

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2021-26 Rule Number Ed 1000

<p>1. Agency Name & Address: State Board of Education c/o Department of Education 101 Pleasant Street Concord, NH 03301</p>	<p>2. RSA Authority: RSA 21-N:9, II(k); RSA 200-C:8; RSA 200-C:20; RSA 200-C:23; RSA 200-C:26</p> <p>3. Federal Authority: 34 CFR 361</p> <p>4. Type of Action: <input checked="" type="checkbox"/> Adopt <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal <input type="checkbox"/> Readoption <input type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **Vocational Rehabilitation Programs**

6. Contact person for copies and questions:

Name: **Amanda Phelps** Title: **Administrative Rules Coordinator**
 Address: **Department of Education** Phone #: **(603) 271-2718**
101 Pleasant Street
Concord, NH 03301

7. Yes No Agency requests review by Committee legal staff in the Office of Legislative Services and delayed Committee review pursuant to RSA 541-A:12, I-a.

8. The rulemaking notice appeared in the Rulemaking Register on

SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING: (optional to number correspondingly)

9. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

10. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

11. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

12. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Notice Number 2021-26

Rule Number Ed 1000

1. Agency Name & Address:

**State Board of Education
c/o Department of Education
101 Pleasant Street
Concord, NH 03301**

2. RSA Authority: **RSA 21-N:9, II(k); RSA 200-C:8; RSA 200-C:20; RSA 200-C:23; RSA 200-C:26**

3. Federal Authority: **34 CFR 361**

4. Type of Action:

Adoption X

Repeal

Readoption

Readoption w/amendment

5. Short Title: **Vocational Rehabilitation Programs**

6. (a) Summary of what the rule says and of any proposed amendments:

Ed 1000 on Vocational Rehabilitation Programs is being adopted. Rules for Ed 1000 expired on January 10, 2021. The rules were replaced by an emergency rule on January 11, 2021 which were later repealed on January 15, 2021. The rules proposed for adoption have been amended from the January 10, 2021 expired rules to align with current requirements of 34 CFR 361. The rules have also been amended to remove duplicative language between the federal regulation and the rule, to provide application process and procedures, and to incorporate forms by reference. These rules are the same in substance and content of the emergency rule repealed emergency rule on January 15, 2021 with some editorial changes.

6. (b) Brief description of the groups affected:

The Department, providers of services, and citizens of the state eligible for benefits are affected by these rules.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Statute or Federal Regulation Implemented
Ed 1001	34 CFR 361; RSA 200-C:1
Ed 1002	34 CFR 361.5
Ed 1003	34 CFR 361.38
Ed 1004	34 CFR 361.41
Ed 1005	34 CFR 361.42
Ed 1006	34 CFR 361.42-44
Ed 1007	34 CFR 361.42
Ed 1008	34 CFR 361.45-46
Ed 1009	34 CFR 361.36
Ed 1010	34 CFR 361.53
Ed 1011	34 CFR 361.54
Ed 1012	34 CFR 361.51
Ed 1013	34 CFR 361.52
Ed 1014	34 CFR 361.55
Ed 1015	34 CFR 361.56

Ed 1016	34 CFR 363
Ed 1017	45 CFR 1329; 34 CFR 77.1
Ed 1018	34 CFR 367
Ed 1019	RSA 196-B:10-II
Ed 1020	RSA 326-I:5, RSA 200-C:19, IV
Ed 1021	RSA 541-A:30-a; 34 CFR 361.57

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Amanda Phelps** Title: **Administrative Rules Coordinator**
Address: **Department of Education** Phone #: **(603) 271-2718**
101 Pleasant Street Fax#: **(603) 271-1953**
Concord, NH 03301 E-mail: **Amanda.j.phelps@doe.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **April 15, 2021**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, April 8, 2021 @ 10:30 a.m.**
[Londergan Hall, Room 100f, 101 Pleasant St. Concord, NH 03301](#)

Pre-registration for in-person testimony is recommended to ensure physical distancing by emailing Amanda.j.phelps@doe.nh.gov no later than April 7, 2021.

Place: **This meeting can also be accessed via zoom by registering for the zoom meeting below:**

https://zoom.us/webinar/register/WN_NzkozE5ESFaGqSajbwNUhA

The following email address will be monitored during the meeting if there is any public access or technical problems during the meeting: Amanda.j.phelps@doe.nh.gov

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 21:008, dated 3/10/2021

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**

Not applicable as Ed 1000 were repealed January 2021.

2. **Cite the Federal mandate. Identify the impact on state funds:**

The federal mandate for this rule is 34 CFR 361, relative to the state vocational rehabilitation services program. There is no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The prior Ed 1000 rules were repealed in January 2021. Those rules contained two provisions, which are also included in the proposed rules, identified to have a cost. First, a \$225 state certified interpreter test fee of \$225 and a retest fee, if needed, of \$140 (Ed 1020.06). According to the Department of Education, in 2020 there were 11 certification candidates and any revenue collected is credited as restricted revenue in the interpreter licensing accounting unit. The second is a requirement for licensed vending facility managers to set aside funds from the net proceeds of vending facilities and vending machines (Ed 1019.11). There are no costs or benefit difference between the repealed rules, or previously expired rules, and the proposed rules for these two provisions.

The proposed rules also add a deductible of \$100 per repair call assessed by the Office of Services for Legally Blind Individuals to managers relative to vending equipment (Ed 1019.10).

A. To State general or State special funds:

See 3 above. No impact to state general funds.

B. To State citizens and political subdivisions:

See 3 above. No impact on political subdivisions.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

Relative to Part I, Article 28-a of the N.H. Constitution, there are no added costs for these proposed rules to the state or to political subdivisions. These rules provide a process for a federally funded program. Therefore, there is no violation of Part I, Article 28-a.

Note to JLCAR/Authority. The rule was previously an interim rule that expired 7-8-20 (Doc. #12971), necessitating the need for an emergency rule to avoid fiscal harm to the providers and individuals served and which was effective 7-14-20 and expired 1-10-21 (Document # 13069). The Board was engaged in regular rulemaking with proposal 2020-35, and the JLCAR entered a preliminary objection 10-15-20. The Board withdrew the proposal before filing a response. Subsequently the Board filed and then repealed the emergency rule as noted here. The rules Ed 1000 are currently expired. Because there have been no effective Ed 1000 rules since 1-15-21, the JLCAR may wish to ask if the expired rules have been enforced.

Adopt Ed 1000, previously effective 1-11-21 (Document #13157, EMERGENCY), and repealed effective 1-15-21 (Document #13157-A, REPEAL OF EMERGENCY RULE), to read as follows:

CHAPTER Ed 1000 VOCATIONAL REHABILITATION PROGRAMS

Substantive comments pages 1, 3, 4, 18, 37, 42, 54 and 66.

PART Ed 1001 PURPOSE AND SCOPE

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

Ed 1001.02 Scope.

(a) The New Hampshire vocational rehabilitation services (NHVR) program shall be responsible for assessing, planning, developing, and providing vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they can prepare for and engage in gainful employment. The rules for the NHVR services program implement the Act.

(b) NHVR shall work with individuals with disabilities to obtain an employment outcome in the most competitive and integrated employment settings consistent with the individual's unique employment factors, as described in Ed 1006.02. In addition, NHVR provides training and services to employers. Services include training and technical assistance on disability awareness issues, providing guidance on developing work-based learning experiences, providing pre-employment transition services for students with disabilities, providing recruitment training, as well as training techniques to assist in successful employment outcomes.

(c) NHVR shall comply with the provisions of this chapter, 34 CFR 361, and 34 CFR 363 when determining the eligibility and scope of vocational rehabilitation services for individuals with disabilities.

PART Ed 1002 DEFINITIONS

Ed 1002.01 Definitions. In addition to the definitions in 34 CFR 361.5, the following definitions shall apply to Ed 1000, unless context makes another meaning manifest:

(a) "Available resources" means the amount that an eligible individual has available to contribute toward NHVR's financial need based services as determined by a financial needs review outlined in Ed 10111;

(b) "Commensurate" referencing comparable services and benefits, means the service or benefit from another source shall be similar in scope and quality to the service or benefit offered by vocational rehabilitation services;

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

(d) "Individual" means the individual requesting services or the individual's representative, as appropriate;

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

Edit. Insert comma.

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

(2) Whose vocational rehabilitation is expected to require 3 or more vocational rehabilitation services over a period of 6 months or longer;

(f) “New Hampshire Vocational Rehabilitation (NHVR)” means the department of workforce innovation, bureau of vocational rehabilitation, which shall be the state unit as defined in 34 CFR 361(c)(13); and

(g) “Program for the deaf and hard of hearing” means the program established in 34 CFR 361.18.

Edit. If the provisions of this part apply to all the other programs under this Chapter, a statement to that fact would be useful to the public. Previously, Part Ed 1017 “General Provisions for Independent Living Services Programs and Centers for Independent Living Programs” contained requirements for the protection of PII and other personal information and data and for its transfer and use. Since those provisions have been removed from Part Ed 1017 a purpose section for Ed 1003 here would be useful.

PART Ed 1003 PROTECTION, USE AND RELEASE OF PERSONAL INFORMATION

Ed 1003.01 Notice to the Individual.

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

(b) If an individual indicates that information in his or her file is misleading or inaccurate, NHVR shall consider the individual's reasons and request verification documents as necessary. Obvious errors shall be corrected, but information confirmed by the counselor as accurate and necessary for an eligibility determination, plan development, or provision of services, shall be retained. If the information is not amended, the record of services shall document that the individual requested such an amendment, and the individual shall be informed of the availability of the hearing process pursuant to Ed 1021.

(c) If an individual refuses to grant permission for NHVR to release information or obtain needed information from another agency or source, the reasons for the refusal shall be discussed and the potential consequences shall be explained to the individual. If the refusal results in NHVR being unable to share or obtain information required to make an eligibility determination or complete the individualized plan for employment (IPE), NHVR shall close the case pursuant to Ed 1003.03(d).

Ed 1003.02 Confidentiality. In addition to the requirements under 34 CFR 361.38, the following shall apply regarding confidentiality:

(a) NHVR’s acquisition of PII and other personal information and data about individuals includes the obligation to fully inform individuals about what information is gathered and how it will be used, and how it will be safeguarded against unnecessary or inappropriate dissemination. PII and other personal information and data shall be material which is identifiable to an individual, including reports, evaluations, case histories, notes, photographs and directory information. NHVR’s obligation to preserve confidentiality shall apply to its own use of information directly, and the release of PII and other personal

Edit. Since this is the rule’s definition for “Personally Identifiable Information (PII) and other personal information and data” and the term is being used throughout the rules, consider moving this definition to the Definitions section, Ed 1003.01 above. Consider creating a definition that includes all three types of information, for example “Personal information shall mean PII, and other personal information and data...”

information and data to third parties, other individuals, and agencies. Release of PII and other personal information and data shall also involve the individual's access to his or her own personal information and records pursuant to (c) below;

(b) To the greatest extent possible, NHVR shall use existing information in determining eligibility or providing services to an individual. To the extent existing information is insufficient, NHVR shall obtain only information necessary to determine eligibility or to provide services to an individual. Necessary information may already exist and be available from the individual and his or her family members, treating physicians, other agencies, or it may be information acquired by NHVR specifically for the purpose of serving the individual; and

(c) An individual shall have full, timely access to any information that NHVR maintains about him or her, unless NHVR determines that some information may be harmful to the individual based on counselor professional judgement in consultation with a NHVR supervisor, or if NHVR obtained the information from a source which has restricted its dissemination to the individual. Information that may be harmful shall be released in accordance with 34 CFR 361.38(c).

Ed 1003.03 Personally Identifiable Information (PII) and Other Personal Information and Data Collection. In addition to the requirements of 34 CFR 361.38, the following shall apply to PII and other personal information and data collection:

(a) The collection of PII and other personal information and data by NHVR personnel concerning individuals shall be authorized by the individual through completion of the “Application for Vocational Rehabilitation Services and Authorization to Release Information” form, revised November 2020.

(b) The individual, or the individual's representative, shall complete and file the “Personal Information Form” revised November 2020;

(c) The signature of the parent or guardian shall be required when the individual is under 18 years old or has a legal guardian.

(d) The NHVR shall collect PII and other personal information and data under 34 CFR 361.38. Failure by the individual to provide sufficient personal information to the NHVR to determine eligibility, or to prepare an IPE or to monitor progress of services provided, shall result in the case being closed.

Ed 1003.04 Release of Information. In addition to the requirements of 34 CFR 361.38, the following shall apply to the release of information:

(a) By completing the form referenced in Ed 1003.03(a) above, an individual shall authorize NHVR to release relevant information when requested in accordance with this section.

(b) NHVR shall use PII only for the person's participation in the NHVR program, and shall safeguard and preserve the confidentiality of all PII and other personal information and data it possesses, including the way information is used within NHVR. Information shall be shared with other programs and agencies only with the individual's informed, written consent pursuant to Ed 1003.01 above, if the information is necessary for the program. If NHVR has received information from another source with restrictions or conditions for any further dissemination, NHVR shall release the information only under the conditions established by the other agency or organization;

(c) PII and other personal information and data shall also be released for approved audit, evaluation, and research for purposes in accordance with 34 CFR 361.38(d);

Note to Agency.
Please see note on page 4.

Edit. If approved at the June JLCAR meeting, this edition date here and on the forms, should be changed to “June 2021”

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

(e) The request shall include:

- (1) The individual’s name;
- (2) The information being requested;
- (3) The reasons why the information is being requested;
- (4) The signature of the individual.

