

**COVER SHEET FOR EMERGENCY RULE**

Document Number           #13069          

Rule Number           Ed 1000          

<p>1. Agency Name &amp; Address:</p> <p align="center"><b>State Board of Education c/o Department of Education 101 Pleasant Street Concord, NH 03301</b></p>	<p>2. RSA Authority: <u>          <b>RSA 200-C:8, 15, 20, 23, and 26</b>          </u></p> <p>3. Federal Authority: <u>          <b>34 CFR 361</b>          </u></p> <p>4. Type of Action:</p> <p style="padding-left: 40px;">Adoption <u>          <b>X</b>          </u></p> <p style="padding-left: 40px;">Amendment <u>          </u></p> <p style="padding-left: 40px;">Repeal <u>          </u></p>
<p>5. Date of Filing: <b>July 9, 2020 - July 14, 2020</b></p>	

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

7. Contact person for copies and questions:

Name: <b>Amanda Phelps</b>	Title: <b>Administrative Rules Coordinator</b>
Address: <b>Department of Education 101 Pleasant Street Concord, NH 03301</b>	Phone #: <b>(603) 931-9133</b>

**\*\*PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

9. A summary of the effect if the rule were not adopted.

10. A description of those affected.

**\*PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the emergency rule to the Office of Legislative Services, Administrative Rules.

**\*\*PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,\* hereby certify that the attached is an accurate statement explaining why an emergency rule is necessary.

Date:           **July 14, 2020**          

Signature:                     

Name:           **Andrew Cline**          

Title:           **Chair, State Board of Education**          

\*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

**An emergency rule for Ed 1000, Vocational Rehabilitation Programs, is necessary to reinstate expired rules to prevent the imminent peril to public health or safety and to prevent the substantial fiscal harm to NH citizens. These rules provide the process by which individuals with disabilities receive services which are funded by federal grants so that they may prepare for and engage in competitive integrated employment and achieve economic self-sufficiency. The relevant NH RSAs require rules for the Department to provide services. This emergency rule will only be in effect until an anticipated adoption of the current Initial Proposal IP 2020-35 as described below.**

**Ed 1000, Vocational Rehabilitation Programs, was effective 1-10-20 as an interim rule (Document #12971), and expired 7-8-20. The State Board initiated a concurrent rulemaking proceeding to replace the interim rules, IP 2020-35, with notice in the March 12, 2020 Rulemaking Register, and scheduled a public hearing for April 9, 2020. That hearing was postponed, with a rescheduled date to be determined, due to the COVID-19 pandemic and restrictions on public gatherings in Emergency Order #16. State Board meetings were subsequently conducted by phone pursuant to Emergency Order #12. Understanding that EO #12 did not address rulemaking public hearings, and with unclear guidance on how to hold such hearings, the hearing for this rule was further delayed. The public hearing was held on June 11, 2020. The final proposal filing deadline for Notice #2020-35 is August 10, 2020. Due to the substantive changes between the IP and the FP, a second public hearing for the final proposal will be held at the August 13, 2020 meeting in order to request feedback and public comment on the substantive changes to the IP. The State Board will request a waiver of the FP deadline to keep the current rulemaking proceeding active. A new deadline of October 9, 2020 will be necessary to complete the rulemaking process.**

9. A summary of the effect if the rule were not adopted.

**Without an emergency rule to get rules back in effect, the Department would be required to stop processing applications and conducting evaluations which lead to employment and services for eligible individuals. Eligible individuals might not receive the appropriate supports for health and safety in the workplace and could potentially lose opportunities to gain employment leading to fiscal harm.**

10. A description of those affected.

**The State Board, department, eligible individuals, and service providers are affected by these rules.**

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Adopt Ed 1000, previously effective 1-10-20 (Document #112971, Interim), and expired 7-8-20, to read as follows:

## CHAPTER Ed 1000 VOCATIONAL REHABILITATION PROGRAMS

### PART Ed 1001 PURPOSE

Ed 1001.01 Purpose. The purpose of the New Hampshire vocational rehabilitation services program is to assess, plan, develop, and provide 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 New Hampshire vocational rehabilitation services program implement the State Vocational Rehabilitation Services Program authorized by Title I of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

### PART Ed 1002 DEFINITIONS

Ed 1002.01 "Act" means the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

Ed 1002.02 "Administrative costs under the state plan" means "administrative costs under the state plan" as defined in 34 CFR 361.5(b)(2).

Ed 1002.03 "Applicant" means an individual who submits an application for vocational rehabilitation services in accordance with 34 CFR §361.41 (b), (2)

Ed 1002.04 "Appropriate modes of communication" means "appropriate modes of communication" as defined in 34 CFR 361.5(b)(5).

Ed 1002.05 "Assessment for determining eligibility and vocational rehabilitation needs" means "assessment for determining eligibility and vocational rehabilitation needs" as defined in 34 CFR 361.5(b)(6).

Ed 1002.06 "Assistive technology device" means "assistive technology device" as defined in 34 CFR 361.5(b)(7).

Ed 1002.07 "Assistive technology service" means "assistive technology service" as defined in 34 CFR 361.5(b)(8).

Ed 1002.08 "Community rehabilitation program" means "community rehabilitation program" as defined in 34 CFR 361.5(b)(9).

Ed 1002.09 "Comparable services and benefits" means "comparable services and benefits" as defined in 34 CFR 361.5(b)(10).

Ed 1002.10 "Competitive employment" means "competitive employment" as defined in 34 CFR 361.5(b)(11).

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Ed 1002.11 “Designated state agency” means the New Hampshire department of education, which is the state agency responsible for administering the state plan for vocational rehabilitation services in accordance with 34 CFR 361.13(a).

Ed 1002.12 “Designated state unit” means the division of career technology and adult learning in the New Hampshire department of education pursuant to 34 CFR 361.5(b)(14).

Ed 1002.13 "Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements of 34CFR361.5(b)(15).

Ed 1002.14 "Employment outcome" means "employment outcome" as defined in 34 CFR 361.5(b)(16).

Ed 1002.15 "Establishment, development, or improvement of a public or nonprofit community rehabilitation program" means "establishment, development, or improvement of a public or nonprofit community rehabilitation program" as defined in 34 CFR 361.5(b)(17).

Ed 1002.16 "Extended employment" means "extended employment" as defined in 34 CFR 361.5(b)(19).

Ed 1002.17 "Extended services" means "extended services" as defined in 34 CFR 361.5(b)(20).

Ed 1002.18 "Extreme medical risk" means "extreme medical risk" as defined in 34 CFR 361.5(b)(21).

Ed 1002.19 "Family member", for purposes of receiving vocational rehabilitation services in accordance with Ed 1010.16(a)(9), means "family member" as defined in 34 CFR 361.5(b)(23).

Ed 1002.20 "Impartial hearing officer" means "impartial hearing officer" as defined in 34 CFR 361.5(b)(25), and includes “presiding officer” as defined in RSA 541-A:1,XIV.

Ed 1002.21 "Independent living program" means the state independent living services program set out in 34 CFR§364 and RSA 200-C:24 and includes the services set out in 34 CFR §365.1

Ed 1002.22 "Individual who is blind" means a person whose central acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200 is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees, and who has been examined by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual selects, to make the determination that the individual is blind.

Ed 1002.23 "Individual with a disability" means "individual with a disability" as defined in 34 CFR 361.5(b)(28) and (29).

Ed 1002.24 "Individual with a most significant disability" means an individual with a significant disability:

(a) Who has a significant mental or physical impairment that seriously limits 2 or more functional capacities such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance and work skills, or work tolerance or work skills in terms of employment outcomes; and

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(b) Whose vocational rehabilitation can be expected to require 2 or more vocational rehabilitation services, in addition to the vocational rehabilitation counselor provided services of guidance, counseling, service coordination and job placement, over an extended period of time of 6 months or longer.

Ed 1002.25 "Individual with a significant disability" means "individual with a significant disability" as defined in 34 CFR 361.5(b)(31).

Ed 1002.26 "Individual's representative" means "individual's representative" as defined in 34 CFR 361.5(b)(32).

Ed 1002.27 "Integrated setting" means "integrated setting" as defined in 34 CFR 361.5(b)(33).

Ed 1002.28 "Maintenance" means "maintenance" as defined in 34 CFR 361.5(b)(35)

Ed 1002.29 "Mediation" means "mediation" as defined in 34 CFR 361.5(b)(36).

Ed 1002.30 "Nonprofit" means "nonprofit" as defined in 34 CFR 361.5(b)(37).

Ed 1002.31 "Ongoing support services" means "ongoing support services" as defined in 34 CFR 361.5(b)(38).

Ed 1002.32 "Personal assistance services" means "personal assistance services" as defined in 34 CFR 361.5(b)(39).

Ed 1002.33 "Physical and mental restoration services" means "physical and mental restoration services" as defined in 34 CFR 361.5(b)(40).

Ed 1002.34 "Physical or mental impairment" means "physical or mental impairment" as defined in 34 CFR 361.5(b)(41).

Ed 1002.35 "Post-employment services" means "post-employment services" as defined in 34 CFR 361.5(b)(42).

Ed 1002.36 "Program for the deaf and hard of hearing" means the program established under RSA 200-C:18.

Ed 1002.37 "Qualified and impartial mediator" means "qualified and impartial mediator" as defined in 34 CFR 361.5(b)(43).

Ed 1002.38 "Rehabilitation engineering" means "rehabilitation engineering" as defined in 34 CFR 361.5(b)(44).

Ed 1002.39 "Rehabilitation technology" means "rehabilitation technology" as defined in 34 CFR 361.5(b)(45).

Ed 1002.40 "Review " means the procedure for determining whether decisions made by personnel of the designated state unit that affect the provision of vocational rehabilitation services are consistent with the Act and rules adopted thereunder.

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Ed 1002.41 "State workforce investment board" means a board established under section 111 of the Workforce Investment Act of 1998, 29 U.S.C. 705(33).

Ed 1002.42 "Statewide workforce investment system" means a system described in section 111(d)(2) of the Workforce Investment Act of 1998, 29 U.S.C. 705(34).

Ed 1002.43 "State plan" means "state plan" as defined in 34 CFR 361.5(b)(51).

Ed 1002.44 "Substantial impediment to employment" means "substantial impediment to employment" as defined in 34 CFR 361.5(b)(52).

Ed 1002.45 "Supported employment" means "supported employment" as defined in 34 CFR 361.5(b)(53).

Ed 1002.46 "Supported employment program" means the program established under RSA 200-C:21 and 34 CFR 363.1.

Ed 1002.47 "Supported employment services" means "supported employment services" as defined in 34 CFR 361.5(b)(54).

Ed 1002.48 "Transition services" means "transition services" as defined in 34 CFR 361.5(b)(55).

Ed 1002.49 "Transitional employment" means "transitional employment" as defined in 34 CFR 361.5(b)(56).

Ed 1002.50 "Transportation" means "transportation" as defined in 34 CFR 361.5(b)(57).

Ed 1002.51 "Vocational rehabilitation services" means "vocational rehabilitation services" as defined in 34 CFR 361.5(b)(58).

## PART Ed 1003 PROTECTION, USE AND RELEASE OF PERSONAL INFORMATION

### Ed 1003.01 Confidentiality.

(a) All current and stored information as to personal facts given or made available to the designated state unit, its representative, or its employee, in the course of the administration of the vocational rehabilitation program, including photographs, lists of names and addresses and records of agency evaluation, shall be held to be confidential by the division and by individuals, service providers, other cooperating agencies and organizations, and interested parties to whom such information is disseminated.

(b) All personal information in the possession of the designated state unit shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information shall not be shared with advisory or other bodies which do not administer the program.

(c) All applicants, eligible individuals, representatives of applicants or individuals, service providers, other cooperating agencies and organizations, and interested parties shall be informed through appropriate modes of communication consistent with the choice, used by the individual of the

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confidentiality of personal information and the conditions in Ed 1003.03 for accessing and releasing this information.

(d) The designated state unit shall inform all applicants, eligible individuals, and representatives of applicants or individuals about the division's need to collect personal information and the provisions of this section governing its use.

