

**ARTICLE 75-08
VOCATIONAL REHABILITATION**

Chapter
75-08-01 Vocational Rehabilitation

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Section	
75-08-01-01	Definitions
75-08-01-02	General Requirements of the Vocational Rehabilitation Program
75-08-01-03	Variance
75-08-01-04	Establishment and Maintenance of Records
75-08-01-05	Expenditure Authorization
75-08-01-06	Referrals to Other Services
75-08-01-07	Notification of Appeals and Mediation Procedures [Repealed]
75-08-01-08	Confidentiality
75-08-01-09	Informed Written Consent
75-08-01-10	Release of Information Within the Department
75-08-01-11	Release of Information to the Individual and Others
75-08-01-12	Release of Information for Program Audit, Evaluation, or Research
75-08-01-13	Subpoenas
75-08-01-14	Administrative Review Procedures - Appeals [Repealed]
75-08-01-15	Application for Services
75-08-01-16	Period of Time to Determine Eligibility
75-08-01-17	Presumption of Eligibility and Significant Disability
75-08-01-18	Eligibility Criteria and Documentation
75-08-01-19	Eligibility Criteria for Supported Employment
75-08-01-20	Trial Work Experiences
75-08-01-21	Ineligibility Determination
75-08-01-22	Assessment for Determining Eligibility and Vocational Rehabilitation Needs
75-08-01-23	Order of Selection
75-08-01-24	Individualized Plan for Employment
75-08-01-25	Comparable Services and Benefits
75-08-01-26	Determination of Financial Participation
75-08-01-27	Services Exempt From Participation by an Individual in the Cost of Vocational Rehabilitation Services
75-08-01-28	Services Subject to Participation by an Individual in the Cost of Vocational Rehabilitation Services
75-08-01-29	Vocational Rehabilitation Services Necessary to Enable the Individual to Achieve an Employment Outcome
75-08-01-30	Postsecondary Training
75-08-01-31	On-the-Job Training
75-08-01-32	Closure Due to Ineligibility

75-08-01-33	Closure for Reasons Other Than Ineligibility
75-08-01-34	Closure for an Individual Determined to Be Rehabilitated
75-08-01-35	Annual Review of Individuals Compensated Below Federal Minimum Wage
75-08-01-36	Pre-employment Transition Services
75-08-01-37	Vocational Rehabilitation Determinations - Administrative Review Procedures – Appeals

SECTION 1. Section 75-08-01-01 is amended as follows:

75-08-01-01. Definitions.

In this chapter:

1. "Appeal" means a request for an impartial due process hearing or an impartial due process hearing to resolve the issue under dispute.
2. "Assistive technology device", also referred to as "rehabilitation technology device", means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, used to increase, maintain, or improve the functional capabilities of an individual with disabilities.
3. "Assistive technology service", also referred to as "rehabilitation technology service", means a service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.
4. "Client assistance program" means the program that informs and advises an individual of all available benefits under the Rehabilitation Act, as amended, and, if requested, may assist and advocate for the individual in matters related to the division's decisions and services. Client assistance program services include assistance and advocacy in pursuing mediation, administrative, legal, or other appropriate remedies for the protection of the rights of an individual.
5. "Department" means the North Dakota department of human services.
6. "Division" means the vocational rehabilitation division of the department.
7. "Employment outcome" means, in a manner consistent with this chapter:
 - a. Entering, advancing in, or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;
 - b. Supported employment; or

- c. Satisfying any other type of employment in an integrated setting that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including self-employment, telecommuting, and business ownership.

- 8. "Existing data" means information from any source that currently exists that describes the current functioning of the individual and may be available to the division for an eligibility determination. The school records of an individual are considered to be existing data; however, the division may request additional information if there is an indication of changes in functioning or if there is conflicting information.

- 9. "Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with section 14(c) of the Fair Labor Standards Act.

- 10. "Extreme medical risk" means a risk of increasing functional impairment or risk of death if medical services, including mental health services, are not provided expeditiously.

- 11. "Individual with a disability" means any individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment or from advancing in employment and who can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to this chapter.

- 12. "Individual with a most significant disability" means an individual:
 - a. Who meets the criteria for a significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and
 - b. Who requires multiple core services over an extended period of time of six months or more.

- 13. "Individual with a significant disability" means:
 - a. An individual who is receiving social security disability insurance or supplemental security income; or
 - b. An individual:

- (1) Who has severe physical or mental impairments that seriously limit the individual's functional capacity, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome;
 - (2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time of six months or more; and
 - (3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.
14. "Informed choice" means a choice based on disclosure of facts and alternatives to allow a person to make decisions based on relevant information, options, and consequences.
 15. "Mediation" means using an independent third party to assist vocational rehabilitation applicants and clients in settling differences or disputes prior to formal action regarding vocational rehabilitation decisions or services.
 16. "Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be necessary in order to achieve an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. Personal assistance services may include training in managing, supervising, and directing personal assistance services.
 17. "Postsecondary training" means training offered by institutions that qualify for federal financial student aid and is provided only when necessary to achieve a vocational goal consistent with an individual's capabilities and abilities.