Unclear. The “Application for Vocational Rehabilitation Services and Authorization to Release Information” at Ed 1003.03(a) contains a “release”. It is unclear whether that form is meant as the “Authorization to Disclose Information to NH Vocational Rehabilitation” or if it is meant as the “Authorization for Release/Disclosure of Personal Information.” There is one other form dealing with personal information: “Authorization to Disclose Information to NH Vocational Rehabilitation” and it does not include “release” in the title. **Note to Agency.** The revision dates will need to be updated both here in the rule and on the forms.

Ed 1003.05 Exchanging PII and Other Personal Information and Data with Other Parties.

(a) When the NHVR is working with an agency or organization on behalf of an individual, PII and other personal information and data shall be exchanged after the individual completes and files the “Authorization to Disclose Information to NH Vocational Rehabilitation” form, revised November 2020, the “Authorization for Release/Disclosure of Personal Information” form revised November 2020, or both, or his or her parent or guardian if the individual is under 18 years old or has a legal guardian. For agencies and organizations having an agreement with the NHVR to exchange PII and other personal information and data, said information regarding mutual applicants or eligible individual’s PII and other personal information and data shall be exchanged without obtaining an individual’s release. The agencies and organizations having such cooperative agreements shall be identified by the NHVR on the forms described in Ed 1003.03(a)-(b).

(b) Agencies and organizations with which the NHVR shall exchange information shall include but not be limited to:

- (1) The New Hampshire department of health and human services;
- (2) The New Hampshire department of labor, division of workers’ compensation;
- (3) New Hampshire WORKS Partners established under the Workforce Innovation and Opportunity Act of 2014 (WIOA), as described in the cooperative agreement;
- (4) Community rehabilitation programs;
- (5) New Hampshire disability determination services; and
- (6) The Social Security Administration.

(c) In situations not covered by the provisions of Ed 1003.05(a), upon receiving the informed written consent of the applicant or eligible individual the NHVR shall release PII and other personal information and data in accordance with 34 CFR 361.38(e)(1).

Ed 1003.06 Exceptions. When required by law, NHVR shall release PII or other personal information and data without an individual's written consent in accordance with 34 CFR 361.38(e)(2)-(5).

PART Ed 1004 REFERRALS AND APPLYING FOR SERVICES

Ed 1004.01 Intention to Achieve an Employment Outcome. During the application process, individuals shall be informed that vocational rehabilitation services are only provided if they intend to achieve an employment outcome as defined in 34 CFR 361.5(c)(15). Individuals with disabilities shall be active partners with the vocational rehabilitation counselor and together work to establish employment outcomes and the steps to reach those goals.

1004.02 Participant Involvement. NHVR shall encourage the greatest degree of independence and responsibility as desired by an individual. Individuals shall be encouraged to actively participate in developing their own IPE's, schedule their own appointments, complete investigatory assignments, and perform other tasks with the full support and guidance of their counselors, as needed.

Ed 1004.03 Referrals and Applying for Services. In addition to the provisions of 34 CFR 361.41, the following shall apply to referrals and applications for services:

(a) Any individual who has a disability which results in a substantial impediment to employment shall be eligible to receive services from NHVR if determined eligible pursuant to Ed 1006;

(b) Individuals with disabilities shall:

(1) Seek NHVR services directly; or

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

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

(1) Referral disability; and

(2) Source of referral.

(d) When referring an individual to NHVR for services, the referral source may, at the time of the referral, provide all necessary and available information related to the individual's disability and employment needs to expedite eligibility decisions and planning for services;

(e) When information received from referral sources does not include name, address, or date of birth, NHVR staff shall request that the referral source provide the data as well as other necessary information;

(f) When referral information is received from a referral source other than the individual, without a signed application as described in (h)(1), or without a signed letter as described in (h)(2) requesting services, NHVR shall request the individual complete and file the application required in Ed 1003.03(a) above;

(g) Cooperative agreements and memoranda of understanding shall be established between NHVR and agencies enumerated in Ed 1003.05(b), which shall include specific referral criteria and processes to promote referral and shall be used pursuant to the agreements and MOUs;

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

(1) Has either:

a. Completed and signed NHVR's application required in Ed 1003.03(a) above;

b. Submitted a signed letter with the necessary information enumerated in Ed 1004.03(c); or

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

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

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

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

PART Ed 1005 ASSESSMENT

Ed 1005.01 Assessment: Generally. In addition to the requirements of 34 CFR 361.42 and 34 CFR 361.45, the following shall apply to assessments for determining eligibility, developing an IEP, determining priority for services, and as needed to monitor and provide vocational rehabilitation services:

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

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

(1) To determine eligibility;

(2) To determine the significance of disability;

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

(4) To substantiate appropriateness for supported employment;

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

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

(7) To determine if the individual has achieved an employment outcome in a competitive integrated setting consistent with the individual’s employment factors; and

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

Ed 1005.02 Role of the Vocational Rehabilitation Counselor.

(a) The NHVR counselor shall:

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

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

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

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

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

Ed 1005.03 Individual’s Participation in the Assessment Process.

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

(b) The individual shall:

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

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

(d) While the decision-making process shall be collaborative, decisions shall reflect the judgment of the NHVR counselor in accordance with Ed 1000 and 34 CFR 361.

Edit. “The assessment”

Ed 1005.04 Focus on Functional Capacities and Employment Factors.

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

(b) **Assessment** shall include a review of the individual’s disability and its impact on one or more functional capacities as described in Ed 1007.02(b)(2).

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

(d) **Assessment** shall specify what supports, if required to achieve the employment outcome, shall be provided to the individual to enhance strengths and overcome limitations.

Ed 1005.05 Assessment for Determining Eligibility and Priority for Services. In addition to the requirements of 34 CFR 361.42 the following shall apply to assessments for determining eligibility and priority for services:

(a) An assessment for determining eligibility and priority for services shall begin when an individual with a disability applies for NHVR services, as outlined in Ed 1004.03(g), with the intent to reach an employment outcome;

(b) An assessment and determination shall be completed within 60 days of receipt of one of the application types described in Ed 1004.03(g);

(c) Existing information shall be reviewed by the NHVR counselor to determine if the information is sufficient to determine eligibility and this shall include establishing the disability(ies), identifying the impediment to employment, and determining whether there is a need for vocational rehabilitation services;

Edit. Change edition date and check form’s title.

(d) After the execution of the “**Authorization to Disclose Information to NH Vocational Rehabilitation**” form, revised May 2021, and all other applicable releases, written documentation of the person's disability shall be obtained. This documentation may be from treatment facilities, providers, medical and other diagnosticians, educational sources, federal or state agencies, therapists, and professionals who evaluate and report on disability or medical and psychological disorders. Referrals, or information obtained by request with an authorized release, by other agencies, may include information about the individual's disability, resulting functional limitations, and how it relates to the individual’s employment needs;

Edit. No annotations should be shown in a fixed text document.

(e) Individuals may obtain and provide documentation from their treating physician, certified treatment program, a licensed or certified practitioner skilled in the diagnosis and treatment of the disability, or other source that verifies the existence and extent of an impairment to assist with the eligibility determination process;

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

(g) If not already completed, the applicant and counselor shall complete the form required in Ed 1003.03(b) during the assessment process using the information gathered before and during the process;

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

(i) If an individual meets NHVR's eligibility criteria, eligibility shall not be delayed while waiting for information to be used for vocational planning purposes; and

(j) A determination of eligibility shall not be a guarantee of the provision of specific services.

Ed 1005.06 Assessment for Developing the Individualized Plan for Employment (IPE). In addition to the requirements of 34 CFR 361.44, the following shall apply to assessments for developing the individualized plan for employment (IPE):

(a) NHVR shall conduct an assessment for determining vocational rehabilitation needs for each eligible individual. The assessment shall be used to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the IPE;

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

(1) Existing information shall be used as the primary source of information; and

(2) Information provided by the individual and other sources shall be subject to the rules of confidentiality and release of information under Ed 1003 and 34 CFR 361.38.

Ed 1005.07 Referral for Assessment Services.

(a) When referring for assessment services, the NHVR counselor shall provide necessary information, through the most appropriate communication mode for the individual, which focuses on the individual's unique vocational needs. The referral shall include relevant background information about the individual's disability, previous education and work experience, available pertinent records, and existing reports, as appropriate.

(b) The NHVR counselor shall prepare the individual for the assessment in advance.

(c) The NHVR counselor shall assist the individual in understanding the findings and develop a plan.

PART Ed 1006 ELIGIBILITY FOR SERVICES

Ed 1006.01 Eligibility. In addition to the requirements under 34 CFR 361.42 the following shall apply when determining eligibility and an individual's priority under an order of selection for services:

(a) A person shall be eligible for vocational rehabilitation services when the individual, because of the substantial impediment to employment caused by their disability, cannot achieve an employment outcome consistent with an individual's employment factors without receiving vocational rehabilitation services that are identified as essential and necessary for the person to overcome their barriers to employment due to their disability;

(b) For purposes of an assessment for determining eligibility and vocational rehabilitation needs under 34 CFR 361.42(a):

(1) An individual shall be presumed to benefit in terms of an employment outcome; and

(2) Any individual who has been determined eligible for social security benefits because of the individual's disability shall be presumed eligible for vocational rehabilitation services and considered an individual with a significant disability pursuant to 34 CFR 361.42(a)(3);

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

(d) The NHVR shall inform individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program shall intend to achieve an employment outcome;

(e) The applicant's completion of the application process for vocational rehabilitation services shall be sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on the part of the applicant shall be required for purposes of satisfying Ed 1010.04(e); and

(f) Nothing in this section shall be construed to create an entitlement to any vocational rehabilitation service.

Ed 1006.02 Employment Factors.

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

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

(c) Employment factors shall be assessed, as necessary, documented, and considered together when determining eligibility and planning services, relying on existing information available from the individual and other sources, as well as any additional assessments where appropriate.

(d) Employment factors shall be assessed, as necessary, and documented, as appropriate, in the following categories:

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

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

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

- (4) Concerns as demonstrated by the individual’s employment-related issues that need to be considered in vocational planning such as financial, self-sufficiency, medical, residential, transportation and family considerations;
- (5) Abilities as demonstrated by the individual’s existing physical, mental, or functional capacity to successfully engage in employment through natural aptitude or acquired proficiency;
- (6) Capabilities as demonstrated by the potential for an individual to develop the skills necessary for employment through the provision of vocational rehabilitation services;
- (7) Interests as demonstrated by occupational areas on which an individual has focused special attention; and
- (8) Informed choice as demonstrated by the active involvement of participants contributing to the success of and satisfaction with their employment goals in the selection of a long-term employment outcome, rehabilitation objectives, and vocational rehabilitation services including assessment services and service providers.

Ed 1006.03 Trial Work Experiences for Individuals with Significant Disabilities.

- (a) Before an individual is determined unable to benefit from vocational rehabilitation services because of the severity of the individual’s disability, the NHVR counselor shall explore the individual’s abilities, capabilities, and capacity to perform in work situations through trial work experiences;
- (b) A trial work experience shall assess individuals with significant disabilities by providing an opportunity to demonstrate their potential capacities through real work experiences;
- (c) The trial work experiences shall provide an opportunity for experiences with on-the-job supports and training, including assistive technology, except when determined not appropriate for an individual to participate in such experience;
- (d) If a trial work experience is not appropriate for an individual, the vocational rehabilitation counselor shall document in the case record the circumstances for that determination;
- (e) The results of the trial work experience shall be used demonstrate that the individual can benefit from services or it shall enable the NHVR counselor to determine with clear and convincing evidence that the applicant cannot benefit from vocational rehabilitation services in terms of an employment outcome;
- (f) NHVR counselors shall enlist community rehabilitation providers through vocational assessments that include activities such as situational assessments, community-based workplace assessments, work try-outs, and supported employment as a means to provide the required trial work experiences;
- (g) NHVR counselors shall have a high degree of certainty before concluding that a person is incapable of benefiting from vocational rehabilitation services, and there shall be clear and convincing evidence for the conclusion. For purposes of this rule, clear and convincing evidence shall mean that no employment outcome is possible considering information from the trial work experience and more than one opinion considered and utilized as evidence; and

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

Ed 1006.04 Timeline for Determining Eligibility.

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

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

- (1) The reasons for the delay and the steps necessary to reach an eligibility determination; and
- (2) A date for which eligibility shall be determined;

(c) If the determination will be delayed beyond the projected date, staff shall work with the applicant to resolve any impediments and a new projected date for eligibility determination shall be based on the anticipated time frame to collect the necessary information;

(d) If an agreement to extend the timeline for determination cannot be achieved one of the following shall apply:

- (1) If the delay is not due to the individual's refusal to provide information, but rather to the individual's unavailability to provide additional information or participate in additional assessment for determining eligibility, the case shall be closed pursuant to Ed 1003.03(d), and the individual shall be fully informed of his or her right to an administrative review, mediation, and impartial hearing and assistance as described in Ed 1021;
- (2) If the delay is due to the individual declining to provide additional information or participate in additional assessment activities after initial documentation is received, the eligibility decision shall be made as quickly as possible based on the available information, and the individual shall be fully informed of his or her right to an administrative review, mediation, and impartial hearing and assistance as described in Ed 1021; or
- (3) If the delay is due to the individual's refusal to provide information, the case shall be closed pursuant to Ed 1003.03(d), and the individual shall be fully informed of his or her right to an administrative review, mediation, and impartial hearing and assistance as described in Ed 1021.