(e) In the administration of the vocational rehabilitation program, the designated state unit shall obtain personal information from service providers and cooperating agencies under assurances that the information shall not be further divulged, except as provided under Ed 1003.02, Ed 1003.03, and Ed 1003.04.

(f) Individuals, agencies, and organizations shall pay a fee of \$.06 per page to cover costs of duplicating records and making extensive searches required for the release of information in Ed 1003.03 and the exchange of information in Ed 1003.04.

#### Ed 1003.02 Data Collection.

(a) The collection of personal information by designated state unit personnel concerning applicants and eligible individuals shall be authorized by the applicant or individual through completion of a release of information permit containing the:

- (1) Date;
- (2) Applicant or individual's name;
- (3) Signature;
- (4) Social security number optional: may be required for eligibility for certain state and federal programs; and
- (5) A statement authorizing release to the designated state unit of medical, psychological, psychiatric, educational, and vocational information necessary for the determination of eligibility and development and implementation of an individualized plan for employment.

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

(c) The designated state unit shall collect personal information under 29 U.S.C. 709(c), 29 U.S.C. 721(a)(6)(A), and 34 CFR 361.38. Failure by the applicant or eligible individual to provide sufficient personal information to the designated state unit to determine eligibility, or to prepare an individualized plan for employment or to monitor progress of services provided, shall result in the case being closed.

#### Ed 1003.03 Release of Information.

(a) Personal information concerning the applicant or eligible individual shall not be released to any individual or organization except as authorized by the applicant, individual, or law. When personal information has been obtained from another agency or organization, it shall be released only by, or under the conditions established by, the other agency or organization. However, when such information has

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been used to make a determination regarding the applicant or eligible individual that is being contested through the hearing process it shall be available for release as evidence in the hearing unless precluded by law.

(b) When requested in writing by the applicant or eligible individual or his or her representative, the designated state unit shall make all information in the record of vocational rehabilitation services accessible to the individual and release the information to him or her or the representative except when:

(1) Medical, psychological, or other information that the designated state unit determines might be harmful to the applicant or eligible individual after consultation with a qualified medical or mental health professional, in which case the information shall not be released directly to the applicant or individual but shall be provided to the applicant or individual through a third party chosen by the applicant or individual. The third party may include an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the applicant or individual, in which case the information shall be released to the court-appointed representative; or

(2) Personal information has been obtained from another agency or organization, in which case the information shall be released only by, or under the conditions established by, the other agency or organization.

(c) An applicant or eligible individual who believes that information in his or her record of services is inaccurate or misleading may request that the designated state unit amend the information. If the information is not amended, the request for an amendment shall be documented in the record of services, consistent with Ed 1010.16(a)(12).

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

(e) The request shall include:

(1) The applicant's or eligible individual's name;

(2) The information being requested;

(3) The reasons why the material is being requested; and

(4) The name of the individual, agency, or organization assuming responsibility for the information and giving assurance that the information will not be released to any other individual, agency or organization.

(5) The request shall also include the following statement:

"I \_\_\_\_\_, hereby authorize the release of information for the purpose of providing vocational rehabilitation services relating to me which is in the custody or control of the New Hampshire Department of Education, Division of Career Technology and Adult Learning. I have considered and understand the implications of this waiver. The release of this



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information is more important to me than the loss of privacy which may result directly or indirectly from the release. I agree to hold harmless the New Hampshire Department of Education, Division of Career Technology and Adult Learning and their authorized representatives for any damages arising out the release of the information I am requesting. ”

(f) Personal information shall be released under Ed 1003.03(g) only if the organization, agency, or individual assures that:

- (1) The information will be used only for the purposes for which it is being provided;
- (2) The information will be released only to persons officially responsible for conducting the audit, evaluation, or research;
- (3) The information will not be released to the involved applicant or individual;
- (4) The information will be managed in a manner to safeguard confidentiality; and
- (5) The final product will not reveal any personal identifying information without the informed written consent of the involved applicant or individual or the applicant's or individual's representative.

(g) Upon receiving the informed written consent of the applicant or eligible individual or, if appropriate, the applicant's or individual's representative, the designated state unit shall release personal information to another agency or organization for its program purposes if:

- (1) The information may be released to the involved applicant or individual or the applicant's or individual's representative; and
- (2) The other agency or organization demonstrates that the information requested is necessary for its program.
- (3) Medical or psychological information that the designated state unit determines might be harmful to the applicant or eligible individual shall be released only if the other agency or organization assures the designated state unit that the information will be used only for the purpose for which it is being provided and will not be further released to the applicant or individual.

(h) Personal information concerning the applicant or eligible individual shall be released to an organization, agency, or individual engaged in audit, evaluation, or research.

(i) The designated state unit shall release personal information as required by federal law.

(j) The designated state unit shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, and in response to an order issued by a judge or other authorized judicial officer.

(k) The designated state unit shall release personal information in order to protect the applicant or eligible individual or others if the applicant or individual poses a threat to his or her safety or to the safety of others.

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Ed 1003.04 Exchanging Information with Other Parties.

(a) When the designated state unit is working with an agency or organization on behalf of an applicant or eligible individual, information shall be exchanged after obtaining a written release of information authorization described in Ed 1003.03(d), signed by the individual, 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 designated state unit to exchange information, information regarding mutual applicants or eligible individual's information shall be exchanged without obtaining an individual's release. The agencies and organizations having such cooperative agreements shall be identified by the designated state unit on the application for vocational rehabilitation services described in Ed 1010.02.

(b) Agencies and organizations with which the designated state unit shall exchange information include but are not 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 Investment Act of 1998, 29 U.S.C. 705, 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 1003.04(a), upon receiving the informed written consent of the applicant or eligible individual or, if appropriate, the applicant's or individual's representative, the designated state unit shall release personal information to another agency or organization for its program purposes only to the extent that the information shall be released to the involved applicant or individual or the applicant's or individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

PART Ed 1004 REVIEW PROCEDURE

Ed 1004.01 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 designated state unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination.

(c) The designated state unit 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.

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Ed 1004.02 Notification of Right to Mediation and Hearings.

(a) The designated state unit shall provide an individual or, as appropriate, the individual's representative, notice of:

- (1) The right to obtain review of designated state unit determinations that affect the provision of vocational rehabilitation services through a hearing under Ed 1004.07 and Ed 1004.15;
- (2) The availability of informal dispute resolution under Ed 1004.03
- (3) The right to pursue mediation under Ed 1004.05 with respect to determinations made by designated state unit personnel that affect the provision of vocational rehabilitation services to an individual;
- (4) The names and addresses of department of education personnel with whom requests for mediation or hearings may be filed;
- (5) The manner in which a neutral mediator or hearing officer is selected; and
- (6) The availability of the client assistance program, established under 34 CFR 370, to assist the individual during neutral evaluation, mediation sessions or hearings.

(b) The notice required in Ed 1004.04(a) shall be provided by using the appropriate mode of communication consistent with the informed choice of the individual:

- (1) At the time the individual applies for vocational rehabilitation services;
- (2) At the time the individual is assigned to a category in the order of selection, if an order of selection is established under Ed 1006;
- (3) At the time the individualized plan for employment is developed; and
- (4) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated;

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

Ed 1004.03 Informal Dispute Resolution.

(a) An individual, or a representative of the individual, seeking review of a determination shall file a complaint with the administrator for policy and law at the bureau of vocational rehabilitation, in the designated state unit.

(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 1004.04 Mediation.

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(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 1004.10(c).

(c) Inconsistencies between mediation procedures in Ed 205.03 and Ed 1004.05 shall be resolved in favor of the provisions of Ed 1004.05.

Ed 1004.05 Mediation Procedure.

(a) An individual shall have the option of using mediation to resolve disputes involving designated state unit 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. The mediator 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 designated state unit.

(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 designated state unit.

Ed 1004.06 Scheduling of Mediation, Prehearing Conference, and Hearing.

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(a) At the time of the filing of a request to initiate a hearing under Ed 1004.07, 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 1004.10.

(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 1004.07 Initiation of Hearing by Applicant or Individual.

(a) An individual who is dissatisfied with any determination made by personnel of the designated state unit 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 designated state unit 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 1004.08 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 1004.07, unless an agreement is reached prior to the 60th day, or unless the parties agree to a specific extension of time.

Ed 1004.09 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 the individual:

- (1) Withdraws the request in writing;

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- (2) Is held by the hearing officer 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 1004.10 Scheduling Mediation Proceedings and Hearings.

- (a) The office of legislation and hearings in the department of education shall schedule mediation, if requested, and a prehearing conference and a hearing as follows:
- (b) 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:
- (1) The date, time and place of the requested mediation and the prehearing conference;
  - (2) The date, time, place, and nature of the hearing;
  - (3) Legal authority under which the hearing is to be held;
  - (4) The particular sections of the statutes and rules involved, including a copy of Ed 1004;
  - (5) A short and plain statement of the issues involved; and
  - (6) The party's right to have an attorney present to represent the party at the party's expense.
- (c) The name and address of the hearing officer who will preside at a hearing shall be selected:
- (1) From a list of hearing officers, who have knowledge of state and federal vocational rehabilitation law, that is maintained by the office; and
  - (2) On a random basis.

Ed 1004.11 Elements of a Hearing. A hearing shall include the following elements:

- (a) A prehearing conference, governed by Ed 1004.13;
- (b) A hearing, governed by Ed 1004.15, that shall, except for good cause shown, be limited to 2 days; and

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(c) A hearing officer's decision under Ed 1004.16(a) shall be considered the final decision of the designated state unit.

Ed 1004.12 Prehearing Procedures. The prehearing conference required by Ed 1004.10(a) shall be conducted by a hearing officer and governed by 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 "designated state unit (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 has 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 1004.13 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 1004.14.

Ed 1004.14 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.

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(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 1004.15 Hearing Procedures. The hearing shall be conducted by a hearing officer, governed by 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



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

Ed 1004.16 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 1004.17 Continuance of Hearing.

(a) A hearing officer shall grant extensions of time beyond the period set out in Ed 1004.(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 1004.18 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 designated state unit 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 1004.19 Impact on Provision of Services During Proceedings.

(a) The designated state unit 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 individualized plan for employment development, pending resolution of a request for review of a determination through mediation or pending a decision by a hearing officer unless:

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- (1) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services;
- (2) The designated state unit 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 designated state unit 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.

(b) If a party brings a civil action under Ed 1004.20 to challenge the final decision of the hearing officer made under Ed 1004.18(f), the final decision of the hearing officer shall be implemented pending review by the court.

Ed 1004.20 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).

## PART Ed 1005 ABILITY TO SERVE ALL ELIGIBLE INDIVIDUALS

### Ed 1005.01 Ability to Provide Full Range of Vocational Rehabilitation Services.

(a) The designated state unit shall either provide the full range of vocational rehabilitation services listed in 29 U.S.C. 723(a) and Ed 1010.16, as appropriate, to all eligible individuals or, 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 Ed 1006 to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(b) The designated state unit shall provide the full range of vocational rehabilitation services to all eligible individuals if a determination is also made that, on the basis of the designated state unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within New Hampshire, the designated state unit can:

- (1) Continue to provide services to all individuals currently receiving services;
- (2) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

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(3) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(4) Meet all program requirements.

(c) The designated state unit shall establish and implement an order of selection according to the provisions of Ed 1006 if the designated state unit determines that it is unable to provide the full range of vocational rehabilitation services to all eligible individuals in New Hampshire who apply for the services.

(d) The designated state unit shall consult with the state rehabilitation council established under 34 CFR 361.16 that meets the requirements of 34 CFR 361.17 regarding the:

(1) Need to establish an order of selection, including any reevaluation of the need as provided in Ed 1006.01(b);

(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.

#### PART Ed 1006 ORDER OF SELECTION FOR SERVICES

##### Ed 1006.01 Determining Need for Establishing and Implementing An Order of Selection.

(a) Prior to the beginning of each fiscal year the designated state unit shall determine whether to establish and implement an order of selection.

