New Jersey at:

(609) 292-9742

(800) 922-7233 (NJ Only)

via email at advocate@disabilityrightsnj.org

or visit our website: disabilityrightsnj.org