Ed 1006.05 Eligibility Determination. Except as provided in Ed 1006.04(b) through (d), within 60 days of an individual's application for services pursuant to Ed 1004.01(h), NHVR shall notify the individual regarding eligibility as follows:

(a) When sufficient information and documentation exists to determine eligibility, that the applicant is eligible for services, and planning for services continues;

(b) When eligibility cannot be determined because of the severity of the person's disability, that a written plan shall be developed for the services to be provided during a trial work experience to determine if the individual can benefit from NHVR services;

(c) When sufficient information and documentation exists to determine that the applicant is not eligible for services because NHVR has documented that the individual:

- (1) Does not have a disability;
- (2) Does not have a substantial impediment to employment;
- (3) Is unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of the disability, justified by clear and convincing evidence demonstrated by a trial work experience pursuant to Ed 1006.03; or
- (4) Does not require services.

Ed 1006.06 Provisions of an Ineligibility Determination. NHVR shall comply with 34 CFR 361.43 when making an ineligibility determination as described in Ed 1006.05(c).

Ed 1006.07 Closure without Eligibility Determination. Pursuant to 34 CFR 361.44 the NHVR shall not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the NHVR has made a minimum number of 2 attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

PART Ed 1007 SIGNIFICANCE OF DISABILITY

Ed 1007.01 Significance of Disability Categories.

(a) NHVR shall assign and track levels of significance of disabilities to:

- (1) Ensure vocational rehabilitation services for individuals with the most significant disabilities; and
- (2) To establish priority of services when NHVR determines an order of selection is necessary.

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

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

(c) Significance of disability shall not be based on a specific diagnosis or disability and the determination may be changed any time NHVR becomes aware of additional relevant information consistent with the requirements of Ed 1007.02 during the life of the case.

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

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

Ed 1007.02 Determining Significance of Disability.

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(a) ***The NHVR counselor shall determine the significance of disability by*** reviewing the following 3 criteria:

- (1) Serious impairments to functional limitation areas;
- (2) More than one rehabilitation service required to reduce the impact of limitations on employment; and
- (3) Duration of services for 6 months or more.

(b) ***The NHVR counselor shall apply the following to determine*** serious functional limitations:

- (1) “Serious limitation” means a reduction, due to a severe physical or mental impairment, to the degree that the individual requires services or accommodations not typically made for other individuals in order to prepare for, enter into, engage in, advance in, or retain competitive integrated employment; and
- (2) Functional capacities to be considered shall include, but not be limited to:
 - a. Mobility which shall refer to a person’s ability to move to and from work or within a work environment including walking, climbing, coordination, accessing and using transportation, and use of spatial and perceptual relationships;
 - b. Communication which shall refer to a person’s ability to transmit and receive information through spoken, written, or other non-verbal means;
 - c. Self-care which shall refer to a person’s ability to perform activities of daily living, to participate in training or work-related activities, including eating, toileting, grooming, dressing, cooking, shopping, washing, housekeeping, financial management, and health and safety needs;
 - d. Self-direction which shall refer to a person’s ability to independently plan, learn, reason, problem solve, memorize, initiate, organize, and make decisions in order to allow individuals to assimilate information and learn specific skills related to job functions;

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

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

g. Motor skills which shall refer to a person's purposeful movement and control of the body and its members to achieve specific results to the degree necessary to get and keep a job; and

h. Work skills which shall refer to a person's ability to perform specific tasks required to carry out job functions, the capacity to benefit from training in the necessary skills, and the capacity to practice the work habits needed to stay employed.

(c) The NHVR counselor shall only include those services that are necessary, as a direct result of the disability, in the determination of the significance of disability, including without limitation:

(1) Agency provided services;

(2) Assistive technology or rehabilitation technology;

(3) Job or training accommodations other than assistive technology;

(4) Job-related services or community rehabilitation program (CRP) services;

(5) Physical restoration services, mental restoration services, or both;

(6) Reader, rehabilitation technology, and orientation and mobility for individuals who are blind;

(7) Supported employment; and

(8) Training, including vocational, college, or on-the-job training, or equivalent as determined by NHVR;

(d) Assessment services, counseling and guidance, and job placement services shall be provided to all individuals to meet a specific employment outcome, and may be provided by other federal, state, or local public agencies, by health insurance, or by employee benefits as comparable benefits and services, but shall not be considered when determining significance of disability.

(e) A determination that services will be required for an extended period of time shall be made when required services are expected to last 6 or more months after a plan is developed.

(f) An individual who has a disability and is receiving supplemental security income (SSI) or social security disability insurance (SSDI) benefits as a result of the disability, as determined by the social security administration (SSA), shall be presumed to have at least a significant disability, as described in Ed 1006.01(c). Further review by the NHVR counselor of the individual's functional capacities may result in a determination that the individual has a most significant disability and changes to disability designation may occur any time additional information becomes available.

PART Ed 1008 INDIVIDUALIZED PLAN FOR EMPLOYMENT

Ed 1008.01 Individualized Plan for Employment (IPE); Generally. The NHVR shall comply with the provisions of 34 CFR 361.45 and 34 CFR 361.46 in the development and completion of a written IPE, in addition to the following:

(a) The IPE shall contain a written plan consistent with the requirements of 34 CFR 361.45(d)(2)(i), to include the steps that shall measure progress toward the employment outcome;

(b) The IPE shall outline how the individual shall achieve a specific employment outcome in accordance with 34 CFR 361.45(b)(2);

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

(d) The NHVR counselor and the eligible individual shall agree on the criteria to evaluate progress toward the employment outcome.

Ed 1008.02 Timelines for IPE Development.

(a) The IPE shall be developed as soon as possible, within 90 days of the determination of eligibility pursuant to Ed 1006.

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

(1) Reasons for the delay;

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

(3) Date for which the IPE shall be completed; and

(4) Completion of the “**IPE Extension Form**”, August 2020;

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Ed 1008.03 Basic Requirements of the IPE.

(a) The eligible individual and the counselor shall develop the IPE based on results of the planning that began during the assessment for determining eligibility and continued through comprehensive assessment, to the degree necessary, for plan development pursuant to Ed 1005 and Ed 1006.

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

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

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

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

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

Ed 1008.04 Contents of the IPE. In addition to the requirements of 34 CFR 361.45, the following shall apply to the contents of an IPE:

(a) NHVR shall comply with the provisions of 34 CFR 361.46 in developing the content of the IPE, except that the NHVR shall not fund or assist in the funding of intensive hospitalization or surgery including, but not limited to, organ or bone marrow transplantations pursuant to Chapter 252:2 of the Laws of 1993;

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

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

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

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

(4) The service provider(s);

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

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

(7) Post-employment services that the individual shall need once employed;

(8) Information regarding the individual's rights and how to express and resolve any dissatisfaction through due process as described in Ed 1021; and

(9) Information regarding the availability of the local Client Assistance Program (CAP).

Ed 1008.05 Options for Development of the IPE. In accordance with 34 CFR 361.45(c)(1), the following applies to the options for development of the IPE:

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

(b) The individual may combine any of the options, and take on a greater degree of responsibility for the IPE, or receive increased assistance from NHVR over the course of time;

(c) The individual shall choose one or more of the following methods to develop the IPE:

(1) Without assistance from NHVR;

(1) With assistance from a NHVR counselor; and

(2) With technical assistance from other sources such as independent living centers, school guidance counselors, parents, friends, or community rehabilitation programs, which shall include the organizations and individuals receiving a copy of the IPE.

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

(e) The individual shall be informed of:

(1) The required content or components of the IPE;

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

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

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

(5) The rights and responsibilities of the individual in carrying out the IPE, including remedies available through due process pursuant to Ed 1021; and

(6) The availability of the CAP and how to contact the CAP provider.

Ed 1008.06 Counseling and Guidance During IPE Development.

(a) The counselor shall facilitate the development of the IPE by engaging the eligible individual through counseling and guidance to identify the employment outcome and the steps and services needed to reach that goal to the degree necessary based on the option for developing the IPE in accordance with CFR 361.45(c)(1) and 1008.05.

(b) The counselor shall be responsible for reviewing and approving all IPEs, including any proposed changes as described in Ed 1008.13.

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

Unclear. Since there are no criteria in the rule that applies when the individual develops the IPE without NHVR help, it is unclear what criteria the counselor will use to review and approve these IPEs. The rule previously outlined criteria for independently developed IPEs. Are there general criteria that can be referenced here?

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

- (1) Exploring the impact of the disability and options and resources which allow the individual to achieve an employment outcome;
- (2) Engaging in assessment activities that identify the individual’s rehabilitation needs and help the individual make informed choices about employment options and the employment outcome;
- (3) Using current labor market information to help identify a potential employment outcome;
- (4) Identifying an employment goal consistent with abilities, interests, rehabilitation goals and labor market information;
- (5) Developing positive employment attitudes and behaviors;
- (6) Explaining services available through various community resources;
- (7) Identifying needed services and coordinating referrals as appropriate;
- (8) Developing job-seeking and networking skills; and
- (9) Monitoring post-employment adjustment to determine need for additional services.

Ed 1008.07 Secondary Students with Disabilities.

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

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

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

(d) For students with disabilities receiving special education services who are determined eligible for vocational rehabilitation services, IPEs shall be developed prior to their exiting the secondary program, or within 90 days of eligibility determination, whichever occurs first.

(e) Students not already evaluated, or with an incomplete assessment, by the student’s special education team, shall require assessments and reports completed prior to identifying and employment outcome and determining the specific vocational rehabilitation services in an IPE. In these circumstances, the NHVR counselor shall document the specific assessment activities and services conducted to develop the IPE and how this will affect the timeframe for IPE development

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

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(1) NHVR staff shall review school information and reports to determine if there is transition information contained in the student’s IEP, and if appropriate, include the information in the IPE, including, but not limited to:

- a. Assessment information;
- b. Employment outcome; and
- c. A description of vocationally-related services;

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

(3) The results of the planning by NHVR shall be made available to the school liaison, with a signed release of information from the parent or adult student, pursuant to Ed 1003. The NHVR shall request the student’s IEP be amended to contain the school services identified in (2) above as those that will contribute to the success of the student’s plan.

Ed 1008.08 IPE and Supported Employment. For individuals with the most significant disabilities for whom an employment outcome in a supported employment setting is determined to be appropriate, the IPE shall also include the following:

- (a) A description of the extended services needed, including natural supports when necessary;
- (b) The source of extended services, or if not possible during the development of the IPE, an explanation of why there is a reasonable expectation that such sources shall be available; and
- (c) Coordination of NHVR services with vocationally-relevant services provided under other individualized plans under related federal or state programs, which shall be documented in the record of services.

Ed 1008.09 IPE Documentation Requirements. The following areas shall be documented, and the NHVR shall indicate any opportunities that the individual was afforded to exercise informed choice pursuant to Ed 1013:

- (a) Employment outcome development, including, but not limited to:
 - (1) The employment outcome selected by the individual in developing the IPE;
 - (2) The rationale for that goal, based on the employment factors, as describe in Ed 1006.02;
 - (3) The results of assessment services;
 - (4) The alternatives considered by or with the individual;

(5) If applicable, the coordination with the individual education program (IEP), or if coordination with the IEP cannot be realized in the IPE, the case note shall contain the reason;

(6) The level of integration in the employment outcome; and

(7) Discussion of rehabilitation technology, accommodations, support services, and transportation considerations pursuant to Ed 1006 and Ed 1007;

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

(1) The rationale that describes why the planned services are required to reach the employment outcome;

(2) Vocational rehabilitation services;

(3) The cost effectiveness of the service selected;

(4) Service providers;

(5) The level of integration in the settings in which services shall be provided;

(6) The need for extended services; and

(7) The need for post-employment services;

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

(d) An indication of the result of, or the exemption from, the financial need determination when services are to be provided contingent on financial need as described in Ed 1006;

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

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

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

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

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

Ed 1008.10 Preparing the Original IPE.

(a) The original IPE shall be completed based on the existing information and comprehensive assessment that identifies the employment outcome and the nature and scope of NHVR services.

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

Edit. Here and on the form the edition date needs to be updated. The form has a revision date of November 2020.

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

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

(2) The employment outcome shall be as specific as possible;

(3) The anticipated month and year the eligible individual is expected to reach the employment outcome shall include the 90-day employment period prior to case closure;

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

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

(6) The services section shall contain specific information about the individualized vocational rehabilitation services, including support services such as transportation, interpreter services, and note taker services that shall be required to reach the employment outcome. All services shall be provided, as appropriate, in the most integrated setting.

(7) Vocational rehabilitation services or support services shall include:

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

(8) Identification of services on the IPE shall include:

- a. The specific vocational rehabilitation or support service;
- b. The service provider;
- c. The start and end dates of the service;

- d. NHVR responsibility, or the estimated amount NHVR shall be responsible for;
- e. The amounts of comparable benefits;
- f. Individual responsibility after the financial needs assessment and comparable benefits and services are determined; and
- g. The estimated cost of services;

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

(10) The rights and responsibilities section of the IPE shall contain preprinted information regarding both the individual and NHVR’s role in achieving the IPE and shall include information concerning the CAP, administrative reviews, mediation, and impartial hearings.

Ed 1008.11 Reviewing the IPE.

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- (a) The IPE shall be reviewed at least annually.
- (b) The eligible individual or the NHVR counselor may initiate a review of the IPE at any time.
- (c) The results of any review shall be recorded in the “Plan Review Form”, revised August 2020.
- (d) If changes are initiated following a review, those changes shall be recorded in an amendment to the IPE pursuant to Ed 1008.12.
- (e) At least 30 days prior to the date of the annual review, the NHVR counselor shall communicate with the individual to schedule an IPE review.

Ed 1008.12 Changes to the IPE.