(b) If the designated state unit determines that it does not need to establish an order of selection, the designated state unit shall reevaluate this determination whenever changed circumstances during the course of a fiscal year indicate that it might no longer be able to provide the full range of vocational rehabilitation services, as appropriate, to all eligible individuals according to the requirements in Ed 1005.01(c).

(c) If the designated state unit establishes an order of selection, but determines that it does not need to implement that order at the beginning of the fiscal year, the designated state unit shall continue to meet the requirements of Ed 1005.01(c). If the designated state unit does not continue to meet the requirements of Ed 1005.01(c) it shall implement the order of selection by closing one or more priority categories.

Ed 1006.02 Establishing an Order of Selection. An order of selection shall be based only on the 3 criteria in the definition of "individual with a significant disability."

##### Ed 1006.03 Administering and Implementing an Order of Selection.

(a) The designated state unit shall administer an order of selection as follows:

(1) The order of selection shall be implemented on a statewide basis;

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- (2) All eligible individuals shall be notified of the priority categories in the order of selection, their assignment to a particular category, and their right to appeal their category assignment;
  - (3) The designated state unit shall continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability;
  - (4) The designated state unit shall ensure that its funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection; and
  - (5) The designated state unit shall renegotiate any funding arrangements that are inconsistent with the order of selection so that they are consistent with the order of selection.
- (b) The designated state unit shall implement an order of selection for eligible individuals according to the following priority categories:

- (1) Priority one shall include individuals who are determined to be eligible for services prior to the effective date of the implementation of the order of selection as provided in Ed 1006.03(a)(3), and individuals who are determined to be 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 public safety officers as defined in RSA 507:8-h who are disabled in the line of duty in law enforcement or protection of life or property and who are not included in priority one; and
- (3) Priority 3 shall include all other eligible individuals who do not have a significant disability.

## PART Ed 1007 COMPARABLE SERVICES AND BENEFITS

### Ed 1007.01 Determination of Availability of Comparable Services and Benefits.

(a) Prior to providing any vocational rehabilitation services, except those services listed in Ed 1007.02, to an eligible individual or to members of the individual's family, the designated state unit shall determine whether comparable services and benefits exist under any other program and whether those services and benefits are available to the individual.

(b) A determination of the availability of comparable services and benefits shall not be required if the determination would interrupt or delay:

- (1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;
- (2) An immediate job placement; or

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(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriately licensed medical professional acting within the scope of his or her authority, unless the extreme medical risk requires intensive hospitalization or surgery in those circumstances, such as but not limited to, where organ or bone marrow transplantations are required.

Ed 1007.02 Exempt Services. The following vocational rehabilitation services described in Ed 1010.16 shall be exempt from a determination of the availability of comparable services and benefits:

(a) Assessment for determining eligibility and priority for services and assessment for determining vocational rehabilitation needs;

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

(c) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment system, if those services are not available under the vocational rehabilitation services program;

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

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

(f) Post-employment services consisting of the services listed under Ed 1007.02(a)-(e).

Ed 1007.03 Using Comparable Services or Benefits.

(a) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment, the designated state unit shall use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(b) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment, the designated state unit shall provide vocational rehabilitation services until those comparable services and benefits become available.

## PART Ed 1008 PARTICIPATION OF INDIVIDUALS IN COST OF SERVICES BASED ON FINANCIAL NEED

Ed 1008.01 Financial Needs Assessment.

(a) The designated state unit shall consider the financial need of eligible individuals or of individuals who are receiving services through trial work experiences under Ed 1010.07 or during an extended evaluation under Ed 1010.08. The financial needs assessment shall be used for determining the

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extent of the individual's participation in the costs of vocational rehabilitation services. The services listed in Ed 1008.02 shall be exempt from a financial needs assessment.

(b) The financial needs assessment shall:

(1) 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; and

(2) Specify the types of vocational rehabilitation services from the following services for which the designated state unit has established a financial needs test:

- a. Physical and mental restoration;
- b. Vocational and other training services;
- c. Maintenance;
- d. Transportation;
- e. 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;
- f. Supported employment services;
- g. Post employment services;
- h. Occupational licenses, tools, equipment, initial stocks, and supplies;
- i. Rehabilitation technology, including vehicular modification, telecommunications, sensory, and other technological aids and devices;
- j. Transition services; and
- k. 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.

(c) The financial needs assessment shall be applied uniformly to all individuals in similar circumstances.

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(d) Although the financial needs assessment might require different levels of need for different geographic regions in the state, the assessment shall be applied uniformly to all individuals within each geographic region.

(e) The financial needs assessment shall ensure that the level of an individual's participation in the cost of vocational rehabilitation services is:

(1) Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and

(2) Not so high as to effectively deny the individual a necessary service.

Ed 1008.02 Services Exempt from Financial Needs Assessment.

(a) The designated state unit shall not apply a financial needs assessment or require the financial participation of the individual as a condition for furnishing the following vocational rehabilitation services:

(1) Assessment for determining eligibility and priority for vocational rehabilitation services under Ed 1010.04, except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under Ed 1010.07 or an extended evaluation under Ed 1010.08;

(2) Assessment for determining vocational rehabilitation needs under Ed 1010.12;

(3) Vocational rehabilitation counseling and guidance under Ed 1010.11;

(4) Referral and other services under Ed 1009;

(5) Job-related services under Ed 1010.15(a)(12);

(6) Personal assistance services; and

(7) Any auxiliary aid or interpreter services under Ed 1010.15(a)(10) or reader services under Ed 1010.15(a)(11) that an individual with a disability requires under section 504 of the Act, 29 U.S.C. 794, or under the Americans with Disabilities Act, 42 U.S.C. 12101, et seq., or regulations implementing those laws, in order for the individual to participate in the vocational rehabilitation program.

(b) The designated state unit shall not apply a financial needs assessment or require the financial participation of the individual as a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act.

PART Ed 1009 INFORMATION AND REFERRAL SERVICES

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Ed 1009.01 Referring Individuals Under an Order of Selection. The designated State agency shall implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the agency's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, are provided accurate vocational rehabilitation information and guidance which may include counseling and referral for job placement using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment.

Ed 1009.02 Referring Individuals to Extended Employment Providers.

(a) The designated state unit shall refer to local extended employment providers an individual with a disability who makes an informed choice to pursue extended employment as the individual's employment goal.

(b) Before making the referral required by this section, the designated state unit shall:

- (1) Consistent with Ed 1010.04(f), explain to the individual that the purpose of the vocational rehabilitation program is to assist individuals to achieve an employment outcome;
- (2) Consistent with Ed 1012, provide the individual with information concerning the availability of employment options, and of vocational rehabilitation services, in integrated settings;
- (3) Inform the individual that services under the vocational rehabilitation program can be provided to eligible individuals in an extended employment setting if necessary for purposes of training or otherwise preparing for employment in an integrated setting;
- (4) Inform the individual that, if he or she initially chooses not to pursue employment in an integrated setting, he or she can seek services from the designated state unit at a later date if, at that time, he or she chooses to pursue employment in an integrated setting; and
- (5) Refer the individual, as appropriate, to the Social Security Administration in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the Social Security Administration.

Ed 1009.03 Criteria for Appropriate Referrals.

(a) The designated state unit shall refer individuals with disabilities to federal or state programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of an individual with a disability.

(b) The designated state unit shall provide the individual who is being referred with a notice of the referral by the designated state unit to the agency carrying out the program that includes:

- (1) Information identifying a specific point of contact within the agency to which the individual is being referred; and
- (2) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.



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## PART Ed 1010 PROVISION AND SCOPE OF SERVICES

### Ed 1010.01 Processing Referrals.

(a) The designated state unit shall promptly and equitably handle referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the One-Stop service delivery systems established under section 121 of the Workforce Investment Act of 1998, 29 U.S.C. 721(a)(6)(A) and 723(a)(6). Good faith efforts shall be made in a timely manner to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) The following minimum information shall be furnished for each individual who is referred to the designated state unit for vocational rehabilitation services:

- (1) Name and address;
- (2) Disability;
- (3) Age and gender;
- (4) Date of referral; and
- (5) Source of referral.

### Ed 1010.02 Processing Applications.

(a) Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in One-Stop centers established under section 121 of the Workforce Investment Act of 1998, 29 U.S.C. 721(a)(6)(A) and 723(a)(6), an eligibility determination shall be made within 60 days, unless:

- (1) Exceptional and unforeseen circumstances beyond the control of the designated state unit preclude making an eligibility determination within 60 days and the designated state unit and the individual agree to a specific extension of time; or
- (2) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with Ed 1010.07 or, if appropriate, an extended evaluation is carried out in accordance with Ed 1010.08.

(b) If no agreement can be reached under subparagraph (a)(1), the eligibility determination shall be made on the available information.

(c) An individual shall be considered by the designated state unit to have submitted an application when the individual or the individual's representative, as appropriate:

- (1) Has completed and signed a designated state unit application form;

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- (2) Has completed a common intake application form in a One-Stop center requesting vocational rehabilitation services;
  - (3) Has provided to the designated state unit information necessary to initiate an assessment to determine eligibility and priority for services;
  - (4) Is available to complete the assessment process; or
  - (5) Has otherwise requested services from the designated state unit through a verbal request, a request through an interpreter, or a request from the individual's representative.
- (d) The designated state unit shall ensure that its application forms are available throughout New Hampshire, particularly in the One-Stop centers established under section 121 of the Workforce Investment Act of 1998, 29 U.S.C. 721(a)(6)(A) and 723(a)(6).

#### Ed 1010.03 Assessment for Determining Eligibility and Priority for Services.

- (a) In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services in the event New Hampshire operates under an order of selection, the designated state unit shall conduct an assessment.
- (b) The assessment shall be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the provisions of Ed 1010.04 through Ed 1010.09.

#### Ed 1010.04 Eligibility Requirements.

- (a) An applicant shall be determined eligible for vocational rehabilitation services if:
  - (1) A determination is made by qualified personnel that the applicant has a physical or mental impairment;
  - (2) A determination is made by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;
  - (3) A determination is made by a vocational rehabilitation counselor employed by the designated state unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and
  - (4) A determination is made by the designated state unit that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.
- (b) An applicant who meets the eligibility requirements in Ed 1010.04(a)(1) and (2) shall be deemed as being able to benefit in terms of an employment outcome unless the designated state unit demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant's disability.

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(c) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act shall be:

- (1) Presumed to be eligible for vocational rehabilitation services under Ed 1010.04(a) and (b); and
- (2) Considered to be an individual with a significant disability.

(d) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under Title II or Title XVI of the Social Security Act and is therefore presumed eligible for vocational rehabilitation services under Ed 1010.04(c)(1), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the designated state unit shall verify the applicant's eligibility under Title II or Title XVI of the Social Security Act by contacting the Social Security Administration. This verification shall be made within a period of time that enables the designated state unit to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with Ed 1010.02(a) and (c).

(e) Any eligible individual shall intend to achieve an employment outcome that is consistent with the applicant's:

- (1) Unique strengths;
- (2) Resources;
- (3) Priorities;
- (4) Concerns;
- (5) Abilities;
- (6) Capabilities;
- (7) Interests; and
- (8) Informed choice.

(f) The designated state unit 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.

(g) 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).

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

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Ed 1010.05 Prohibited Factors. In making a determination of eligibility under Ed 1010.03 through Ed 1010.04 and under Ed 1010.06 through Ed 1010.09:

(a) No applicant or group of applicants shall be excluded or found ineligible solely on the basis of the type of disability; and

(b) The eligibility requirements shall be applied without regard to the:

- (1) Age, gender, race, color, or national origin of the applicant;
- (2) Type of expected employment outcome;
- (3) Source of referral for vocational rehabilitation services;
- (4) Particular service needs or anticipated cost of services required by an applicant; and
- (5) The income level of an applicant or applicant's family.

Ed 1010.06 Review and Assessment of Data for Eligibility Determination.

(a) Except as provided in Ed 1010.07, the designated state unit shall base its determination of each of the basic eligibility requirements in Ed 1010.04 on:

(1) A review and assessment of existing data, including:

- a. Counselor observations;
- b. Education records;
- c. Information provided by the individual or the individual's family;
- d. Information used by education officials; and
- e. Determinations made by officials of other agencies; and

(2) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including:

- a. Trial work experiences;
- b. Assistive technology devices and services;
- c. Personal assistance services; and
- d. Any other support services that are necessary to determine whether an individual is eligible.