18. "Pre-employment transition services" means services for all students with disabilities in need of such services, without regard to the type of disability, and which must be made available to students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.
19. "Qualified rehabilitation professional" means a vocational rehabilitation counselor ~~or administrator who meets educational and experience standards consistent with requirements for certification by the commission on rehabilitation counseling certification~~ that has obtained a baccalaureate degree in a field of study reasonably related to vocational rehabilitation and has indicated a level of competency and skill demonstrating basic preparation in a field of study that reasonably prepares the individual to work with consumers and employers.
20. "Student with a disability" means an individual with a disability in a secondary, postsecondary, or other recognized education program who:
 - a. Is not younger than the earliest age for the provision of transition services under the Individuals with Disabilities Education Act [20 U.S.C. 1414(d)(1)(A)(i)(VIII)] and is not older than twenty-one years of age;
 - b. Is a student who is an individual with a disability, for purposes of section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794]; or
 - c. Is a student who is eligible for and receiving special education services under part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.].
21. "Substantial impediment to employment" means that a physical or mental impairment in light of attendant medical, psychological, vocational, educational, communication, and other related factors hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment, consistent with the individual's abilities and capabilities.
22. "Suitable" means consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual.
23. "Supported employment" means competitive integrated employment, in which an individual with a most significant disability, including a youth with a most significant disability, is working toward employment that is consistent with their individualized plan for employment. The following

terms are defined concerning supported employment:

- a. "Competitive employment" means work that, at the time of transition to extended services, is performed on a full-time or part-time basis, as determined in the individualized plan for employment, and for which an individual is compensated at or above the federal minimum wage.
- b. "Extended services" means ongoing support services that are:
 - (1) Needed to support and maintain an individual with a most significant disability in supported employment;
 - (2) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining employment;
 - (3) Based on the needs of an eligible individual, as specified in an individualized plan for employment;
 - (4) Provided by a state agency, private nonprofit organization, employer, or any other appropriate resource after an individual has been determined stable in employment and has made the transition from support from the division; and
 - (5) Provided to a youth with a most significant disability, who will not immediately be able to access extended services from an alternative source. The division shall provide extended services for a period not to exceed four years, or at such time that a youth reaches age twenty-five and no longer meets the definition of a youth with a disability, whichever occurs first. The division may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.
- c. "Integrated setting" means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals.
- d. "Ongoing support services" is as defined in 34 C.F.R. 361.5.
- e. "Time-limited services" means support services provided by the division for a period not to exceed twenty-four months, unless a longer period to achieve job stabilization has been established in the individualized plan for employment, before the individual

transitions to extended services.

24. "Trial work experiences" means an exploration of an individual's abilities, capabilities, and capacity to perform realistic work in the most integrated setting possible in which appropriate support and training are provided.
25. "Vocational goal" means an employment outcome.
26. "Youth with a disability" means an individual with a disability who:
 - a. Is at least fourteen years of age; and
 - b. Is not older than twenty-four years of age.
27. "Youth with a most significant disability" means an individual with a disability who:
 - a. Is at least fourteen years of age;
 - b. Is not older than twenty-four years of age;
 - c. Meets the criteria for a most significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and
 - d. Requires multiple core services over an extended period of time of six months or more.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019; January 1, 2023.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06.1

SECTION 2. Subsection 8 of section 75-08-01-37 is amended as follows:

8. A claimant may request an informal review to resolve the decision under dispute without mediation or an appeal hearing. A claimant's request for informal review does not prohibit claimant of the right to an appeal hearing or mediation.
 - a. A claimant may not be required to go through an informal review prior to, or instead of, an appeal hearing.
 - b. A written request for an informal review must be made by claimant to division within thirty days of the determination with which claimant is dissatisfied.

- c. The informal review must be conducted by either the division's chief of field services, or a division employee appointed by the chief of field services, who has had no prior involvement in the case.
- d. An informal review must be conducted within fifteen days of the initial request unless both parties agree additional time is necessary. Informal review may not delay an appeal hearing if one has been requested. The appeal hearing must be conducted within sixty days of the claimant's request for review of a determination made by division with which claimant is dissatisfied, unless the division and the claimant agree to a specific extension of time.
- e. The informal review process, if completed, must result in a decision by the division regarding the division's determination under dispute. The division shall notify claimant by writing of the decision within ten days of the informal review, unless circumstances require additional time.
- f. If the informal review does not resolve the issue, the claimant, or authorized representative, may request an appeal hearing or mediation. The claimant shall notify division within fifteen days of the informal review decision that the claimant ~~wish~~wishes to proceed with mediation or an appeal hearing.

History: Effective January 1, 2019; amended effective January 1, 2023.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-04, 50-06.1-10