- (a) Changes to the IPE shall occur at any time when agreed to by the eligible individual and the NHVR counselor.
- (b) All changes shall be documented in the record of services by completing IPE form referenced in Ed 1008.10(c) or the “New Hampshire Vocational Rehabilitation Amendment-Individualized Plan for Employment” form, revised August 2020.
- (c) A case note shall be completed to indicate how the individual was involved in developing the changes.
- (d) When making changes to the IPE, the individual has the same options enumerated in Ed 1008.05(b).
- (e) Major changes to an IPE shall include, but not be limited to:

Edit. The form’s title appears to be “New Hampshire Vocational Rehabilitation Plan Amendment”. Also, here and on the form the edition date needs to be updated. The form has a revision date of November 2020.

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

(2) An increase in the level of individual participation in the cost of services, if, as a result of a change in the IPE, the total expenditure that the individual is expected to contribute increases over the amount the individual contributed to the original IPE, or most recent major change if applicable;

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

(4) A new provider of services.

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

(1) Service start or end dates;

(2) The anticipated date of employment;

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

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

(5) An increase in the cost of an authorized service that does not increase the level of the individual's participation in the cost of services.

Ed 1008.13 IPE Approvals and Signatures.

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

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

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

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

(3) Services are required to reach the employment outcome;

(4) Services are cost effective; and

(5) NHVR policies and procedures are followed.

(c) If the IPE development is approved, NHVR shall prepare an original IPE as referenced in Ed 1008.10(c) or revised IPE as described in Ed 1008.12(b).

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

(1) Is developed by a NHVR counselor I;

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

- a. Graduate school training; or
- b. Plans for self-employment; or

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

(e) If no supervisory approval was required, or if supervisory approval was granted, the following shall apply:

- (1) The forms for an original IPE pursuant to Ed 1008.10(c) or a revised IPE pursuant to Ed 1008.12(b) shall be signed by the counselor and supervisor, as required;
- (2) The individual shall be provided with a copy of all signed forms; and
- (3) The forms shall be signed before the initiation of services, except in an emergency situation where the NHVR counselor determined a delay in obtaining a signature would cause a significant delay in services.

Ed 1008.14 Record of Services. The NHVR shall maintain for each applicant and eligible individual a record of services that complies with the provisions of 34 CFR 361.47.

PART Ed 1009 ORDER OF SELECTION

Ed 1009.01 Determination, Establishment, and Implementation. The provisions under 34 CFR 361.36 shall be used to determine the ability to serve all eligible individuals or an order of selection in addition to the following:

(a) NHVR shall comply with the provisions of 34 CFR 361.36 to either:

- (1) Provide the full range of vocational rehabilitation services listed in 29 U.S.C. 723(a), as appropriate, to all eligible individuals; or
- (2) In the event that vocational rehabilitation services cannot be provided to all eligible individuals who apply for the services, implement the order of selection established in (e) below in selecting eligible individuals to be provided vocational rehabilitation services;

(b) The NHVR shall consult with the state rehabilitation council established under 34 CFR 361.16 and meeting the requirements of 34 CFR 361.17 regarding the:

- (1) Need to establish an order of selection;
- (2) Priority categories of the particular order of selection;
- (3) Criteria for determining individuals with the most significant disabilities; and
- (4) Administration of the order of selection

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

(d) If NHVR establishes an order of selection, but determines that it does not need to implement that order at the beginning of the fiscal year, NHVR shall continue to meet the requirements of Ed 1009.01(c). If the NHVR does not continue to meet the requirements of Ed 1009.01(c) it shall implement the order of selection by closing one or more priority categories;

(e) If, in accordance with 34 CFR 361.36, the NHVR determines that it is unable to provide the full range of services to all eligible individuals, the NHVR shall implement an order of selection for eligible individuals according to the following priority categories:

(1) Priority one shall include individuals determined eligible for services prior to the effective date of the implementation of the order of selection in accordance with 34 CFR 361.36(e)(3)(i), and individuals determined eligible for services after the effective date of the implementation of the order of selection and who are individuals with a most significant disability;

(2) Priority 2 shall include individuals with a significant disability; and

(3) Priority 3 shall include all other eligible individuals who do not have a significant disability;

(f) NHVR shall provide services to individuals who require specific services or equipment to maintain employment.

(g) NHVR shall continue to provide pre-employment transition services to students with disabilities who were receiving such services prior to being determined eligible for vocational rehabilitation services.

Ed 1009.02 Referring Individuals Under an Order of Selection. The NHVR shall comply with 34 CFR 361.37 to implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the NHVR's order of selection criteria for receiving vocational rehabilitation services if the NHVR is operating on an order of selection, shall be provided accurate vocational rehabilitation information and referral guidance.

PART Ed 1010 COMPARABLE SERVICES AND BENEFITS

Ed 1010.01 Comparable Services and Benefits.

(a) NHVR shall comply with the provisions of 34 CFR 361.53 in the determination and use of comparable services and benefits.

(b) Comparable benefits and services shall be:

(1) Provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits;

(2) Available to the individual at the time needed to achieve the intermediate objectives in the IPE; and

(3) Commensurate to the services that the individual would otherwise receive from NHVR.

(c) NHVR shall determine whether comparable benefits and services are available to an individual prior to paying for all vocational rehabilitation services, excluding only those services and circumstances

listed as exceptions in (g) below. NHVR staff and participants shall seek comparable benefits and services in order to maximize the vocational rehabilitation resources available to individuals with disabilities. If an individual refuses to apply for or accept available comparable benefits, NHVR funds shall not be used instead of, or to replace, comparable benefits.

(d) Prior to initiating comparable benefits and services, the NHVR staff shall determine the following:

(1) Whether the determination of the availability of comparable services and benefits would delay services to an individual who is at extreme medical risk, as determined by an appropriate licensed medical professional; and

(2) Whether an immediate job placement would be lost due to a delay in the provision of such comparable benefits.

(e) When comparable benefits or services are available, they shall be used prior to using NHVR funds or services;

(f) When comparable benefits or services are unavailable or if an individual is required to initiate a new application to another program, NHVR funds shall not be used in the interim except when in the judgment of NHVR staff in consultation with the individual, waiting for benefits would prevent the individual from achieving the intermediate objectives of the IPE;

(g) Comparable benefits shall not be required for the following exempt services:

(1) Assessment services to determine eligibility and vocational rehabilitation needs;

(2) Counseling and guidance, including information and support services to assist an individual exercising informed choice;

(3) Referral and other services to secure needed services from other agencies;

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices; and

(6) Post-employment services as noted above in (1) through (5).

(h) If an individual is in default of a student loan, financial aid, including a Pell grant, shall not be available to the individual. NHVR shall be prohibited from paying for any training or related services at a post-secondary program eligible for a Pell grant, including, but not limited to, colleges and business and trade schools, for an individual who owes a refund on a Pell Grant or is in default of a student loan, unless the individual makes maximum effort to resolve the default. Maximum effort shall mean that the individual has a repayment plan, or documented correspondence attempting to set up a repayment plan, with the lending institution or grantor.

(i) When making a determination of whether to secure comparable benefits prior to using vocational rehabilitation funds, counselors shall:

- (1) Acquire at least general knowledge about the nature of services available from other sources, their eligibility criteria, and the application and appeals process;
- (2) Explore with the individual all possible sources of comparable benefits and assess, through discussion with the participant, the appropriateness of pursuing specific benefits or services and the availability of such benefits;
- (3) Document in the case record the participant's application for benefits or the reasons NHVR funds are being used in place of benefits; and
- (4) Monitor the application of benefits and assist the individual, if necessary.

(j) Individuals shall also exercise initiative in exploring the availability of and in securing the comparable benefits available to them, as appropriate to their disability by:

- (1) Applying in a timely manner for all comparable benefits and services which are appropriate, with counselor assistance if necessary;
- (2) Accepting and use comparable benefits and services when available; and
- (3) Informing the NHVR counselor of the status of any application and the receipt of denial of any comparable benefit.

PART Ed 1011 PARTICIPATION OF INDIVIDUALS IN COST OF SERVICES BASED ON FINANCIAL NEED

Ed 1011.01 Financial Needs Assessment.

(a) NHVR shall consider the financial need of eligible individuals who are planned to receive services that require a financial needs assessment pursuant to (f) below. The financial needs assessment shall be used for determining the extent of the individual's participation in the costs of vocational rehabilitation services.

(b) Although eligible individuals shall require a financial needs assessment, the services listed in (g) below shall not require a financial needs assessment.

(c) There shall be a shared responsibility between the eligible individual and the NHVR counselor in determining financial need as follows:

- (1) The eligible individual shall be responsible for providing their complete and accurate personal and household financial information to the NHVR counselor, including, but not limited to:
 - a. Most recent federal tax return;
 - b. SSI/SSDI award letter;
 - c. Public assistance budget; and
 - d. Most recent pay stubs; and

(2) Pursuant to Ed 1003, the NHVR counselor shall obtain, document, maintain, and safeguard the personal and household financial information required to review the individual's financial need and to calculate the extent of their participation in the cost of services.

(d) A financial needs assessment shall be completed at least annually. A financial needs assessment shall also be conducted if there is a significant change in the eligible individual's financial situation and they are receiving a financial need-based service.

(e) The financial needs assessment shall:

- (1) Be applied uniformly to eligible individuals; and
- (2) Explain the method for determining the financial need of an eligible individual as follows:
 - a. The method shall be a review of the person's financial status; and
 - b. The method shall compare income and resources to determine the amount of monthly resources that shall be utilized for specific vocational rehabilitation services.

(f) The following services shall not be provided until the participant has been determined to meet financial need and available resources have been applied toward the cost:

- (1) All training services at college and vocational training programs, including, but not limited to, tuition, room and board, required fees, and required textbooks and materials;
- (2) Physical and mental restoration;
- (3) Vocational and other training services;
- (4) Maintenance;
- (5) Driver training;
- (6) Transportation, except during evaluation, special transportation, when used for the provision of pre-employment training services, and transportation to attend an administrative review or impartial hearing;
- (7) Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome;
- (8) Supported employment services;
- (9) Post-employment services;
- (10) Occupational and business licenses, tools, equipment, initial stocks, and supplies;
- (11) Goods, inventory, equipment, and supplies for self-employment;
- (12) Rehabilitation technology, including vehicle modification, telecommunications, sensory, and other technological aids and devices;

(13) Modifications to homes, vehicles, and worksites;

(14) Transition services;

(15) Technical assistance and other consultation services to conduct market analyses, develop business plans and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment; and

(16) All other goods and services not exempt under (g) below.

(g) The NHVR shall not require a financial needs assessment or require the financial participation of the individual for any of the services listed in 34 CFR 361.54(c)(3)(i).

(h) The provisions of comparability pursuant to Ed 1010 shall apply to the services listed in (g) above.

(i) Eligible individuals shall be exempt from a financial needs assessment who:

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“(f)”.

(1) Receive public benefits, including, but not limited to:

a. Temporary assistance for needy families (TANF); and

b. Aid to the permanently and totally disabled (APTD); and

(2) Receive SSI or SSDI pursuant to Ed 1006.01(b)(2).

(j) Eligible individuals in accordance with (i)(1) above shall be determined to meet NHVR’s financial need and shall be exempt from a financial needs assessment except that NHVR shall provide funding for financial need-based services after all comparable benefits have first been applied.

PART Ed 1012 STANDARDS FOR PROVIDERS OF SERVICES

Ed 1012.01 Standards for Facilities and Providers of Services. The NHVR shall comply with the provisions of 34 CFR 361.51 regarding the standards for facilities and providers of services including accessibility of facilities, affirmative action, and special communication needs personnel.

PART Ed 1013 INFORMED CHOICE

Ed 1013.01 Informed Choice. The NHVR shall comply with the provisions of 34 CFR 361.52 to assist applicants and recipients of services in exercising informed choice throughout the rehabilitation process.

PART Ed 1014 SEMI-ANNUAL AND ANNUAL REVIEW

Ed 1014.01 Semi-Annual and Annual Review. The NHVR shall comply with the provisions of 34 CFR 361.55 and Ed 1008.11 when conducting semi-annual and annual reviews.

PART Ed 1015 REQUIREMENTS FOR CLOSING THE RECORD OF SERVICES OF AN INDIVIDUAL WHO HAS ACHIEVED AN EMPLOYMENT OUTCOME

Ed 1015.01 Closing the Record of Services. The record of services of an individual who has achieved an employment outcome shall be closed only if all the requirements of 34 CFR 361.56 are met to include employment outcome achieved, employment outcome maintained, satisfactory outcome, and post-employment services.

PART Ed 1016 SUPPORTED EMPLOYMENT SERVICES PROGRAM

Ed 1016.01 Purpose. The purpose of Ed 10156 is to develop and implement a collaborative program with appropriate entities, consistent with state and federal law, to provide a program of supported employment services for individuals with the most significant disabilities who require supported employment services to enter or retain competitive employment.

Ed 1016.02 Definitions. Except where the context makes another meaning manifest, terms incorporated in 34 CFR 363.6 and used in Ed 10156 shall have the same meaning.

Ed 1016.03 Eligibility for Services. In order to be considered for services under the state supported employment services program, an individual shall:

(a) Be eligible for vocational rehabilitation services in accordance with the provisions of 34 CFR 361.42 and Ed 1006;

(b) Be an individual with the most significant disabilities pursuant to Ed 1007; and

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

Ed 1016.04 Authorized Activities. Activities authorized by the state supported employment services program shall include the following:

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

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

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

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

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

(3) Discrete post-employment services following transition that are unavailable from an extended services provider and that are necessary to maintain the job placement, such as job

station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

Ed 1016.05 Developing Collaborative Agreements.