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(b) Except as provided in Ed 1010.07, the designated state unit shall base its presumption under Ed 1010.04(c) that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in Ed 1010.04 on determinations made by the Social Security Administration.

Ed 1010.07 Trial Work Experiences for Individuals with Significant Disabilities.

(a) Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the designated state unit shall conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether there is clear and convincing evidence to support such a determination.

(b) The designated state unit shall develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences. Such trial work experience shall be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(c) Trial work experiences shall include supported employment, on-the-job training, and other experiences using realistic work settings.

(d) Trial work experiences shall be of sufficient variety and over a sufficient period of time for the designated state unit to determine that:

(1) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(2) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

(e) The designated state unit shall provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

Ed 1010.08 Extended Evaluation for Certain Individuals with Significant Disabilities.

(a) If an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the designated state unit is able to make the determinations described in Ed 1010.07(d), the designated state unit shall conduct an extended evaluation to make these determinations.

(b) During the extended evaluation period, vocational rehabilitation services shall be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(c) During the extended evaluation period, the designated state unit shall develop a written plan for providing services necessary to make a determination under Ed 1010.07(d).

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(d) During the extended evaluation period, the designated state unit shall provide only those services that are necessary to make the determination described in Ed 1010.07(d) and shall terminate extended evaluation services when the designated state unit is able to make the determination.

Ed 1010.09 Data for Determination of Priority for Services under an Order of Selection.

(a) If the designated state unit is operating under an order of selection for services as provided in Ed 1006, the designated state unit shall base its priority assignments on:

- (1) A review of the data that was developed under Ed 1010.06 and Ed 1010.07 to make the eligibility determination; and
- (2) An assessment of additional data, to the extent necessary.

Ed 1010.10 Procedures for Ineligibility Determination.

(a) If the designated state unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the designated state unit shall:

- (1) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;
- (2) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of:
  - a. The ineligibility determination, including the reasons for that determination;
  - b. The requirements under this section; and
  - c. The means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of designated state unit personnel determinations in accordance with Ed 1004;
- (3) Provide the individual with a description of services available from a client assistance program established under 34 CFR 370 and with information on how to contact that program;
- (4) Refer the individual:
  - a. To other programs that are part of the One-Stop service delivery system under the Workforce Investment Act, 29 U.S.C 705, that can address the individual's training or employment-related needs; or
  - b. To local extended employment providers if the ineligibility determination is based on a finding that the individual is incapable of achieving employment; and
- (5) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome.

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(b) The review required under Ed 1010.10(a)(5) shall not be conducted in situations in which the individual has refused it, the individual is no longer present in New Hampshire, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

Ed 1010.11 Closure without Eligibility Determination. The designated state unit 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 designated state unit 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.

Ed 1010.12 Development of the Individualized Plan for Employment.

(a) An individualized plan for employment meeting the requirements of this section and Ed 1010.13 shall be developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated state unit is operating under an order of selection in accordance with Ed 1006, for each eligible individual to whom the designated state unit is able to provide services. Services shall be provided in accordance with the provisions of the individualized plan for employment.

(b) The designated state unit shall conduct an assessment for determining vocational rehabilitation needs for each eligible individual or, if the designated state unit is operating under an order of selection, for each eligible individual to whom the designated state unit is able to provide services. The purpose of this assessment shall be to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment.

(c) The individualized plan for employment shall be designed to achieve a specific employment outcome that is selected by the individual consistent with the individual's:

- (1) Unique strengths;
- (2) Resources;
- (3) Priorities;
- (4) Concerns;
- (5) Abilities;
- (6) Capabilities;
- (7) Interests; and
- (8) Informed choice.

(d) The designated state unit shall provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

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- (1) Information on the available options for developing the individualized plan for employment, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment with or without assistance from the designated state unit or other entity or individual; and
  - (2) Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the individualized plan for employment, including:
    - a. Information describing the full range of components that shall be included in an individualized plan for employment;
    - b. As appropriate to each eligible individual:
      1. An explanation of the criteria in Ed 1008 for determining an eligible individual's financial commitments under an individualized plan for employment;
      2. Information on the availability of assistance in completing designated state unit forms required as part of the individualized plan for employment; and
      3. Additional information that the eligible individual requests or the designated state unit determines to be necessary to the development of the individualized plan for employment;
    - c. A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in Ed 1004; and
    - d. A description of the availability of a client assistance program established under 34 CFR 370 and information on how to contact the client assistance program.
- (e) The individualized plan for employment shall be:
- (1) A written document prepared on forms provided by the designated state unit that contain the information in Ed 1010.13;
  - (2) Developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with Ed 1012, in selecting:
    - a. The employment outcome, including the employment setting;
    - b. The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;
    - c. The entity or entities that will provide the vocational rehabilitation services; and
    - d. The methods available for procuring the services;
  - (3) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative;



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- (4) Approved and signed by a vocational rehabilitation counselor or other qualified personnel employed by the designated state unit;
  - (5) Provided to the eligible individual along with a copy of any amendments to the individualized plan for employment in writing or, as appropriate, to the individual's representative, and, if appropriate, in the native language or mode of communication of the individual;
  - (6) Reviewed at least annually by a vocational rehabilitation counselor or other qualified personnel and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;
  - (7) Amended, as necessary, by the individual or, as appropriate, the individual's representative as follows:
    - a. The individualized plan for employment shall be amended in collaboration with a representative of the designated state unit or a vocational rehabilitation counselor or other qualified personnel, to the extent determined to be appropriate by the individual;
    - b. The individualized plan for employment shall be amended if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services; and
    - c. Amendments to the individualized plan for employment shall not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a vocational rehabilitation counselor employed by the designated state unit; and
  - (8) Developed for a student with a disability receiving special education services:
    - a. In consideration of the student's individualized education plan; and
    - b. In accordance with the plans, policies, procedures, and terms of the interagency agreement required under the state plan.
- (f) The designated state unit shall establish and implement standards for the prompt development of individualized plan for employment for the individuals identified under Ed 1010.12(a), including timelines that take into consideration the needs of the individuals.
- (g) To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's individualized plan for employment shall be determined based on the data used for the assessment of eligibility and priority for services under Ed 1010.03 through Ed 1010.09 without a comprehensive assessment.
- (h) The individualized plan for employment shall be prepared based on a comprehensive assessment as follows:

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(1) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the individualized plan for employment of an eligible individual, the division shall conduct a comprehensive assessment of the unique:

a. Strengths;

b. Resources;

c. Priorities;

d. Concerns;

e. Abilities;

f. Capabilities;

g. Interests; and

h. Informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, and consistent with the informed choice of the individual in accordance with the provisions of 34 CFR 361.5(b)(6)(ii); and

(2) In preparing the comprehensive assessment, the designated state unit shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the individualized plan for employment, including:

a. Information available from other programs and providers, including information used by education officials and the Social Security Administration;

b. Information provided by the individual and the individual's family; and

c. Information obtained under the assessment for determining the individual's eligibility and vocational rehabilitation needs.

Ed 1010.13 Content of the Individualized Plan for Employment.

(a) Each individualized plan for employment shall include:

(1) A description of the specific employment outcome that is chosen by the eligible individual and that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice;

(2) A description of the specific rehabilitation services under Ed 1010.15 that are:

a. Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

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b. Provided in the most integrated setting that is appropriate for the services involved and that is consistent with the informed choice of the eligible individual;

(3) Timelines for the achievement of the employment outcome and for the initiation of services;

(4) A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;

(5) A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(6) The terms and conditions of the individualized plan for employment, including, as appropriate, information describing:

a. The responsibilities of the designated state unit;

b. The responsibilities of the eligible individual, including:

1. The responsibilities the individual will assume in relation to achieving the employment outcome;

2. If applicable, the extent of the individual's participation in paying for the cost of services; and

3. The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in Ed 1007; and

c. The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in Ed 1007.

(b) An individualized plan for employment for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate shall:

(1) Specify the supported employment services to be provided by the designated state unit;

(2) Specify the expected extended services needed, which may include natural supports provided through the people and environments a person encounters that enhance the potential for inclusion more effectively than relying on specialized services and personnel, such as:

a. Relationships with coworkers;

b. The social support of family and friends;

c. Social networks; and

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d. Established resources within one's community including religious centers, recreational activities and support groups;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the individualized plan for employment by the time of transition to extended services;

(5) Provide for the coordination of services provided under an individualized plan for employment with services provided under other individualized plans established under other federal or state programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique:

a. Strengths;

b. Resources;

c. Priorities;

d. Concerns;

e. Abilities;

f. Capabilities;

g. Interests; and

h. Informed choice of individuals with the most significant disabilities.

(c) The individualized plan for employment for each individual shall contain, as determined to be necessary, statements concerning:

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

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- (3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in Ed 1007.
- (d) The individualized plan for employment for a student with a disability who is receiving special education services shall be coordinated with the individualized education plan of that individual in terms of the goals, objectives, and services identified in the individualized education plan.
- (e) Notwithstanding the content of the individualized plan for employment set out above, the designated state unit of vocational rehabilitation, department of education 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 as set forth in Ed 1010.13.
- Ed 1010.14 Record of Services. The designated state unit shall maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:
- (a) If an applicant has been determined to be an eligible individual, documentation in the form of written notification of eligibility supporting that determination in accordance with the requirements under Ed 1010.03 through Ed 1010.09;
- (b) If an applicant or eligible individual receiving services under an individualized plan for employment has been determined to be ineligible, documentation in the form of written notification of ineligibility supporting that determination in accordance with the requirements under Ed 1010.10;
- (c) Documentation in the form of case notes, an amendment to the individualized plan for employment, or a letter to an applicant or eligible individual that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the designated state unit has satisfied the requirements in Ed 1010.11;
- (d) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation in accordance with 34 CFR 361.42(d) supporting that determination;
- (e) Documentation supporting the need for, and the plan relating to, the extended evaluation or trial work experiences in accordance with the requirements under Ed 1010.07 and Ed 1010.08 if an individual with a significant disability requires trial work experiences or an extended evaluation;
- (f) The individualized plan for employment, and any amendments to the individualized plan for employment, consistent with the requirements under Ed 1010.13;
- (g) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the individualized plan for employment with respect to the selection of the:
- (1) Specific employment outcome;
  - (2) Specific vocational rehabilitation services needed to achieve the employment outcome;

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- (3) Entity to provide the services;
- (4) Employment setting;
- (5) Settings in which the services will be provided; and
- (6) Methods to procure the services;

(h) In the event that an individual's individualized plan for employment provides for vocational rehabilitation services in a non-integrated setting, a justification in the individualized plan for employment to support the need for the non-integrated setting;

(i) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with 34 CFR 361.5(b)(11)(ii);

(j) In the event an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act, 29 CFR 525, or the designated state unit closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome or that an eligible individual through informed choice chooses to remain in extended employment, documentation of the:

- (1) Results of the annual reviews required under Ed 1013;
- (2) Individual's input into those reviews; and
- (3) Individual's or, if appropriate, the individual's representative's acknowledgment that those reviews were conducted;

(k) Documentation concerning any action or decision resulting from a request by an individual under Ed 1004 for a review of determinations made by the designated state unit;

(l) In the event that an applicant or eligible individual requests under Ed 1003.03(i) that documentation in the record of services be amended and the documentation is not amended, documentation of the request;

(m) In the event an individual is referred to another program through the designated state unit's information and referral system under Ed 1009, including other components of the statewide workforce investment system, documentation on the nature and scope of services provided by the designated state unit to the individual and on the referral itself, consistent with the requirements of Ed 1009;

(n) In the event an individual's record of service is closed under Ed 1014, documentation that demonstrates the services provided under the individual's individualized plan for employment contributed to the achievement of the employment outcome; and

(o) In the event an individual's record of service is closed under Ed 1014, documentation verifying that the provisions of Ed 1014 have been satisfied.