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

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

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

(2) The extended services to be provided by state agencies, private nonprofit organizations, or other sources following the cessation of supported employment services under Ed 1016;

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

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

Ed 1015.06 Information Collection and Reporting Requirements.

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

(b) The NHVR shall collect and report separately information for:

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

(2) Supported employment clients served under Ed 1010.15 and Ed 1010.16.

Ed 1016.07 Coordinating Services and Activities. The NHVR shall coordinate the services provided to an individual under Ed 1015 and under Ed 1010.15 and Ed 1010.16 to ensure that the services are complementary and not duplicative.

Ed 1016.08 Transition of an Individual to Extended Services. The NHVR shall provide for the transition of an individual with the most significant disabilities to extended services no later than 18 months after placement in supported employment, unless a longer period is established in the IPE, and only if the individual has made substantial progress toward meeting the hours-per-week work goal identified in the IPE, the individual is stabilized in the job, and extended services are available and can be provided without a hiatus in services.

Ed 1016.09 Requirements for Successfully Rehabilitating an Individual in Supported Employment. An individual with the most significant disabilities who is receiving supported employment services shall

be considered to be successfully rehabilitated if the individual maintains a supported employment placement for 90 days after making the transition to extended services.

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Ed 1016.10 Client Assistance Program. In accordance with the informed provisions of 1013 the NHVR shall inform applicants and recipients, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the client assistance program (CAP) established in New Hampshire under the Act, including information on seeking assistance from that program.

PART Ed 1017 GENERAL PROVISIONS FOR INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM

Ed 1017.01 Purpose. The purpose of Ed 1017 is to provide uniform application of 45 CFR 1329 regarding state independent living services and centers for independent living.

Ed 1017.02 Definitions. Except where the context makes another meaning manifest, the terms defined in 45 CFR 1329.4 and 34 CFR 77.1 have the meaning indicated when used in Ed 1016.

Ed 1017.03 Requirements for Processing Referrals and Applications. The service provider shall adhere to the requirements of Ed 1004 for referrals and applications for IL services from individuals with significant disabilities.

Ed 1017.04 Requirements for Determining Eligibility.

(a) Before or at the same time that an applicant for IL services begins receiving IL services funded under Ed 1017, the service provider shall determine the applicant's eligibility and maintain documentation that the applicant has met the basic requirements specified in 29 USC 796b. relative to assuring that any individual with a significant disability is eligible to receive IL services.

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

Ed 1017.05 Requirements for Determining Ineligibility.

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

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

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

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

(e) If the service provider determines that the applicant can benefit from services other than IL, the service provider shall refer the applicant to other agencies and facilities, including the NHVR.

Ed 1017.06 Review of Ineligibility Determination.

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

(b) The review shall not be conducted in situations where the applicant has refused the review, no longer resides in New Hampshire, or their location is unknown.

Ed 1017.07 Requirements for an Independent Living Plan.

(a) Unless the individual signs a waiver in accordance with Ed 1017.07(b), the service provider, in collaboration with the individual with a significant disability, shall develop and periodically review an IL plan for the individual in accordance with the requirements in Ed 1017.08 through Ed 1017.11.

(b) The requirements of Ed 1017.07 with respect to an IL plan shall not apply if the individual knowingly and voluntarily signs a waiver stating that an IL plan is unnecessary.

(c) Subject to Ed 1017.07(b), the service provider shall provide each IL service in accordance with the IL plan.

Ed 1017.08 Initiation and Development of an Independent Living Plan.

(a) Development of an individual's IL plan shall be initiated after documentation of eligibility under Ed 1017.04(a) and shall indicate the goals or objectives established, the services to be provided, and the anticipated duration of the service program and each component service.

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

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

Ed 1017.09 Review.

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

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

Ed 1017.10 Coordination with Vocational Rehabilitation, Developmental Disabilities, and Special Education Programs. The development of the IL plan and the provision of IL services shall be coordinated to the maximum extent possible with any individualized:

- (a) Written rehabilitation program for vocational rehabilitation services for that individual;
- (b) Habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act, 42 USC 15001; and
- (c) Education program for the individual prepared under part B of the Individuals with Disabilities Education Act 20 USC 1440, et seq., as implemented by 34 CFR 300 and 303.

Ed 1017.11 Termination of Services. If the service provider intends to terminate services to an individual receiving IL services under an IL plan, the service provider shall follow the procedures in Ed 1017.05(c)-(e) and Ed 1017.06.

Ed 1017.12 Maintaining Records for the Individual.

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

- (1) Documentation concerning eligibility or ineligibility for services;
- (2) The services requested by the applicant or individual;
- (3) Either the IL plan developed with the applicant or individual or a waiver signed by the applicant or individual stating that an IL plan is unnecessary;
- (4) The services actually provided to the applicant or individual; and
- (5) The IL goals or objectives:
 - a. Established with the applicant or individual, whether or not in the applicant's or individual's IL plan; and
 - b. Achieved by the applicant or individual.

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

Ed 1017.13 Durational Limitations on Independent Living Services. The service provider shall not impose any uniform durational limitations on the provision of IL services, except as otherwise provided by federal law or regulation.

Ed 1017.14 Standards for Service Providers. In providing IL services to individuals with significant disabilities, service providers shall comply with:

- (a) The written standards for IL service providers established by the NHVR pursuant to Ed 1017; and

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

Ed 1017.15 Personally Identifiable Information (PII). Personally identifiable information (PII) and other personal information and data shall be collected and shared pursuant to the provisions of Ed 10043.

Ed 1017.16 Review Procedures Available to Individuals.

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

(b) Each service provider shall inform each individual who seeks or is receiving IL services from the service provider about the review procedures required by Ed 1017.16(a). The information about the review procedures shall be in an accessible format that uses appropriate modes of communication consistent with the informed choice of the individual.

PART Ed 1018 INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

Ed 1018.01 Purpose. The purpose of the independent living services for older individuals who are blind program is to support projects that:

(a) Provide any of the IL services as described in 34 CFR 367.3(b);

(b) Conduct activities that will improve or expand services for older individuals who are blind; and

(c) Conduct activities to help improve public understanding of the problems of older individuals who are blind.

Ed 1018.02 Definitions. Except where the context makes another meaning clear, the terms defined in 34 CFR 367.5 shall have the same meaning in Ed 1018.

Ed 1018.03 Services for Older Individuals Who Are Blind. For the purposes of Ed 1018.01(a), IL services for older individuals who are blind shall include:

(a) Services to help correct blindness including:

(1) Outreach services;

(2) Visual screening;

(3) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and

(4) Hospitalization related to these services;

(b) The provision of eyeglasses and other visual aids;

(c) The provision of services and equipment to assist with becoming more mobile and more self-sufficient;

(d) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;

(e) Guide services, reader services, and transportation;

(f) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;

(g) IL skills training, information and referral services, peer counseling, and individual advocacy training; and

(h) Other IL services as defined in the Act, 29 USC 707(30), and as listed in 34 CFR 365.22.

Ed 1018.04 Administering the Program.

(a) The NHVR shall administer the program in Ed 1018 in order to carry out the purposes listed in Ed 1018.01 either directly or through:

(1) Grants to public or private nonprofit agencies or organizations; or

(2) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(b) Notwithstanding Ed 1018.04(a), the NHVR may enter into assistance contracts with public or private nonprofit agencies or organizations by following the requirements in 34 CFR 366.32(e).

(c) Notwithstanding Ed 1018.04(a), the NHVR shall not enter into procurement contracts with public or private nonprofit agencies or organizations, as provided in 34 CFR 366.32(f).

Note to JLCAR. RSA 186-B:12 grants the program the ability to grant licenses.

PART Ed 1019 NEW HAMPSHIRE BUSINESS ENTERPRISE PROGRAM

Ed 1019.01 Purpose. The purpose of the New Hampshire Business Enterprise Program (BEP) is to provide blind persons with remunerative employment, enlarge the economic opportunities for the blind, and stimulate the blind to strive to make them self-supporting. The department, through the BEP of the office of services for blind and visually impaired, (SBVI) shall be the state licensing agency (SLA) for legally blind individuals who operate food and vending service facilities on federal, state, and other properties.

Ed 1019.02 Authority. The implementation of agreed-upon policies, standards, and procedures affecting the overall operation of the vending facilities program shall be subject to review by the committee, as defined in Ed 1019.03(g). SBVI shall have final authority and responsibility for the administration and operation of the vending facilities program.

Ed 1019.03 Definitions. Except where the context makes another meaning manifest, the terms defined in 34 CFR 395.1, Ed 1002.01, and Ed 1109 shall have the same meanings in addition to the following terms:

(a) “Active participation” means an ongoing process of negotiations between SBVI and the committee to achieve joint planning and approval of program policies, standards, and procedures affecting the overall operation of the vending facilities program, prior to their implementation by SBVI;

(b) “Business enterprise program (BEP)” means the New Hampshire business enterprise program in the department of education;

(c) “Individual who is legally blind” means a blind person as defined in 34 CFR 361.1(c);

(d) “Manager” means an individual who is legally blind who is licensed to operate a vending facility on federal or other property;

(e) “Roster” means a list of all qualified candidates who have successfully completed all BEP training requirements and are eligible and awaiting assignment to a vacant vending facility;

(f) “Services for blind and vision impaired (SBVI)” means “Blind Services” as defined in RSA 186-B:10-II; and

(g) “State committee of licensed managers (the committee)” means an officially constituted body within state government, functioning as an integral part of the state's BEP. The committee shall consist of all licensed managers and shall carry out its duties in accordance with 34 C.F.R. 395.14;

Ed 1019.04 Issuance of Vending Facility Manager Licenses.

(a) SBVI shall issue licenses only to a candidate who is:

(1) A citizen of the United States;

(2) Legally blind as defined in Ed 1019.03(b); and

(3) Qualified to operate a vending facility by evidence of having successfully completed training prescribed by SBVI or by virtue of demonstrated experience.

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

(1) Are in need of employment; and

(2) Are residents of the state of New Hampshire.

(c) Candidates, who have satisfactorily completed the training and probationary period described in Ed 1019.05 and Ed 1019.06, shall be issued a manager license.

Ed 1019.05 Training Program and Probationary Period.

(a) All manager candidates shall complete a training program developed by SBVI.

(b) In selecting a candidate who is deemed appropriate to enter the BEP training program, SBVI shall focus on the candidates' individual skills, abilities, and personal qualifications especially suited to the operation of a vending facility as determined by materials submitted by the candidate, NHVR counselor, or both, including but not limited to evaluation reports, educational background, work experience, and resumes.

(c) SBVI shall document that the candidate possesses the necessary skills to function as an independent blind person and the aptitude to be a successful business owner.

(d) The candidate shall meet with the committee chair and administrator of SBVI during the initial interview phase of the acceptance process.

(e) After considering all available information including the interview and recommendation of the committee chair, the administrator shall make the decision as to whether or not to accept the candidate into the training.

(f) Training shall be developed by SBVI with the active participation of the committee.

(g) Training shall consist of a standardized training curriculum combined with on-the-job training in areas including, but not be limited to:

- (1) Health and sanitation;
- (2) Customer service;
- (3) Vending management;
- (4) Café management;
- (5) Marketing;
- (6) Human resources;
- (7) Business processes;
- (8) Accounting;
- (9) Randolph-Sheppard Act; and
- (10) State rules and regulations.

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(h) Candidates, who have been accepted and have satisfactorily completed the training prescribed by SBVI shall be placed on a roster.

Ed 1019.06 Probationary Candidates (Individuals on the Roster).

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

(b) A candidate from the roster who is awarded a first location shall serve a probationary period not to exceed 6 months.

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

- (1) The candidate receives satisfactory evaluation reports as acknowledged by SBVI, and these reports have been reviewed with the NHVR counselor if applicable and the committee chair; and
- (2) The evaluation reports attest that the candidate effectively demonstrates the ability to:

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

(d) A candidate whose performance is not acceptable to SBVI shall not be licensed by SBVI and shall be removed from the program when the candidate fails to meet the criteria listed in Ed 1019.06(c) during the training or the probationary periods.

(e) Licenses shall be issued to the manager by SBVI for an indefinite period and shall be subject to termination as provided in Ed 1019.14 and Ed 1019.15.

Ed 1019.07 Transfers and Promotions of Licensed Managers.

(a) When a location becomes available for bid, the vacancy shall be announced to all licensed managers and individuals on the roster.

(b) When an opportunity to bid on a location is announced, a manager may bid or not bid without prejudice to future consideration of a subsequent bid by the potential applicant.

(c) A manager shall be informed of additional requirements of a particular property management, including, but not limited to, security clearance background checks and drug screenings, and shall agree to the additional requirements as a condition of being assigned.

(d) Any manager who is in probationary status as outlined in Ed 1019.06(b), has not completed the continuing education requirements set forth in Ed 1019.18, or is delinquent with respect to filing any reports or had any indebtedness to the BEP or the state of New Hampshire at the time of the vacancy announcement shall not be permitted to bid for the vacancy.

(e) A selection committee shall be convened by the administrator of SBVI when new opportunities become available for promotion or transfer. The selections committee shall include a representative of the state committee of licensed managers assigned by the chair or co-chairs, the BEP coordinator, and a SBVI representative appointed by the SBVI administrator.

(f) The selection committee shall interview all candidates who submit a bid and score the candidates using the following criteria:

- (1) Record of performance for the past 2 years;
- (2) The manager’s plan for the new business including a business plan if applicable;
- (3) Responses to interview questions; and
- (4) Personal appearance, demeanor, and attitude.

(g) After considering all criteria, each review committee member shall award points to the candidates as follows:

- (1) First choice, 3 points;
- (2) Second choice, 2 points; and
- (3) Third choice, 1 point.

(h) The BEP coordinator shall total up the points, and the candidate with the most points shall be awarded the facility. In the event of a tie, the candidate with the most seniority shall be awarded the facility.

(i) When experience has proven that a manager, who SBVI has determined is committed to the successful operation of their vending facility, is assigned to a location or locations beyond the manager’s capacities, the manager shall be given opportunities for training. Except that if the training does not result in improved performance, an assignment to a location commensurate with the manager’s ability shall be made. If no such facility is available, the manager’s name shall be placed on the roster.

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

(k) If no qualified manager has submitted a bid on a vacant vending facility, BEP, with active participation of the committee shall:

- (1) Assign the vending facility on a temporary basis to a licensed manager assigned to another vending facility;
- (2) Enter into a third-party agreement with a private entity with the commissions being used in accordance with any state or federal regulations to perpetuate the BEP. Such agreements shall not exceed one year and are subject to renewal if no manager is still available to manage the vending facility; or
- (3) Permanently attach the vending facility to another vending facility being managed by a licensed manager if it is evident that the location will never sustain a manager nor will there be an opportunity in the foreseeable future to use the location when creating a vending route.

Ed 1019.08 Teaming Arrangements. A manager shall enter into a teaming arrangement with a private vendor only when the following criteria are met:

- (a) The manager a made a qualified bid on the location in response to a bid notification by SBVI;

(b) The manager demonstrated his or her active role in the day-to-day operation of the business as the person responsible for all reports and accountabilities under applicable federal and state laws and regulations;

(c) The financial arrangements are acceptable to the program and not less than the manager could make if managed independently; and

(d) The written agreement was reviewed and approved by the program.

Ed 1019.09 Vending Routes.

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

(b) Once a vending route is established it shall remain an intact route. When the manager no longer wishes to, or cannot, serve one or more of the locations on the established vending route the vending route as a whole shall go out to bid as a single vending location.

(c) Altering the composition of a vending route requires the submission of a written proposal which shall be jointly approved by the program and the state committee of licensed managers.

Ed 1019.10 Maintenance and Replacement of Equipment.

Note to JLCAR. 34 CFR 395.8(c) and 34 CFR 395.9(c) grants authority to charge an assessment and to set aside funds for maintenance and replacement of equipment. See attachments.

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

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

(b) After the initial 4-month period referenced in (a) above, the manager shall be assessed a \$100 deductible on each repair call in accordance with 34 CFR 395.8(c) and 34 CFR 395.9(c).

Edit. "34 CFR 395.9(c)."

(c) SBVI shall replace a piece of equipment based upon funds available if it is deemed to be more cost effective to replace, and the manager has called in a repair.

Edit. No annotations should be shown in a fixed text document.

(d) If SBVI becomes aware of malfunctioning equipment and the manager has not called in a repair, SBVI shall repair and maintain, or cause to be repaired and maintained, any equipment in need of repair and maintenance in order to keep the facility operable and in an attractive condition, and the manager shall be assessed the full amount of the repair charge.

Ed 1019.11 Setting Aside of Funds.

(a) In accordance with 34 CFR 395.8(c) and 34 CFR 395.9(c), SBVI shall set aside funds from the net proceeds of the operation of vending facilities and vending machine income to the extent necessary for the following purposes:

- (1) Maintenance and replacement of equipment;

- (2) Purchase of new or replacement equipment;
- (3) Management services as defined in Ed 34 CFR 395.1(j), including training and continuing education for managers;
- (4) Retirement and pension funds, health insurance contributions, paid sick leave and vacation time if it is determined by a majority vote of the managers licensed by SBVI to contribute and use funds set aside for these purposes after SBVI provides each manager information on all matters relevant to such funds; and
- (5) The establishment of a fair minimum return.

(b) The charge for each purpose listed in Ed 1019.11(a) shall be determined by SBVI with the active participation of the state committee of licensed managers and shall be designed to prevent, so far as is practicable, a greater charge than is reasonably required. SBVI shall maintain adequate records to support the reasonableness of the charges, including any reserves necessary to assure that these purposes can be achieved on a consistent basis.

(c) The amount of funds set aside Ed 1019.11(a) shall:

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

Edit. Delete extra space.

(d) The percentage in Ed 1019.11(c) shall be a percentage of net proceeds and shall be reviewed every 2 years by SBVI with the active participation of the committee of licensed managers. The new percentage shall be set utilizing the running average balance of the set aside account over the previous 2-year period, the Consumer Price Index, and projected needs.

(e) If the set aside percentage is changed, SBVI shall submit the change to the secretary of the committee for approval prior to implementation.

Ed 1019.12 Distribution and Use of Income from Vending Machines on Federal Property.

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

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

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

(b) No manager shall receive less vending machine income than a manager was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under Ed 1019.12 as provided in 34 CFR 395.8(a).

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

(d) Vending machine income disbursed by a property managing department, agency, or instrumentality of the United States to SBVI in excess of the amounts eligible to accrue to managers in accordance with Ed 1019.12 shall be retained by SBVI.

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

(f) Vending machine income which is retained by SBVI under Ed 1019.12 shall be used for:

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

(2) Health insurance contributions; and

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

(g) Any vending machine income not necessary for the purposes in Ed 1019.12(f) shall be used by SBVI for maintenance and replacement of equipment, purchase of new equipment, management services, and assuring a fair minimum return to managers. Any amounts used for these purposes shall require a reduction in set aside in an equal amount on a pro rata basis.

(h) If SBVI determines that a vending location is not suitable for a blind manager, SBVI shall arrange vending services through a third party. Income that accrues to SBVI as a result shall be used to:

(1) Purchase new equipment;

(2) Replace equipment as needed;

(3) Purchase merchandise inventory;

(4) Provide training for managers; or

(5) Establish retirement, health insurance, vacation, or sick pay plans.

Ed 1019.13 Operating Agreement Between SBVI and Manager.

(a) Before assuming management of one or more vending facilities, a manager shall enter into an operating agreement with SBVI. The operating agreement shall set forth the terms and conditions and state the responsibilities of both the manager and SBVI.

(b) The agreement shall include:

- (1) The manager's name;
- (2) The vending facility name and location;
- (3) The hours of operation for the vending facility;
- (4) The articles to be sold at the vending facility;
- (5) The insurance requirements for the vending facility;
- (6) The financial records that must be kept by the manager; and
- (7) The rights and obligations of the manager and SBVI relative to assignments, subcontracts, and default.

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

- (1) The duties of the manager and the performance of such duties in accordance with the following:
 - a. SBVI rules, policies, and standards developed with the active participation of the state committee of managers;
 - b. Applicable health laws and regulations;
 - c. Terms of the permit granted by, or the contract entered into with, the federal or other agency or organization in control of the site of the vending facility; and
 - d. Security clearance requirements for the vending facility such as the process to obtain access cards. This may include background checks and security clearance applications for the manager and their employees or partners. If a licensed manager cannot receive clearance for a particular location, the location shall be released from the manager and put out to bid, unless the manager had not assumed management of the facility and there is an opportunity to award it to the next highest ranked candidate pursuant to Ed 1019.07;
- (2) The responsibilities of SBVI to provide management services to the manager including assistance and supervision, and the ways in which such responsibilities shall be carried out;
- (3) A statement that the manager shall receive the net proceeds from the vending facility that the manager operates;
- (4) The responsibility of the manager to furnish:
 - a. A monthly profit and loss statement that includes payment for assessed set asides no later than the last day of the month following the close of the previous month's accounting period;

b. One copy each of business liability insurance and workers compensation insurance;
and

c. One copy of automobile collision and liability insurance in the case of managers with vending delivery vehicles;

(5) The right of the manager to terminate the operating agreement at any time;

(6) The termination of the operating agreement upon termination of the permit or contract;
and

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

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

Ed 1019.14 Performance Probation.

(a) Licensed managers shall be placed on performance probation when SBVI determines that the vending facility is not being operated in accordance with:

(1) The rules governing the program pursuant to Ed 1019;

(2) The terms and conditions of the permit or contract;

(3) The terms and conditions of the operating agreement;

(4) State law, the violation of which is, or reasonably may, result in financial or physical harm to the customers of the facility or other persons, the department or the manager; or

(5) Rules of other agencies of the state of New Hampshire which have regulatory authority directly related to the operation of a vending facility.

(b) A written notice of performance probation shall state the reason(s) for probation, steps to be taken, if any, to avoid termination, and the manager's right to appeal SVBI's action pursuant to Ed 1019.21.

(c) The probationary period shall be in effect for 30 days from the date of a written notification as follows:

(1) If hand delivered, the program representative shall document that the notice was received by the manager as evidenced by a signed acknowledgment of receipt. The 30-day probationary period shall begin on the date the manager signed the receipt;

(2) If sent by U.S. mail, the notice shall be sent certified mail with return receipt requested. The 30-day probationary period shall begin on the date the manager signed the return receipt;
or

(3) If sent via email, it shall be sent to an email address provided by the manager for all official correspondence. The 30-day probationary period shall begin on the date the email is sent.

(d) Managers placed on performance probation pursuant to (a) above shall not be permitted to bid on vacant vending facilities.

(e) If a manager is placed on disciplinary probation for the same offense for the third time during a 12-month period, the manager's license shall be terminated in accordance with Ed 1019.16 and Ed 1019.21.

Ed 1019.15 Removal of a Manager.

(a) If a manager determines that it is in the manager's best interest to withdraw from a permanently or temporarily assigned facility, the manager may do so and shall be immediately placed on the roster if the withdrawal is not for the purpose of avoiding disciplinary action. The manager shall provide 30 days written notice and shall not accrue seniority.

(b) SVBI shall remove a manager from a facility if circumstances prevent a manager from fulfilling the manager's obligations. Prior to or within 24 hours of the removal, SBVI shall contact the Committee chair and inform the manager of the action.

(c) In facilities that require security clearance by property management, the manager shall meet all such security requirements in order to service a vending facility in such locations. If property management rescinds security clearance for a manager for any reason, SVBI shall remove the manager from that facility. SBVI shall investigate and consult with property management regarding security clearance reinstatement. If the security clearance is not reinstated, the removal shall be permanent.

(d) In the event of the documented misconduct by the manager jeopardizing the existence of the facility, or if SBVI reasonably determines there is a hazardous situation involving the manager which poses an immediate threat to the safety of the manager or others, SBVI shall declare that emergency circumstances exist, whereupon the manager shall be immediately removed. In the case of such removal, the committee chair shall be advised of the action prior to or within 24 hours of the removal.

(e) Any involuntary removal of a manager is subject to appeal pursuant to Ed 1019.21.

(f) In the event of a manager's removal under paragraphs (b), (c), (d), or (e) of this section, SBVI shall, within 10 working days, do one of the following:

- (1) Return the manager to the vending facility;
- (2) Mandate re-training;
- (3) Place the manager's name on the roster;
- (4) Assign the manager to a vending facility with lesser sales and less responsibility; or
- (5) Initiate disciplinary action against the manager.

(g) In lieu of removing a manager from a facility, if SBVI determines that the manager has made a good faith effort to perform all duties required, SBVI shall relieve the manager of responsibility for a

portion of the facility if such action would enable the manager to fulfill their obligations in the remaining areas that they service. This provision shall only be applicable if a vending facility has multiple locations and relieving the manager of responsibility for one or more of the locations will help the manager manage the main facility.

(h) When a manager is operating a facility on property not protected under federal or state law with respect to a statutory priority or preference, SBVI shall, upon the request of property management, be required to remove the manager from the facility, but SBVI shall be bound to proceed in accordance with the terms and conditions of the permit. If the removal is a result of violation(s) of the rules, SBVI shall initiate disciplinary proceedings as appropriate. If the removal is not as a result of a violation of the rules, SBVI shall place the manager's name on the roster.

Edit. No annotation should be shown in a fixed text document.

Ed 1019.16 Termination of Licenses.

(a) A license issued to a manager shall be terminated after affording the manager an opportunity for an administrative review, an evidentiary hearing, and arbitration under Ed 10+21.15, when one or more of the following conditions apply:

- (1) When vision is improved so that the manager no longer meets the definition of an individual who is legally blind;
- (2) When there is extended illness with medically documented diagnosis of prolonged incapacity of the manager to operate the vending facility in a manner consistent with the needs of the location or other available locations in the vending facility program;
- (3) When the manager withdraws from the BEP; and
- (4) When SBVI finds that a vending facility is not being operated in accordance with:
 - a. The provisions of Ed 1019;
 - b. The terms and conditions contained in the licensing agreement between the manager and SBVI;
 - c. The terms and conditions of the vending facility's permit or contract between SBVI and the manager of the property on which the vending facility is located; or
 - d. State or federal statutes or regulations of other agencies with jurisdiction over vending facilities.

(b) Fifteen days prior to termination, written notice shall be given to any manager whose license is to be terminated or who is in jeopardy of losing the license, including a statement of the reason.

(c) Such notice shall:

- (1) Inform the manager of the manager's right to request an administrative review, an evidentiary hearing, and arbitration under Ed 200; and
- (2) Be hand-delivered or sent via US mail with a signed receipt requested.

Ed 1019.17 Vending Facility Equipment and Initial Stock.

(a) SBVI shall furnish each vending facility with adequate, suitable equipment and initial stocks of merchandise sufficient for the establishment and operation of the facility for an initial 2-week period. If the manager obtaining the agreement to operate the location is on the roster or in a probationary period per Ed 1019.05, the manager shall not be eligible to obtain additional locations or inventory until a license has been obtained.