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Ed 1010.15 Scope of Vocational Rehabilitation Services for Individuals with Disabilities.

(a) As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the following vocational rehabilitation services shall be available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

- (1) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with Ed 1010.03 through Ed 1010.09;
- (2) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with Ed 1010.12;
- (3) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with Ed 1012;
- (4) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, in accordance with 34 CFR 361.23 and 34 CFR 361.24, and Ed 1008, and to advise those individuals about client assistance programs established under 34 CFR 370;
- (5) Physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated state unit such as through health insurance or a comparable service or benefit;
- (6) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education such as universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing, shall be paid for with funds under the state vocational rehabilitation services program unless maximum efforts have been made by the designated state unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training;
- (7) Maintenance;
- (8) Transportation in connection with the rendering of any vocational rehabilitation service;
- (9) 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;
- (10) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing, and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel;

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- (11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind;
  - (12) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;
  - (13) Supported employment services;
  - (14) Personal assistance services;
  - (15) Post-employment services;
  - (16) Occupational licenses, tools, equipment, initial stocks, and supplies;
  - (17) Rehabilitation technology, including vehicular modification, telecommunications, sensory, and other technological aids and devices;
  - (18) Transition services;
  - (19) 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 or telecommuting or establishing a small business operation as an employment outcome; and
  - (20) Other goods and services necessary for the individual with a disability to achieve an employment outcome as determined in the individualized plan for employment.
- (b) Scope of services shall not include services prohibited by Chapter 252:2 of the laws of 1993 as set out in Ed 1010.13(e).

Ed 1010.16 Provision of Services for Individuals with Disabilities.

- (a) The provision of services shall be based on the rehabilitation needs of each individual as identified in that individual's individualized plan for employment and shall be consistent with the individual's informed choice. There shall not be any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome, or on the timely authorization of services that shall be consistent with the individualized plan for employment.
- (b) If the individual chooses an out-of-state service at a higher cost than an in-state service, if either service would meet the individual's rehabilitation needs, the designated state unit shall not be responsible for those costs in excess of the cost of the in-state service.
- (c) The designated state unit:
- (1) Shall establish for each provider a provider fee schedule to govern the rates of payment for all purchased vocational rehabilitation services listed under Ed 1010.15; and



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- (2) Shall not place absolute dollar limits on specific service categories or on the total services provided to an individual.
- (d) The provider fee schedule shall be consistent with:
- (1) The fees charged by medical and psychological providers;
  - (2) Rates negotiated between the designated state unit and community rehabilitation programs;
  - (3) Interpreter fees charged for services under Ed 1010.15(a)(10);
  - (4) Tuition rates charged by an institution of higher education such as universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing; and
  - (5) The cost of services provided to individuals under Ed 1010.15(a)(7), (8), (9), (10), (16), (17), (19), and (20).]

(e) Time periods for the provision of services shall not be so short as to effectively deny an individual a necessary service. Time periods shall not be absolute and shall be extended in the event the individual cannot get the services in the identified time frame so that individual needs can be addressed.

#### PART Ed 1011 STANDARDS FOR PROVIDERS OF SERVICES

Ed 1011.01 Special Communication Needs Personnel. Providers of vocational rehabilitation services shall be able to communicate:

- (a) In the native language of applicants and eligible individuals who have limited English speaking ability; and
- (b) By using appropriate modes of communication used by applicants and eligible individuals consistent with the informed choice of those applicants and individuals.

#### PART Ed 1012 INFORMED CHOICE

Ed 1012.01 Informed Choice.

- (a) Each applicant or eligible individual shall exercise informed choice throughout the vocational rehabilitation process.
- (b) The designated state unit shall implement informed choice by:
  - (1) Informing each applicant and eligible individual, including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated state unit, through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other

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disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assisting applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Affording eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services; and

(4) Assisting eligible individuals or, as appropriate, the individuals' representatives, in acquiring information that enables them to exercise informed choice in the development of their individualized plan for employment with respect to the selection of the:

- a. Employment outcome;
- b. Specific vocational rehabilitation services needed to achieve the employment outcome;
- c. Entity that will provide the services;
- d. Employment setting and the settings in which the services will be provided; and
- e. Methods available for procuring the services.

Ed 1012.02 Information and Assistance in the Selection of Vocational Rehabilitation Services and Service Providers.

(a) In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the designated state unit shall provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome.

(b) The information in Ed 1012.02(a) shall include, at a minimum, information relating to the:

- (1) Cost, accessibility, and duration of potential services;
- (2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;
- (3) Qualifications of potential service providers;
- (4) Types of services offered by the potential providers;
- (5) Degree to which services are provided in integrated settings; and
- (6) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

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Ed 1012.03 Methods or Sources of Information.

(a) In providing or assisting the individual or the individual's representative in acquiring the information required under Ed 1012.02, the designated state unit shall use, to the extent available, the following methods or sources of information:

- (1) Lists of services and service providers;
- (2) Periodic consumer satisfaction surveys and reports;
- (3) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers;
- (4) Relevant accreditation, certification, or other information relating to the qualifications of service providers; and
- (5) Opportunities for individuals to visit or experience various work and service provider settings.

PART Ed 1013 ANNUAL REVIEW OF INDIVIDUALS IN EXTENDED EMPLOYMENT AND OTHER EMPLOYMENT UNDER SPECIAL CERTIFICATE PROVISIONS OF THE FAIR LABOR STANDARDS ACT

Ed 1013.01 Annual Review.

(a) The provisions of Ed 1013 shall apply to any individual with a disability served under the state vocational rehabilitation services program:

- (1) Who has achieved an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act, 29 CFR 525; or
- (2) Whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome or that the individual made an informed choice to remain in extended employment.

(b) For each individual with a disability who meets the criteria in Ed 1013.01(a), the designated state unit shall:

- (1) Annually review and reevaluate the status of each individual for 2 years after the individual's record of services is closed, and thereafter if requested by the individual or, if appropriate, the individual's representative, determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;
- (2) Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and shall document that input in the record of services, consistent with Ed 1010.14(j), with the individual's or, as appropriate, the individual's

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representative's signed acknowledgment that the review and reevaluation have been conducted; and

(3) Identify and provide vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive employment.

#### PART Ed 1014 REQUIREMENTS FOR CLOSING THE RECORD OF SERVICES OF AN INDIVIDUAL WHO HAS ACHIEVED AN EMPLOYMENT OUTCOME

Ed 1014.01 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 Ed 1014.02 through Ed 1014.05 have been met.

Ed 1014.02 Employment Outcome Achieved. The individual shall have achieved the employment outcome that is described in the individual's individualized plan for employment in accordance with Ed 1010.13(a)(1) and that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Ed 1014.03 Employment Outcome Maintained. The individual shall have maintained the employment outcome for not less than 90 days necessary to ensure the stability of the employment outcome, and that the individual no longer needs vocational rehabilitation services.

Ed 1014.04 Satisfactory Outcome. At the end of the 90 day period under Ed 1014.03, the individual and the rehabilitation counselor employed by the designated state unit shall have considered the employment outcome to be satisfactory, and shall have agreed that the individual is performing well in the employment.

Ed 1014.05 Post-Employment Services. The individual shall be informed through appropriate modes of communication of the availability of post-employment services.

#### PART Ed 1015 SUPPORTED EMPLOYMENT SERVICES PROGRAM

Ed 1015.01 Purpose. The purpose of Ed 1015 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 1015.02 Definitions. Except where the context makes another meaning clear, the following words have the meaning indicated when used in Ed 1015:

(a) "Competitive employment" means "competitive employment" as defined in 34 CFR 363.6(c)(2)(i).

(b) "Extended services" means "extended services" as defined in 34 CFR 363.6(c)(iv).

(c) "Individual with a disability" means "individual with a disability" as defined in 34 CFR 369.4(b).

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- (d) “Integrated setting” means “integrated setting” as defined in 34 CFR 363.6(c)(2)(ii).
- (e) “Nonprofit” means “nonprofit” as defined in 34 CFR 77.1(c).
- (f) “On-going support services” means “on-going support services” as defined in 34 CFR 363.6(c)(3).
- (g) “Supported employment” means “supported employment” as defined in 34 CFR 363.6(c)(1).
- (h) “Supported employment services” means “supported employment services” as defined in 34 CFR 363.6(c)(2)(iii).
- (i) “Transitional employment” means “transitional employment” as defined in 34 CFR 363.6(c)(v).

Ed 1015.03 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 in Ed 1010.04 through Ed 1010.09;
- (b) Be an individual with the most significant disabilities; 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 1015.04 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 Ed 1010.04 through Ed 1010.09 and that is provided subsequent to 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, 29 USC 701.103(a), 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

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(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 1015.05 Developing Collaborative Agreements.

(a) The designated state unit 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 designated state unit 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 1015;

(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 designated state unit shall collect and report information as required under the Act, 29 USC 701.13, for each individual with the most significant disabilities served under the supported employment services program.

(b) The designated state unit 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 1015.07 Coordinating Services and Activities. The designated state unit 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 1015.08 Transition of an Individual to Extended Services. The designated state unit 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

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goal provided for 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 1015.09 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.

Ed 1015.10 Client Assistance Program. The designated state unit shall advise applicants for or recipients of services under Ed 1015, 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 established in New Hampshire under the Act, 29 USC 701.112, including information on seeking assistance from that program.

#### PART Ed 1016 GENERAL PROVISIONS FOR INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM

Ed 1016.01 Purpose. The purpose of the state independent living services program and the centers for independent living program is to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, to maximize the leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society.

Ed 1016.02 Definitions. Except where the context makes another meaning clear, the following words have the meaning indicated when used in Ed 1016:

(a) “Administrative support services” means “administrative support services” as defined in 34 CFR 364.4(b).

(b) “Advocacy” means “advocacy” as defined in 34 CFR 364.4(b).

(c) “Applicant” means “applicant” as defined in 34 CFR 77.1(c).

(d) “Application” means “application” as defined in 34 CFR 77.1(c).

(e) “Attendant care” means “attendant care” as defined in 34 CFR 364.4(b).

(f) “Award” means “award” as defined in 34 CFR 74.2.

(g) “Center for independent living” (CIL) means “center for independent living” as defined in 34 CFR 364.4(b).

(h) “Centers for independent living program” means the centers for independent living program authorized by chapter 1 of title VII of the Act.

(i) “Consumer control” means “consumer control” as defined in 34 CFR 364.4(b).

(j) “Cross-disability” means “cross-disability” as defined in 34 CFR 364.4(b).

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- (k) “Department” means the U.S. Department of Education.
- (l) “Decision making position” means “decision making position” as defined in 34 CFR 366.5.
- (m) “Eligible agency” means “eligible agency” as defined in 34 CFR 364.4(b).
- (n) “Fiscal year” means “fiscal year” as defined in 34 CFR 77.1(c).
- (o) “Independent living core services” mean “independent living core services” as defined in 34 CFR 364.4(b).
- (p) “Independent living services” (IL) mean “independent living services” as defined in 34 CFR 364.4(b).
- (q) “Individual with a disability” means “individual with a disability” as defined in 34 CFR 364.4(b).
- (r) “Individual with a significant disability” means “individual with a significant disability” as defined in 34 CFR 364.4(b).
- (s) “Legally authorized advocate or representative” means “legally authorized advocate or representative” as defined in 34 CFR 364.4(b).
- (t) “Minority group” means “minority group” as defined in 34 CFR 364.4(b).
- (u) “Nonprofit” means “nonprofit” as defined in 34 CFR 77.1(c).
- (v) “Nonresidential” means “nonresidential” as defined in 34 CFR 364.4(b).
- (w) “Peer relationships” mean “peer relationships” as defined in 34 CFR 364.4(b).
- (x) “Peer role models” means “peer role models” as defined in 34 CFR 364.4(b).
- (y) “Personal assistance services” means “personal assistance services” as defined in 34 CFR 364.4(b).
- (z) “Private” means “private” as defined in 34 CFR 77.1(c).
- (aa) “Project” means “project” as defined in 34 CFR 77.1(c).
- (ab) “Public” means “public” as defined in 34 CFR 77.1(c).
- (ac) “Secretary” means the Secretary of the U.S. Department of Education.
- (ad) “Service provider” means:
  - (1) A CIL that receives financial assistance under Parts B or C of Chapter 1 of Title VII of the section 711(c) and 29 U.S.C. 796(e); or



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- (2) Any other entity or individual that meets the requirements of 34 CFR 364.43(e) and provides IL services under a grant or contract from the designated state unit pursuant to 34 CFR 364.43(b).
- (ae) “Significant disability” means “significant disability” as defined in 34 CFR 364.4(b).
- (af) “Staff position” means “staff position” as defined in 34 CFR 366.5.
- (ag) “State independent living services program” (SILS) means the state independent living services program authorized by chapter 1 of title VII of the Act.
- (ah) “Statewide independent living council” (SILC) means the statewide independent living council established under 34 CFR 364.21.
- (ai) “State plan” means “state plan” as defined in 34 CFR 364.4(b).
- (aj) “Transportation” means “transportation” as defined in 34 CFR 364.4(b).
- (ak) “Unserved and underserved groups or populations” means “unserved and underserved groups or populations” as defined in 34 CFR 364.4(b).

Ed 1016.03 Requirements for Processing Referrals and Applications. The service provider shall apply the standards and procedures established by the designated state unit under Ed 1017.04 to handle referrals and applications for IL services from individuals with significant disabilities.

Ed 1016.04 Requirements for Determining Eligibility.

- (a) Before or at the same time that an applicant for IL services may begin receiving IL services funded under Ed 1016, the service provider shall determine the applicant's eligibility and maintain documentation that the applicant has met the basic requirements specified in 34 CFR 364.40 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 1016.05 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 that is 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

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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 Client Assistance Program established in New Hampshire under the Act, 29 USC 701.112, including information on how to contact the program.

(e) If appropriate, the service provider shall refer the applicant to other agencies and facilities, including the designated state unit.

Ed 1016.06 Review of Ineligibility Determination.

(a) If an applicant for IL services has been found ineligible, the service provider shall review the applicant's ineligibility at least once within 12 months after the ineligibility determination has been 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, the applicant is no longer present in New Hampshire, or the applicant's whereabouts is unknown.

Ed 1016.07 Requirements for an Independent Living Plan.

(a) Unless the individual who is to be provided IL services under Ed 1016 signs a waiver in accordance with Ed 1016.07(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 1016.08-Ed 1016.11.

(b) The requirements of Ed 1016.07 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 1016.07(b), the service provider shall provide each IL service in accordance with the IL plan.

Ed 1016.08 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 1016.04(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 developed jointly 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 1016.09 Review.

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(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 1016.10 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, 34 CFR 300 and 303.

Ed 1016.11 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 1016.05(c)-(e) and Ed 1016.06.

Ed 1016.12 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.

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(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 1016.13 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 1016.14 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 designated state unit pursuant to Ed 1017.05; and

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

Ed 1016.15 Use of Personal Information by Service Providers.

(a) All personal information in the possession of the service provider shall be used only for the purposes directly connected with the provision of IL services.

(b) Information containing identifiable personal information shall not be shared with advisory or other bodies that do not have official responsibility for the provision of IL services.

(c) In the provision of IL services or the administration of the IL program under which IL services are provided, the service provider shall only obtain personal information from other service providers and cooperating agencies under assurances that the information shall not be further divulged, except as provided under Ed 1016.16 and Ed 1016.17.

Ed 1016.16 Release of Personal Information to Recipients of Independent Living Services.

(a) Except as provided in Ed 1016.16(b) and (c), if requested in writing by a recipient of IL services, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative.

(b) Medical, psychological, or other information that the service provider determines may be harmful to the individual shall not be released directly to the individual, but shall be provided through a qualified medical or psychological professional or the individual's legally authorized representative.

(c) If personal information has been obtained from another agency or organization, it shall be released only by, or under the conditions established by, the other agency or organization.

Ed 1016.17 Release of Personal Information for Audit, Evaluation, and Research.

(a) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities subject to the provisions of Ed 1016.17(b).

(b) Personal information shall be released only if the organization, agency, or individual assures that:

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- (1) The information will be used only for the purposes for which it is being provided;
- (2) The information will be released only to persons officially connected with the audit, evaluation, or research;
- (3) The information will not be released to the involved individual;
- (4) The information will be managed in a manner to safeguard confidentiality; and
- (5) The final product will not reveal any personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

Ed 1016.18 Release to Other Programs or Authorities.

(a) Upon receiving the informed written consent of the individual or, if appropriate, the individual's legally authorized representative, the service provider shall release personal information to another agency or organization for the latter's program purposes only to the extent that the information is released to the involved individual under Ed 1016.16 and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.

(b) Medical or psychological information shall be released under Ed 1016.18(a) only if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(c) The service provider shall release personal information if required by federal laws or regulations.

(d) The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, and in response to judicial order.

(e) The service provider also shall release personal information to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

Ed 1016.19 Review Procedures Available to Individuals.

(a) The review procedures in Ed 1004 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 1016.19(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 1017 STATE INDEPENDENT LIVING SERVICES AND CENTERS FOR INDEPENDENT LIVING

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Ed 1017.01 Definitions. Except where the context makes another meaning clear, the following words have the meaning indicated when used in Ed 1017:

(a) “Administrative support services” means “administrative support services” as defined in 34 CFR 364.4(b).

(b) “Advocacy” means “advocacy” as defined in 34 CFR 364.4(b).

(c) “Applicant” means “applicant” as defined in 34 CFR 77.1(c).

(d) “Application” means “application” as defined in 34 CFR 77.1(c).

(e) “Attendant care” means “attendant care” as defined in 34 CFR 364.4(b).

(f) “Award” means “award” as defined in 34 CFR 74.2.

(g) “Center for independent living” (CIL) means “center for independent living” as defined in 34 CFR 364.4(b).

(h) “Centers for independent living program” means the centers for independent living program authorized by chapter 1 of title VII of the Act.

(i) “Consumer control” means “consumer control” as defined in 34 CFR 364.4(b).

(j) “Cross-disability” means “cross-disability” as defined in 34 CFR 364.4(b).

(k) “Department” means the U.S. Department of Education.

(l) “Decision making position” means “decision making position” as defined in 34 CFR 366.5.

(m) “Eligible agency” means “eligible agency” as defined in 34 CFR 364.4(b).

(n) “Fiscal year” means “fiscal year” as defined in 34 CFR 77.1(c).

(o) “Independent living core services” mean “independent living core services” as defined in 34 CFR 364.4(b).

(p) “Independent living services (IL)” mean “independent living services” as defined in 34 CFR 364.4(b).

(q) “Individual with a disability” means “individual with a disability” as defined in 34 CFR 364.4(b).

(r) “Individual with a significant disability” means “individual with a significant disability” as defined in 34 CFR 364.4(b).

(s) “Legally authorized advocate or representative” means “legally authorized advocate or representative” as defined in 34 CFR 364.4(b).

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- (t) “Minority group” means “minority group” as defined in 34 CFR 364.4(b).
- (u) “Nonprofit” means “nonprofit” as defined in 34 CFR 77.1(c).
- (v) “Nonresidential” means “nonresidential” as defined in 34 CFR 364.4(b).
- (w) “Peer relationships” mean “peer relationships” as defined in 34 CFR 364.4(b).
- (x) “Peer role models” means “peer role models” as defined in 34 CFR 364.4(b).
- (y) “Personal assistance services” means “personal assistance services” as defined in 34 CFR 364.4(b).
- (z) “Private” means “private” as defined in 34 CFR 77.1(c).
- (aa) “Project” means “project” as defined in 34 CFR 77.1(c).
- (ab) “Public” means “public” as defined in 34 CFR 77.1(c).
- (ac) “Secretary” means the Secretary of the U.S. Department of Education.
- (ad) “Service provider” means:
  - (1) A CIL that receives financial assistance under Parts B or C of Chapter 1 of Title VII of the Act, section 711(c) and 29 U.S.C. 796(e); or
  - (2) Any other entity or individual that meets the requirements of 34 CFR 364.43(e) and provides IL services under a grant or contract from the designated state unit pursuant to 34 CFR 364.43(b).
- (ae) “Significant disability” means “significant disability” as defined in 34 CFR 364.4(b).
- (af) “Staff position” means “staff position” as defined in 34 CFR 366.5.
- (ag) “State independent living services program” (SILS) means the state independent living services program authorized by chapter 1 of title VII of the Act.
- (ah) “Statewide independent living council” (SILC) means the statewide independent living council established under 34 CFR 364.21.
- (ai) “State plan” means “state plan” as defined in 34 CFR 364.4(b).
- (aj) “Transportation” means “transportation” as defined in 34 CFR 364.4(b).
- (ak) “Unserved and underserved groups or populations” means “unserved and underserved groups or populations” as defined in 34 CFR 364.4(b).

Ed 1017.02 Independent Living Core Services.

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(a) The designated state unit shall provide directly, or through grants or contracts, the following IL core services:

- (1) Information and referral services;
- (2) IL skills training;
- (3) Peer counseling, including cross-disability peer counseling; and
- (4) Individual and systems advocacy.

(b) Funding for the core services provided under this section shall meet the requirements of 34 CFR 365.21.

(c) The provisions of 34 CFR 365.23 shall apply relative to making subgrants and contracts to provide IL services.

Ed 1017.03 Additional Independent Living Services. In addition to the IL core services provided under Ed 1017.02, the designated state unit shall also provide other IL services defined in 34 CFR 364.4(b). Funding for additional IL services shall meet the requirements of 34 CFR 365.22.

Ed 1017.04 Standards for Processing Referrals and Applications. The following standards and procedures shall be applied by service providers to handle referrals and applications for IL services from individuals with significant disabilities:

(a) An individual shall be eligible for IL services if the individual has a significant physical, mental, cognitive, or sensory impairment that limits the individual's ability to function independently in the family or in the community.

(b) Referrals shall be accepted for IL services from individuals, community-based organizations, family members, and service providers.

Ed 1017.05 Standards for Service Providers.

(a) Service providers that are not CILs shall meet the following minimum standards for providing IL services:

- (1) Be community based;
- (2) Be nonprofit;
- (3) Provide cross-disability services and programs;
- (4) Be consumer controlled so that a majority of the members of the governing body are individuals with disabilities; and
- (5) Promote and practice a philosophy of independent living.



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(b) CILs under a contract with the designated state unit shall meet the following minimum standards and provide the following specialized IL services to individuals with significant disabilities:

- (1) Accessible van transportation;
- (2) A transportation reimbursement program;
- (3) Adaptive equipment and home access;
- (4) Youth services; and
- (5) Outreach to populations of individuals with significant disabilities.

(c) Participating service providers shall provide the designated state unit with the information necessary to show that they meet all applicable state licensure or certification requirements in order to be eligible to enter into grants or contracts with the designated state unit.

Ed 1017.06 Awarding Grants to Centers for Independent Living.

(a) The director of the designated state unit shall award grants under the Act, section 723, 29 USC 796f-1(a)(2) and Ed 1017.07-08 to CILs located within New Hampshire or in a bordering state in a fiscal year if:

- (1) The director submits to the Secretary and obtains approval of an application to award grants for that fiscal year under the Act, section 722, 29 USC 796f-1(a) and 34 CFR 366.32 (a) and (b); and
- (2) The Secretary determines that the amount of state funds that were earmarked by New Hampshire to support the general operation of CILs meeting the requirements of part C of chapter 1 of title VII of the Act in the second fiscal year preceding the fiscal year for which the application is submitted equaled or exceeded the amount of federal funds allotted to New Hampshire under the Act, 29 USC 701.721, or part B of title VII of the Act as in effect on October 28, 1992 for that preceding fiscal year.

(b) For the purposes of Ed 1017.06-Ed 1017.15, the second fiscal year preceding the fiscal year for which New Hampshire submits an application to administer the CIL program shall be considered the preceding fiscal year."

(c) For the purposes of Ed 1017.06-Ed 1017.15, earmarked funds are those funds described in 34 CFR 366.30 and 31.