(b) If a licensed manager is provided with initial inventory for a new assignment, it shall be sufficient to operate the location for no more than a 2-week period. The funds provided shall be an interest free loan. SBVI shall establish a monthly payment plan to begin 3 months after the manager has been assigned and assumed management of the location.

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

Ed 1019.18 Continuing Education and Upward Mobility.

(a) Each licensed manager and each candidate on the roster shall complete 10 continuing education or upward mobility credits every 2 calendar years.

(b) Credits shall be awarded in accordance with Table 1019-1 as follows:

Table 1019-1 Continuing Education Credits

Continuing Education/Upward Mobility Type	Credits Awarded
Annual training sponsored by the committee or program	3
Consumer driven regional or national training	4
On-line training approved by the BEP in advance	2
On-line Webinars approved by the BEP in advance	1
State or regional food shows	2
State conventions sponsored by consumer groups	1
National conventions sponsored by consumer groups	3
College level course in business related field	10
Other training, comparable to the list above, as determined by the BEP and committee	TBD based on credits awarded above

Edit. If the number of credits is based on the comparable service, then state that. Consider: “Credit awarded shall be based on the training meeting a comparable category above.”

Edit. “and Ed 1019.21.”

(c) If, by December 31 of the second year, the manager has not fulfilled the training requirement, the program shall inform the manager and shall grant a 90-day extension to complete all requirements. If after 60 days of the extension, the manager has not completed the necessary training, SBVI shall place the manager on performance probation in accordance with Ed 1019.14. If at the end of the probationary period the manager still has not completed the necessary training, SBVI shall terminate the manager’s license and remove the individual as the manager of ~~their~~ vending facility in accordance with Ed 1019.16 and 1019.21. The SBVI administrator shall grant additional time to complete the necessary training if extreme ~~circumstances exist~~. Such extension of time shall be approved by the state committee of licensed managers.

Edit. “circumstances exist pursuant to (e) below.”

Edit. Remove annotation.

(d) To the extent funds are available, SBVI shall provide financial assistance to managers who show evidence of financial need in order to complete the training. If funds are not available, SBVI shall make every effort to provide committee or program sponsored training at no cost to the manager.

(e) For the purposes of (c) above, extreme circumstances shall mean a hardship or challenge which impacts the licensed manager's ability to complete **their** program training in a timely manner, including but not limited to:

- (1) Serious illness of the blind manager or family member, particularly a family member who plays a role in supporting the blind manager with the administration or operation of the business;
- (2) The loss of critical paperwork through fire, flood, or other natural or man-made disasters that effectively destroys such documents;
- (3) A local, state, or federal declared emergency that slows processes; and
- (4) Any planned blindness independence training, including attending a residential guide dog training program or a residential blindness skills program.

Ed 1019.19 Manager Secured Locations.

(a) Managers may seek out new locations on properties not protected by any state or federal priority or preference. If a manager identifies a potential location, and property management is willing to allow the manager to establish a vending facility, the manager shall notify the program coordinator who shall conduct a survey to determine the feasibility of establishing a vending facility. If the results of the survey are favorable and funds are available, SBVI shall enter into an agreement with the entity. The location shall be added to the one being managed by the manager. If the manager bids on and is awarded a different facility, SBVI shall determine on an individual basis, with the active participation of the state committee of licensed managers, to either leave the location attached to the current facility or allow the manager to take it to the new facility.

(b) Nothing in this part shall obligate SBVI to establish a vending facility at a site secured by a manager.

Ed 1019.20 Election, Organization, and Functions of State Committee of Licensed Managers.

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

(b) Pursuant to 34 CFR 395.14, the committee shall:

- (1) Actively participate with SBVI in major administrative decisions, including rule, policy development, and program development decisions affecting the overall administration of the state's vending facility program;
- (2) Receive and transmit to SBVI all grievances at the request of managers and serve as advocates for such managers in connection with such grievances;
- (3) Actively participate with SBVI in the development and administration of a state system of transfer and promotion of managers;

(4) Actively participate with SBVI in the development of training and retraining programs for managers; and

(5) Sponsor, with the assistance of SBVI, meetings and instructional conferences for managers within the state.

(c) The committee chairperson shall be elected by a majority vote of committee members. The chairperson shall be elected every 2 years. The election shall also include an election for a vice-chair who shall assume the responsibilities of the chair if the chair is unable to attend to his or her duties.

(d) Quarterly meetings shall be held between the committee and SBVI to discuss policy, administrative matters affecting the program, provide a training opportunity, and carry on other business of the committee or SBVI, as needed. The chair has the authority to call special meetings in between quarterly meetings as necessary.

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

(f) All written material pertaining to the administration of the program shall be provided to the chairperson of the committee by SBVI in a format that is accessible by the chairperson(s). SBVI shall distribute the materials to all members of the committee upon approval by the committee chair affording the committee an opportunity to actively participate in policy or major administrative changes.

(g) If, after affording the committee with an opportunity as described in (f) above, a consensus cannot be achieved, the chairperson(s) of the committee shall be notified in writing stating the reasons therefore, prior to implementation of the changes by SBVI.

Edit. “the program, the manager, the committee or the aggrieved individual may”

Ed 1019.21 Administrative Reviews, Evidentiary Hearings, and Arbitration of Manager Complaints. If a manager or the committee is aggrieved by any action of SBVI with regard to the administration of the program, the manager, or the committee, the individual aggrieved may file a written complaint to resolve the matter in accordance with Ed 200. If the matter is not resolved to the satisfaction of the complainant at the conclusion of the process outlined in Ed 200, the complainant may appeal the decision under 34 CFR 395.13 and 34 CFR 395.37.

Edit. Remove annotation.

Ed 1019.22 Access to Program and Financial Information. Each manager shall be provided access to all financial data of SBVI relevant to the operation of the program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable federal or state laws pertaining to disclosure of confidential information. At the request of a manager, SBVI shall arrange a convenient time to assist in interpretation of such financial data.

Ed 1019.23 Manager and SBVI Responsibilities.

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

(b) The manager shall:

- (1) Perform faithfully and to the best of manager’s ability the necessary duties in connection with the operation of the vending facility in accordance with SBVI's rules, as well as rules of other applicable state and federal agencies;
 - (2) Cooperate with officials and duly authorized representatives of SBVI in connection with their official program responsibilities;
 - (3) Operate the vending facility in accordance with all applicable health laws and rules, and maintain a clean appearance at all times;
 - (4) Abide by the regulations and policies of the agency controlling the property upon which the facility is located;
 - (5) Comply with all terms of the permit including maintaining the agreed upon hours; and
 - (6) Furnish such reports as SBVI may from time to time require.
- (c) SBVI shall assume responsibility for providing:
- (1) Management services as defined in 34 CFR 395.1(j);
 - (2) Supervision to ensure the effective operation of the vending facility;
 - (3) New and replacement equipment as necessary for the successful operation of the vending facility;
 - (4) Maintenance and repair of equipment; and
 - (5) Initial stock.

Ed 1019.24 State Licensing Rules. SBVI shall furnish a copy of the state licensing rules to each candidate or manager in addition to all written documents pertaining to the administration and management of the program.

Ed 1019.25 Responsibilities of Vending Facilities.

(a) Unless otherwise exempted by RSA 186-B, any properties owned or leased by the state shall recognize the rights granted to SBVI to establish vending facilities on such properties. SBVI shall be permitted to conduct surveys of state-owned or leased properties to determine the feasibility of establishing one or more vending facilities on a particular property. No state entity shall be permitted to enter into an agreement with a third party for a vending facility unless a determination is made by SBVI that it cannot provide services of a high quality at reasonable prices. Property management shall take all necessary steps to ensure that the installation occurs, and that the space and the utilities required shall be provided at no cost to the SBVI or the manager for the operation, except telephone or internet service. SBVI shall provide the necessary alterations, plumbing and equipment, merchandise, a licensed manager, and the appropriate supervision of the manager.

(b) In the event that existing buildings are purchased or leased, or new buildings are constructed by any state entity, written notice shall be given to SBVI in ample time to afford the BEP an opportunity to make plans to provide the service.

(c) All vending facility operations shall be governed by an agreement between SBVI and property management, and known as a permit. The permit shall include the location, type of facility, space available, all necessary equipment, and the operating hours of the facility. In the negotiation process between SBVI and property management regarding either the terms and conditions of an occupancy permit or a contract, the committee shall have an opportunity to participate in making final determinations with respect to the terms and conditions of an occupancy permit or contract. The terms and conditions of the permit may be changed after consultation with the manager for purposes of soliciting their input. Once the changes have been made, the revised document shall be provided to the manager. The absence of an executed permit does not relieve a manager of their responsibilities to otherwise comply with these rules and to provide effective management of the vending facility.

(d) Property management shall not require the payment of rent, utilities, or commissions as a condition for operating a vending facility on its property. Except that, at its discretion and with the active participation of the state committee of licensed managers, may negotiate less restrictive agreements that do require such payments. If such payments are negotiated and are included in the permit agreement, the licensed manager shall be obligated to make such payments; except that, no subsequent priority shall be waived either expressly or by implication.

(e) If SBVI determines that a site is suitable for a blind person, it shall negotiate an agreement with a third party vendor to provide services.

PART Ed 1020 INTERPRETER CLASSIFICATION SYSTEM

Edit. Remove annotation.

Ed 1020.01 Purpose. The purpose of the classification system program shall be to evaluate competency skills of sign language interpreters, to maintain records of interpreter classification, and to maintain records of continuing education units required for maintenance of classification.

Ed 1020.02 Program Designation. ~~This~~ program shall be designated “The New Hampshire interpreter classification system” (NHICS).

Ed 1020.03 Classification. An individual who applies for and meets the requirements for classification under Ed 1020.10 shall be qualified as a sign language interpreter by the department’s program for the deaf and hard of hearing.

Ed 1020.04 Applicability; Administration of Classification System Program. These rules shall apply to the classification process for sign language interpreters as conducted and managed by the program for the deaf and hard of hearing, in the department of education, division of workforce innovation, bureau of vocational rehabilitation. The classification system program shall be managed by a coordinator appointed by the director of the bureau of vocational rehabilitation.

Ed ~~10230~~.05 Definitions. The following definitions shall apply to Ed 1020:

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

(b) “Director” means the director of bureau of vocational rehabilitation, division of workforce innovation, department of education;

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

(d) “Coordinator” means the person appointed by the program for the deaf and hard of hearing, bureau of vocational rehabilitation, division of workforce innovation, department of education to coordinate the classification;

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

(f) “Rater” means an individual who has successfully completed training approved under Ed 1020.12 by the program for the deaf and hard of hearing in the evaluation of interpreter skills;

(g) “State classification test” means the test administered under Ed 1020.08 for the purposes of determining an interpreter’s classification as a qualified interpreter under Ed 1020.10; and

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

Ed 1020.06 Administration of State Classification Test; Classification Fees.

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

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

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

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

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

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

Ed 1020.07 Application Process.

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

- (1) A description of the classification process;
- (2) A completed “NH Interpreter Classification System (NHICS) Application” form, November 2020 edition;
- (3) A description of the fee charged for testing; and

Note to JLCAR. RSA 326-I:5, II grants authority to the Board to set license and application fees, renewal fees, and other fees sufficient to produce revenues equal to 125% of the direct operating costs of the Board for the previous fiscal year.

Edit. Here and on the form, update the edition date.

(4) A description of the appeal procedure.

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

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

Ed 1020.08 State Classification Test.

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

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

(1) Knowledge of and ability to make practical use of the code of professional conduct of the Registry of interpreters for the Deaf;

(2) Knowledge of the role and responsibilities of an interpreter;

(3) Understanding of professional business practices, including the limitations of an interpreter's role, diplomacy required of an interpreter, and the need for attire that enhances the background for signing such as plain clothing and jewelry that does not distract from the interpreting process;

(4) Communication skills in ASL and English; and

(5) The interpreter's overall professional presentation.

(c) The performance test shall consist of an interpreting dialogue, preceded by a warm-up.

(d) Each applicant's performance on sections 1 and 2 of the test shall be videotaped.

(e) The performance test scoring sheet shall consist of a numerical rating covering the following areas:

(1) The rater's ability to comprehend the applicant, based on the applicant's clarity, use of grammar, level of discourse, and use of classifiers;

(2) The message equivalency transmitted by the applicant, including:

a. Message accuracy;

b. Accurate use of morphology;

c. Use of affect and register of the original message; and

d. The amount of information transmitted;

- (3) The interpreting process, including:
 - a. Phrasing; and
 - b. Process management; and
- (4) The applicant’s professionalism, including:
 - a. Composure; and
 - b. Objectivity.

Ed 1020.09 Administration of State Classification Test.

- (a) The coordinator or designee shall videotape section 1, the interview, and section 2, the performance portion, of the test.
- (b) The coordinator or designee shall send the rater scoring packet to 4 qualified raters within one week of the taping. The coordinator shall make sure each packet includes a copy of the candidate’s tape, scoring sheets, and the rater instruction information.
- (c) Candidates who pass both the performance section and the interview section shall be state classified and notified.
- (d) Candidates who successfully pass the performance portion of the test but do not successfully pass the interview portion of the test shall not be considered for state classification and they shall retake both sections of the test.
- (e) The coordinator shall mail to each applicant who has completed the performance test written notice of the test results within one month of the date of the test.
- (f) A person who fails either the structured interview or the performance test may request from the coordinator, in writing, copies of the raters’ scoring sheets. The coordinator shall supply such sheets, upon written request.
- (g) Applicants for initial classification not passing the performance test may retake the performance portion of the test, within one year after passing the structured interview portion.

Ed 1020.10 Classification of Interpreters. An applicant shall be classified as a qualified sign language interpreter who:

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

Ed 1020.11 Maintenance of Classification.

- (a) “Continuing education units (CEUs),” for the purpose of this rule, means:

- (1) Participation in professional workshops sponsored by a post-secondary interpreter training program, the RID, the National Association of the Deaf (NAD) or the state chapters of such organizations, or any other professional training organization which focus on issues related to the deaf community, the interpreting process, or both;
 - (2) Conventions or conferences of either deafness or interpreting organizations;
 - (3) Tutoring sessions, if such sessions are qualified under paragraph (b); and
 - (4) For the 20% required in areas not related to deafness or interpreting, participation in a course, workshop, or training session on a topic unrelated to deafness, but which has an impact on the interpreter's activities as a sign language interpreter.
- (b) To qualify, a tutoring session shall be provided by RID certified interpreters who hold their NIC, Certificate of Interpretation (CI) or NAD level V.
- (c) Classification as a qualified interpreter under Ed 1020.10 shall be valid for 6 years from date of issue.
- (d) All state-classified interpreters shall earn CEU's. The number of CEU's earned shall be the same number of hours as those required by RID over each 4 year period, 80% of which shall be deafness/*or* interpreting related, and 20% of which shall be either deafness or interpreting related or in other areas as pursuant to Ed 1020.11(a)(4) above. CEU hours shall be awarded based on clock hours of participation and shall require documentation from such training programs such as an agenda, conference packet, or syllabus. No one convention, workshop, or course shall be used to satisfy the entire requirement.
- (e) An individual's classification shall lapse for an individual who fails to obtain national certification before the expiration of the 6-year classification period, and the individual shall no longer be:
- (1) Listed in the department of education's directory of interpreters for the deaf; and
 - (2) Considered a licensed interpreter by the state of New Hampshire.

Ed 1020.12 Raters.

- (a) Each team of raters shall be comprised of 2 raters who can hear and 2 raters who are deaf or hard of hearing. Raters who can hear shall possess a valid certification from RID or the NAD level V. The program for the deaf and hard of hearing shall solicit applicants from certified interpreters and the deaf community. Selection shall be made by the program for the deaf and hard of hearing based on skill level, availability, and experience.
- (b) The program for the deaf and hard of hearing shall provide rater training for new raters. New raters shall complete the rater training, which shall consist of instruction and materials on the principles of interpreter classification evaluation, practice tapes, and inter-rater reliability data.
- (c) A rater shall not have a conflict of interest regarding the person to be rated. A conflict of interest shall be deemed to exist if the person to be rated is a member of the rater's immediate family which shall mean the rater's spouse, parent, mother-in-law, father-in-law, sibling, sister-in-law, brother-in-law, or child, or anyone related to the rater by blood or marriage and living in the same household as

the rater. The rater shall disclose any other circumstances which create a conflict of interest as to a particular person, and shall withdraw as a rater for that person. The rater shall also disclose to the coordinator any circumstances likely to create the appearance of a conflict of interest.

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

(1) For the part I-interview portion of the test, the applicant shall be rated by both deaf and hard of hearing raters and raters who can hear; and

(2) For the part II- performance portion of the test, the raters who can hear shall score primarily the ASL-to-English components of the evaluation and the deaf or hard of hearing raters shall score primarily the English-to-ASL components of the evaluation.

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

(f) All documents, paperwork, and digital media, shall be sent back to the coordinator for record keeping to ensure the applicant's confidentiality.

Ed 1020.13 Publication of Directory of Interpreters for the Deaf. The name and date of award of each individual classified under the classification system program shall be published by the department of education in a directory of interpreters for the deaf, which shall be printed at least biennially. The directory shall also include name, source of national certification, state of NH licensure status, and date of certification for any interpreter certified by the RID or the NAD who wishes to be included in the directory. Contact information shall be included at the option of the interpreter. The primary source for this document shall be located on the NHVR's website and an annual printing shall occur.

Ed 1020.14 Retention of Test and Directory Data. The program for the deaf and hard of hearing shall keep the following data in confidential files for a period of at least 7 years:

(a) Correspondence with individual applicants;

(b) Records of scores of individual tests for each applicant tested, whether the applicant was successful or unsuccessful;

(c) Records of CEU's for each interpreter who has completed the state classification process;

(d) The original CD of each applicant's interview and performance test;

(e) The date classification under Ed 1020.10 was awarded; and

(f) Name, address, and telephone number for each state classified and nationally certified interpreter listed in the department of education directory of interpreters for the deaf.

Ed 1020.15 Appeal. An applicant aggrieved by a decision of the program relating to classification shall file a petition for reconsideration along with supporting documentation to the director within 20 business days after receipt of the decision regarding classification. If the petition for reconsideration is denied, the applicant shall appeal the director's decision pursuant to RSA 21-N: 11, III and Ed 200. Any person may file a written complaint charging a person qualified as a deaf interpreter with misconduct

pursuant to the process set forth in **INT 205** of the board of licensing for interpreters of the deaf and hard of hearing.

PART Ed 1021 REVIEW PROCEDURE

Ed 1021.01 Review Procedures.

(a) Review procedures shall comply with 34 CFR 361.57 and New Hampshire law.

(b) An individual who is dissatisfied with any determination made by personnel of the NHVR that affects the provision of vocational rehabilitation services shall request, or, if appropriate, shall request through the individual's representative, a timely review of that determination.

(c) The NHVR shall make reasonable accommodation for the individual's disability in conducting hearings and mediation procedures. Reasonable accommodation shall include using appropriate modes of communication consistent with the informed choice of the individual.

Ed 1021.02 Notification of Right to Mediation and Hearings.

(a) The NHVR shall provide an individual or, as appropriate, the individual's representative, notice as enumerated in 34 CFR 361.57(b)(1).

(b) The notice required in Ed 1021.04(a) shall be provided by using the appropriate mode of communication consistent with the requirements of 34 CFR 361.57(b)(2).

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

Ed 1021.03 Informal Dispute Resolution.

(a) An individual, or a representative of the individual, seeking review of a determination shall file a complaint with the NHVR.

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

Ed 1021.04 Mediation.

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

(b) If mediation as described in Ed 205.03 is selected by the parties and resolution is not achieved, the individual selected as a mediator shall not be the same individual who is subsequently appointed as a hearing officer to preside at a hearing in the same matter pursuant to Ed 1021.10(c).

(c) Inconsistencies between mediation procedures in Ed 205.03 and Ed 1021.05 shall be resolved in favor of the provisions of Ed 1021.05.

Ed 1021.05 Mediation Procedure.

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

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

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

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

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

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

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

(h) The costs of the mediation process shall be paid by the NHVR.

Ed 1021.06 Scheduling of Mediation, Prehearing Conference, and Hearing.

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

(b) If the parties choose not to engage in mediation, the office of legislation and hearings in the department of education shall schedule the prehearing conference and hearing based on hearing officer availability, as provided in Ed 1021.10.

(c) The scheduling shall allow for the following:

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

Ed 1021.07 Initiation of Hearing by Applicant or Individual.

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

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

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

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

Ed 1021.08 Commencement of Hearing Process. The hearing shall be held no later than 60 days after the office of legislation and hearings receives a request for the hearing under Ed 1021.07, unless an agreement is reached prior to the 60th day, or unless the parties agree to a specific extension of time.

Ed 1021.09 Denial, Dismissal, or Withdrawal of Request for Hearing.

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

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

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

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

Ed 1021.10 Scheduling Mediation Proceedings and Hearings.

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

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

- a. The date, time, and place of the requested mediation and the prehearing conference;
- b. The date, time, place, and nature of the hearing;
- c. Legal authority under which the hearing is to be held;
- d. The particular sections of the statutes and rules involved, including a copy of Ed 1021;
- e. A short and plain statement of the issues involved; and
- f. The party's right to have an attorney present to represent the party at the party's expense.

(2) The name and address of the hearing officer who shall preside at a hearing shall be selected:

- a. From a list of hearing officers, who have knowledge of state and federal vocational rehabilitation law, that is maintained by the office; and
- b. On a random basis.

Ed 1021.11 Elements of a Hearing. A hearing shall include the following elements:

Edit. Delete.

(a) A prehearing conference, governed by Ed 1021.12;

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(b) A hearing, governed by Ed 1021.15, that shall, ~~except for good cause shown,~~ be limited to 2 days; and

(c) A hearing officer's decision under Ed 1021.16(a) shall be considered the final decision of the NHVR.

Ed 1021.12 Prehearing Procedures. The prehearing conference required by Ed 1021.10(a) shall be conducted by a hearing officer and governed by Ed 208 along with the following:

(a) Parties shall be prepared to discuss the issues described in RSA 541-A:31, V(c);

(b) Parties shall exchange, and provide to the hearing officer, witness lists including a brief description of each witness's testimony, and documentary evidence at least 5 business days before the hearing. Documentary evidence exchanged shall be legibly labeled in the upper right-hand corner with consecutive Arabic numerals as either "Individual Exhibit (number)" or "NHVR (number)", as appropriate. An index, by title, of all exhibits submitted shall also be exchanged;

(c) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, each party shall submit a statement of facts;

(d) The party who initiated the hearing shall present his or her case first unless the hearing officer determines that the change in the order of presentation would not materially prejudice any party's right to a full and fair hearing and:

(1) The hearing would proceed in a more timely manner if the party not initiating the hearing presents his or her case first; or

(2) The hearing would proceed in a more efficient manner if the party not initiating the hearing presents his or her case first.

Ed 1021.13 Voluntary Production of Information.

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

(b) When a dispute between parties arises concerning a request for the voluntary production of information, releases, or documents, any party may file a motion to compel the production of the requested information under Ed 1021.14.

Ed 1021.14 Motion to Compel Production of Information.

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

(b) The moving party's motion shall:

(1) Set forth in detail those factors which it believes justify its request for information; and

(2) List with specificity the information it is seeking to discover.

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

Ed 1021.15 Hearing Procedures. The hearing shall be conducted by a hearing officer, governed by Ed 200 along with the following:

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

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

(1) Be accompanied and advised by counsel, who shall be an attorney, or by an individual with special knowledge or training with respect to vocational rehabilitation services and whose services shall be paid for by the party retaining counsel;

- (2) Present evidence and confront and cross-examine witnesses;
- (3) Request that the hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the first day of the scheduled hearing;
- (4) Obtain a verbatim record of the hearing, at any point during the hearing or afterwards;
- (5) Obtain written findings of facts and decisions; and
- (6) Record the hearing;

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

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

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

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

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

Ed 1021.16 Agreement Prior to Hearing.

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

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

Ed 1021.17 Continuance of Hearing.

(a) A hearing officer shall grant extensions of time beyond the period set out in Ed 1021.15(e) for specific periods of time at the request of either party if:

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

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

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

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

Ed 1021.18 Decision.

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

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

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

Ed 1021.19 Impact on Provision of Services During Proceedings.

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

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

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

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

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

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

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(b) If a party brings a civil action under Ed 1021.20 to challenge the final decision of the hearing officer made under Ed 1021.18, the final decision of the hearing officer shall be implemented pending review by the court.

Ed 1021.20 Civil Action. Any party who disagrees with the findings and decision of the hearing officer may bring a civil action to appeal that decision in a state or a United States district court of competent jurisdiction as provided in 34 CFR 361.57(i).

Appendix

Rule	Statute or Federal Regulation Implemented
Ed 1001	34 CFR 361; RSA 200-C:1
Ed 1002	34 CFR 361.5
Ed 1003	34 CFR 361.38
Ed 1004	34 CFR 361.41
Ed 1005	34 CFR 361.42
Ed 1006	34 CFR 361.42-44
Ed 1007	34 CFR 361.42
Ed 1008	34 CFR 361.45-46
Ed 1009	34 CFR 361.36
Ed 1010	34 CFR 361.53
Ed 1011	34 CFR 361.54
Ed 1012	34 CFR 361.51
Ed 1013	34 CFR 361.52
Ed 1014	34 CFR 361.55
Ed 1015	34 CFR 361.56
Ed 1016	34 CFR 363
Ed 1017	45 CFR 1329; 34 CFR 77.1
Ed 1018	34 CFR 367
Ed 1019	RSA 196-B:10-II
Ed 1020	RSA 326-I:5, RSA 200-C:19, IV
Ed 1021	RSA 541-A:30-a; 34 CFR 361.57

Note to JLCAR on Legis. Intent—Public Hearing: The rulemaking hearing was scheduled as an in-person hearing for April 8, 2021 with pre-registration by April 7th due to the pandemic. There was also the option to attend via Zoom. The Governor’s E.O. #12 amends RSA 91-A to allow for remote hearings but did not amend RSA 541-A:11 which seems to presume in-person hearings with an allowance for postponement in the case of inclement weather, RSA 541-A:11, IV(a), and the ability to move the physical location of the public hearing, RSA 541-A:11, V. The Board’s administrative rules in Ed 214 also appear to presume in-person hearings such as describing media access to the physical room in which the hearing is held. The JLCAR may wish to ask the Board how the public hearing proceeded, since RSA 541-A:11, I(a) requires that an agency “shall afford all interested persons reasonable opportunity to testify...in accordance with the terms of the notice.” A legislative fix may be needed in RSA 541-A:11, along with changes to all Ch. 200 rules to affirmatively address remote public hearings as the language in the statute. Please note that SB 95 in the current legislative session would amend RSA 91-A to include the protocols for remote meetings of public bodies which are in the Governor’s E.O. #12.