Ed 1017.07 Order of Priorities for Allocating Funds Among Centers for Independent Living.

(a) The director of the designated state unit shall follow the order of priorities in 34 CFR 366.22 for allocating funds among CILs within New Hampshire, to the extent funds are available.

(b) If the order of priorities in 34 CFR 366.22 is followed and, after meeting the priorities in 34 CFR 366.22(a)(1) and (2), there are insufficient funds under New Hampshire's allotment under the Act, 29 USC 701.721(c) and (d), to fund a new CIL under 34 CFR 366.22(a)(3), the director shall:

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- (1) Use the excess funds in New Hampshire to assist existing CILs consistent with the state plan; or
- (2) Return these funds to the Secretary for reallocation in accordance with the Act, 29 USC 701.721(d).

Ed 1017.08 Procedures for Making a Grant for a New Center for Independent Living.

(a) In selecting from among applicants for a grant for a new CIL under 34 CFR 366.24, the director of the designated state unit and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances in section 725(b) and (c) of the Act, 29 USC 701.725(b) and (c), and 34 CFR 366.50 and 34 CFR 366.60-63.

(b) The peer review committee shall consider the ability of each applicant to operate a CIL and shall recommend an applicant to receive a grant for a new CIL based on either the selection criteria in 34 CFR 366.27 or the following:

- (1) Evidence of the need for a CIL, consistent with the state plan;
- (2) Any past performance of the applicant in providing services comparable to IL services;
- (3) The plan for complying with, or demonstrated success in complying with, the standards and the assurances in the Act, 29 USC 701.725(b) and (c), and 34 CFR 366.50 and 34 CFR 366.60-63;
- (4) The quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant;
- (5) The budget and cost-effectiveness of the applicant;
- (6) The evaluation plan of the applicant; and
- (7) The ability of the applicant to carry out the plans identified in Ed 1017.05(b)(3) and (6).

(c) The director of the designated state unit shall award the grant on the basis of the recommendations of the peer review committee if the actions of the committee are consistent with federal and state law.

Ed 1017.09 Procedures for Review of Centers for Independent Living.

(a) The director of the designated state unit shall, in accordance with the Act, 29 USC 701.723(g)(1) and (h), review each CIL receiving funds under 29 USC 723 to determine whether the CIL is in compliance with the standards and assurances in the Act, 29 USC 701.725(b) and (c), and 34 CFR 366.50 and 34 CFR 366.60-63.

(b) The reviews of CILs shall include annual on-site compliance reviews of at least 15 percent of the CILs assisted under the Act, 29 USC 701.723, in each year.

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(c) Each team that conducts an on-site compliance review of a CIL shall include at least one person who is not an employee of the designated state unit, who has experience in the operation of CILs, and who is jointly selected by the director of the designated state unit and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC.

(d) A copy of each review shall be provided to the Secretary and the SILC.

Ed 1017.10 Initiation of Enforcement Procedures by Director.

(a) If the director of the designated state unit determines that any CIL receiving funds under 34 CFR 366 is not in compliance with the standards and assurances in the Act, 29 USC 701.725(b) and (c) and 34 CFR 366.50 and 34 CFR 366.60-63, the director shall immediately provide the CIL by certified mail, return receipt requested, with an initial written notice that the CIL is out of compliance with the standards and assurances and that the director shall terminate the CIL's funds or take other proposed significant adverse action against the CIL 90 days after the CIL's receipt of this initial written notice. The director of the designated state unit shall provide technical assistance to the CIL to develop a corrective action plan to comply with the standards and assurances.

(b) Unless the CIL submits, within 90 days after receiving the notification required by Ed 1017.10(a), a corrective action plan to achieve compliance that is approved by the director of the designated state unit or, if appealed, by the Secretary, the director shall terminate all funds under the Act, 29 USC 796f-4, to a CIL 90 days after the later of:

(1) The date that the CIL receives the initial written notice required by Ed 1017.10(a); or

(2) The date that the CIL receives the Secretary's final decision issued pursuant to 34 CFR 366.46(c) if:

a. The CIL files a formal written appeal of the director's final written decision pursuant to Ed 1017.10(a); or

b. The CIL files a formal written appeal of the decision described in the director's initial written notice pursuant to Ed 1017.14(b).

(c) Other proposed significant adverse action that may be taken includes:

(1) Excluding the CIL from the development of the state plan for independent living; and

(2) Having the SILC prohibit the CIL from participating in SILC activities.

Ed 1017.11 Information to be Included in Initial Written Notice from Director.

(a) The initial written notice required by Ed 1017.10(a) shall include, at a minimum, the following:

(1) The name of the CIL;

(2) The reason or reasons for proposing the termination of funds or other significant adverse action against the CIL, including any evidence that the CIL has failed to comply with any of

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the evaluation standards or assurances in the Act, 29 USC 701.725(b) and (c), and 34 CFR 366.50 and 34 CFR 366.60-63; and

(3) The effective date of the proposed termination of funds or other significant adverse action against the CIL.

(b) The initial written notice required by Ed 1017.10(a) shall be given 90 days in advance of the date the director of the designated state unit intends to terminate a CIL's funds or take any other significant adverse action against the CIL.

(c) The initial written notice required by Ed 1017.10(a) shall inform the CIL that it has 90 days from the date the CIL receives the notice to submit a corrective action plan.

(d) The initial written notice required by Ed 1017.10(a) shall inform the CIL that it may seek alternative dispute resolution under Ed 200 in accordance with a corrective action plan under Ed 1017.10(a) to resolve any dispute with the director of the designated state unit within the 90 days before the proposed termination of funds or other significant adverse action against the CIL.

(e) The initial written notice required by Ed 1017.10(a) shall inform the CIL that, if alternative dispute resolution is not successful and the director of the designated state unit does not issue a final written decision pursuant to Ed 1017.12, the CIL may appeal to the Secretary the decision described in the director's initial written notice on or after the 90th day, but not later than the 120th day, after the CIL receives the director's initial notice.

Ed 1017.12 Issuing A Final Written Decision.

(a) If the CIL submits a corrective action plan in accordance with Ed 1017.10(b), the director of the designated state unit shall provide to the CIL, not later than the 120th day after the CIL receives the director's initial written notice, a final written decision approving or disapproving the CIL's corrective action plan and informing the CIL, if appropriate, of the termination of the CIL's funds or any other proposed significant adverse action against the CIL.

(b) The director of the designated state unit shall send the final written decision to the CIL by registered or certified mail, return receipt requested.

(c) The director of the division's final written decision to terminate funds or take any other adverse action against a CIL shall not take effect until 30 days after the date that the CIL receives the final written decision.

(d) If a CIL appeals the final written decision pursuant to Ed 1017.14, the director of the designated state unit's final written decision to terminate funds or take any other adverse action against a CIL shall not take effect until the Secretary issues a final decision.

Ed 1017.13 Information Included in Final Written Decision. The director of the designated state unit's final written decision to disapprove a CIL's corrective action plan required by Ed 1017.12 shall:

(a) Address any response from the CIL to the director's initial written notice to terminate funds or take other significant adverse action against the CIL;

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(b) Include a statement of the reasons why the director could not approve the corrective action plan; and

(c) Inform the CIL of its right to appeal to the Secretary the director's final written decision to terminate funds or take any other significant adverse action against the CIL.

Ed 1017.14 Appealing a Decision.

(a) To obtain the Secretary's review of the director of the designated state unit's final written decision to disapprove a CIL's corrective action plan submitted pursuant to Ed 1017.10(b), the CIL shall file, within 30 days from receipt of the director's final written decision, a formal written appeal with the Secretary giving the reasons why the CIL believes that the director should have approved the CIL's corrective action plan.

(b) To obtain the Secretary's review of a decision described in the director of the designated state unit's initial written notice, a CIL that does not submit a corrective action plan to the director shall file, in accordance with Ed 1017.14(c)(1)(a), a formal written appeal with the Secretary giving the reasons why the CIL believes that the director should have found the CIL in compliance with the standards and assurances in the Act, 29 USC 701.725(b) and (c), and 34 CFR 366.50 and 34 CFR 366.60-63.

(c) To appeal to the Secretary a decision described in the director of the designated state unit's initial written notice or the director's final written decision to disapprove a CIL's corrective action plan and to terminate or take other significant adverse action, a CIL shall file with the Secretary:

(1) A formal written appeal:

a. On or after the 90th day but not later than the 120th day following a CIL's receipt of a director's initial written notice; or

b. On or before the 30th day after a CIL's receipt of the director's final written decision to disapprove a CIL's corrective action plan and to terminate or take other significant adverse action;

(2) A copy of the corrective action plan, if any, submitted to the director; and

(3) One copy each of any other written submissions sent to the director in response to the director's initial written notice to terminate funds or take other significant adverse action against the CIL.

(d) The date of filing a formal written appeal to the Secretary under Ed 1017.14(c) shall be determined pursuant to the requirements of 34 CFR 81.12.

(e) If the CIL files a formal written appeal with the Secretary, the CIL shall send a separate copy of this appeal to the director of the designated state unit by registered or certified mail, return receipt requested.

(f) The CIL's formal written appeal to the Secretary shall state why:

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(1) The director of the designated state unit has not met the burden of showing that the CIL is not in compliance with the standards and assurances in the Act, 29 USC 701.725(b) and (c), and in 34 CFR 366.50 and 34 CFR 366.60-63;

(2) The corrective action plan, if any, should have been approved; or

(3) The director of the designated state unit has not met the procedural requirements of Ed 1017.10-Ed 1017.15.

(g) As part of its submissions under this section, the CIL may request an informal meeting with the Secretary at which representatives of both parties shall have an opportunity to present their views on the issues raised in the appeal, in accordance with 34 CFR 366.46.

(h) The director of the designated state unit's decision to terminate funds that is described in an initial written notice or final written decision shall be stayed as of the date determined pursuant to Ed 1017.14(d) that the CIL files a formal written appeal with the Secretary.

Ed 1017.15 Action by Director upon Receipt of Center for Independent Living's Formal Written Appeal to the Secretary.

(a) If the CIL files a formal written appeal in accordance with Ed 1017.14(c), the director of the designated state unit shall, within 15 days of receipt of the CIL's appeal, submit to the Secretary one copy each of the following:

(1) The director's initial written notice sent to the CIL to terminate funds or take any other significant adverse action against the CIL;

(2) The director's final written decision, if any, to disapprove the CIL's corrective action plan and to terminate the CIL's funds or take any other significant adverse action against the CIL;

(3) Any other written documentation or submissions the director wishes the Secretary to consider; and

(4) Any other information requested by the Secretary.

(b) As part of its submissions under Ed 1017.15(a), the director of the designated state unit may request an informal meeting with the Secretary at which representatives of both parties shall have an opportunity to present their views on the issues raised in the appeal, in accordance with 34 CFR 366.46.

## 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 to older individuals who are blind that are described in 34 CFR 367.3(b);

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

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(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 following words have the meaning indicated when used in Ed 1018:

(a) “Independent living services for older individuals who are blind” means “independent living services for older individuals who are blind” as defined in 34 CFR 367.5.

(b) “Older individual who is blind” means “older individual who is blind” as defined in 34 CFR 367.5.

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 that include:

(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 an older individual who is blind to become 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 designated state unit shall administer the program in Ed 1018 in order to carry out the purposes listed in Ed 1018.01 either directly or through:

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- (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 designated state unit 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 designated state unit shall not enter into procurement contracts with public or private nonprofit agencies or organizations, as provided in 34 CFR 366.32(f).

#### PART Ed 1019 NEWHAMPSHIRE BUSINESS ENTERPRISE PROGRAM

Ed 1019.01 Purpose. The purpose of the New Hampshire Business Enterprise Program (BEP) is to support self-employment for individuals who are legally blind through career opportunities in cafeteria, snack bar, and vending services. The New Hampshire department of Education, through the BEP of the office of services for blind and visually impaired,(SBVI) is 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 Definitions.

- (a) “Individual who is legally blind” means “blind person” as defined in 34 CFR 395.1(c).
- (b) “License” means “license” as defined in 34 CFR 395.1(i).
- (c) “Net proceeds” means “net proceeds” as defined in 34 CFR 395.1(k).
- (d) “Operator” means an individual who is legally blind who is licensed to operate a vending facility on federal or other property.
- (e) “Other property” means “other property” as defined in 34 CFR 395.1(n).
- (f) “Program” means the New Hampshire business enterprise program in the Designated State Agency, the Designated State Unit.
- (g) “Secretary” means the United States Secretary of Education.
- (h) “Services for Blind and Visually Impaired” means “Blind Services” as defined in 186-B:10-II.
- (i) “State Committee of Licensed Operators” or “Committee” means “Committee of Licensed Operators” as described in 34 CFR 395.14 (a).
- (j) “Vending facility” means “vending facility” as defined in 34 CFR 395.1(x).
- (k) “Vending machine” means “vending machine” as defined in 34 CFR 395.1(y).
- (l) “Vending machine income” means “vending machine income” as defined in 34 CFR 395.1(z).



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(m) “VendingRoute” means a combination of vending locations which as a whole are treated administratively for bidding, reporting and other purposes as a single location.

Ed 1019.03 Issuance of Vending Facility Licenses.

(a) SBVI shall license qualified candidates to operate vending facilities on federal, state, and other property in accordance with Ed 1019.04.

(b) Licenses shall be issued only to qualified individuals who are legally blind and on the roster.

Ed 1019.04 Licensing Procedure.

(a) The licensing procedure shall be as follows:

(1) SBVI shall maintain a roster of blind persons who are eligible and who desire to qualify as vending facility operators;

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

a. Are in need of employment;

b. Are residents of the state of New Hampshire; and

c. Have the experience and training for the location on which they are bidding; and

(3) 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 individual and/or VR counselor if applicable, including but not limited to evaluation reports, educational background, work experience, and resumes. The candidate shall also meet with the committee chair and administrator of SBVI during the initial interview phase of the acceptance process.

(b) Candidates, who have been accepted and have satisfactorily completed the training program in Ed 1019.15, shall be placed on a roster.

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

(d) There shall be a probationary period not to exceed 6 months for candidates taken from the roster when awarded a first location.

(e) 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 VR counselor if applicable and the committee chair; and

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(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.

(f) 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 1019.07(b) during the training or the probationary periods.

(g) Licenses shall be issued to the operator by SBVI for an indefinite period. Licenses shall be subject to termination as provided in Ed 1019.05.

(h) SBVI shall select operators for vending facilities. Generally one operator will be selected, however, 2 operators may bid jointly on a location. Two co-operators may be selected by SBVI when a facility has sufficient earning power to adequately support more than one operator. Such selection shall be approved by a majority vote of the licensed operators in the state. Preference for a bid shall be towards a single operator unless it is deemed the location will be more adequately serviced by joint operators or an operator and assistant.

(i) Operators selected shall be compatible and mutually acceptable to each other, with compensation determined on a profit-sharing basis agreeable to the operators concerned and SBVI.

(j) Candidates, who have satisfactorily completed the probationary period and who have completed the training program in Ed 1019.15, shall be issued a license.

(k) The administrative appeal of any licensing decision made under this section shall be pursuant to Ed 1019.18 (a),(2).

Ed 1019.05 Partnerships.

(a) An operator may enter into a partnership with a private vendor only when the following criteria are met:

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- (1) The operator initiating a partnership shall have made a qualified bid on the location in response to a bid notification by SBVI; and
  - (2) The operator shall demonstrate his or her active role in the partnership as the person responsible for all reports and accountabilities under applicable federal and state laws and regulations.
- (b) If no other qualified single or joint operator bid has been submitted, the development of a partnership agreement with another entity by the single bidder shall be considered for approval by SBVI.

Ed 1019.06 Vending Routes.

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

(b) A proposal for the establishment of a vending route may be brought to SBVI and/or the committee by individual operators or other interested parties.

(c) Once a vending route has been established it shall remain an intact route. In the event that the operator 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. To alter the composition of a vending route requires the submission of a new proposal consistent with this section.

Ed 1019.07 Termination of Licenses.

(a) Written notice shall be given to any operator whose license is to be terminated or who is in jeopardy of losing the license, including a statement of the reason. Such notice shall also inform the operator of the operator's right to request an administrative review, an evidentiary hearing, and arbitration under Ed 1019.15.

(b) A license issued to an operator shall be terminated after affording the operator an opportunity for an administrative review, an evidentiary hearing, and arbitration under Ed 1019.15, when one or more of the following conditions apply:

- (1) When vision is improved so that the operator 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 operator 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 SBVI finds that a vending facility is not being operated in accordance with the Ed 1019;
- (4) When the operator does not comply with the terms and conditions contained in the licensing agreement between the operator and SBVI;
- (5) When the operator does not comply with terms and conditions of the vending facility's contract SBVI and the manager of the property on which the vending facility is located; and

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(6) When the operator withdraws from the program.

Ed 1019.08 Vending Facility Equipment and Initial Stock. The following procedures shall apply to vending facility equipment and initial stocks of merchandise:

(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 operator obtaining the agreement to operate the location is on the roster or in a probationary period per Ed 1019.04 he or she shall not be eligible to obtain additional locations or inventory until a license has been obtained.

(b) If a licensed operator is provided with initial inventory for a new location it shall be sufficient to operate the location for no more than a 2 week period. The funds used shall be as an interest free loan from the set aside account. SBVI shall establish a monthly payment plan to begin 3 months after the operator has begun providing full service at 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 operator.

Ed 1019.09 Maintenance and Replacement of Equipment. The following procedures shall apply to the maintenance and replacement of equipment:

(a) Except as provided in Ed 1019.07(b), (c), and (d), SBVI shall not be responsible for repair and maintenance of equipment after such equipment is furnished to the vending facilities;

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

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

(c) The operators shall bear the responsibility for repair and maintenance of equipment in their respective facilities after the time limits in Ed 1019.07(b) expire;

(d) SBVI shall review repairs and maintenance that exceed \$500.

(e) The final decision shall be based upon funds available and the following criteria:

- (1) If it is deemed to be more cost effective to repair, SBVI shall do so; or
- (2) If it is more efficient to replace the unit, SBVI shall cover the full expense of the replacement;

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(f) 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, after reasonable notice if the operator fails to do so under Ed 1019.09(d)(1);

(g) The operators shall be assessed the amounts needed to repair and maintain equipment when SBVI has undertaken the responsibility in (d)(2) above; and

(h) SBVI shall replace equipment that it determines to be worn out or obsolete. If the licensed operator feels that equipment should be replaced, the operator shall make a request to this effect. SBVI shall fulfill requests based on priority and urgency of all requests.

#### Ed 1019.10 Operator Ownership of Vending Facilities.

(a) If the operator desires to purchase part of the operator's own equipment and retain title thereto, the operator shall be responsible for repair and maintenance of such equipment to assure that the vending facility shall be kept operational and in an attractive condition.

(b) If the operator-owner ceases to be an operator or transfers to another vending facility site, ownership of the equipment shall become vested in SBVI and transferred to a successor operator subject to an obligation on SBVI's part to pay to such operator-owner or the operator's estate the fair value of the operator-owned equipment.

(c) The operator-owner, operator's personal representative or next of kin shall be entitled to an opportunity for an administrative review and an evidentiary hearing under Ed 1019.15 with respect to the determination of the amount to be paid by SBVI for an operator's ownership in the equipment. When the operator-owner is dissatisfied with any decision rendered as a result of the evidentiary hearing, the operator-owner may file a complaint with the Secretary under 34 CFR 395.13 to request the convening of an ad hoc arbitration panel.

(d) If an operator desires to retain title to vending facility equipment which the operator has purchased SBVI shall enter into a written agreement with such operator-owner delineating conditions of ownership.

(e) No person shall be denied the opportunity to become an operator because of their unwillingness or inability to purchase the vending facility equipment or the initial stock.

#### Ed 1019.11 Setting Aside of Funds.

(a) 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 equipment;
- (3) Management services such as but not limited to:
  - a. Ongoing training;

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- b. Upward mobility training;
- c. Food service related education;
- d. Liability insurance; and
- e. Annual dues in vending and food service organization; and

(4) Retirement and pension funds, health insurance contributions, paid sick leave and vacation time if it is determined by a majority vote of the operators licensed by SBVI to contribute and use funds set aside for these purposes after SBVI provides each operator information on all matters relevant to such funds.

(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 operators 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 operator 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 operators, any set aside assessment which lowers an operator's net proceeds below \$ 1,700 for that month shall be reduced by the amount required to raise the net proceeds to \$1,700.

(d) The percentage in Ed 1019.11(c) shall be 10% of net proceeds assessed in Ed 1019.11(a) and shall be reviewed every 2 years by SBVI with the active participation of the committee of licensed operators. 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.

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 operator 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

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- operators within the state, as determined each fiscal year on the basis of each prior year's operation; and
- (2) Not accrue to any operator in any amount exceeding the average net income of the total number of operators in the United States.
- (b) No operator shall receive less vending machine income than an operator 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 an operator.
- (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 operators in accordance with Ed 1019.12 shall be retained by SBVI.
- (e) SBVI shall disburse vending machine income to operators 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 operators, if it is so determined by a majority vote of operators licensed by SBVI, after SBVI has provided to each operator 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 operators.

Ed 1019.13 Operating Agreement Between SBVI and Operator. To obtain a license to operate one or more vending locations, the operator shall agree to the rules in Ed 1019 as well as the terms and conditions under which the license is issued in accordance with the following:

- (a) The terms and conditions shall take the form of an agreement between the operator and SBVI stating what responsibilities the operator has and what responsibilities SBVI has.
- (b) The agreement shall include:
- (1) The operator's name;
  - (2) The vending facility name and location;
  - (3) The hours of operation for the vending facility;

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- (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 operator; and
  - (7) The rights and obligations of the operator 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 operator and the performance of such duties in accordance with standards prescribed by:
    - a. SBVI and developed with the active participation of the state committee of operators;
    - 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 operator and their employees or partners. If a licensed operator cannot receive clearance for a particular location, the location be released from the operator and put out to bid;
  - (2) The responsibilities of SBVI to provide management services to the operator including assistance and supervision, and the ways in which such responsibilities shall be carried out;
  - (3) A statement that operator shall receive the net proceeds from the vending facility that the operator operates;
  - (4) The responsibility of the operator 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 operators with vending delivery vehicles;
  - (5) The right of the operator to terminate the operating agreement at any time;



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- (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 operator to operate the vending facility in accordance with the operating agreement or applicable federal, state, or local laws or regulations.
- (d) The operator and the administrator of SBVI shall both sign the agreement.

Ed 1019.14 Transfer and Promotion of Operators. The following procedures shall apply to transfer and promotion of operators:

(a) 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 operators assigned by the chair or co-chairs, the BEP coordinator, the program assistant coordinator, and a counselor from the designated state agency's office of SBVI. The duties of the committee shall be to oversee and manage the provisions of Ed 1019.14(b)-(f) relative to the transfer and promotion of operators.

(b) Each operator shall be given every possible opportunity by way of the bidding process for promotion to facilities of greater earning capacity or more convenient location or both, as the knowledge skills and abilities of the individual are developed.

(c) When experience has proven that an operator is assigned to a location or locations beyond the operator's capacities, the operator shall be given opportunities for training. However if training does not result in improved operation, an assignment to a location commensurate with the operator's ability shall be made pending the availability of such a location or locations. Alternatively the number and nature of the facilities that the operator manages shall be reviewed and modified accordingly.

(d) When an opportunity to bid on a location is announced an operator may bid or not bid without prejudice to future consideration if another opportunity occurs that will be advantageous to the operator.

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

(f) Promotion to facilities of greater capacity and earning power shall be applied using the following criteria:

- (1) Past performances at vending locations; and
- (2) Active participation in such things as training events, ongoing training opportunities, committee meetings, bid reviews; and
- (3) Seniority.

Ed 1019.15 Training Program.

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(a) All operator candidates shall complete a training program in accordance with the training plan developed by SBVI. The training program shall include evaluation and training in blind/low vision rehabilitation as well as formal classroom instruction and on the job training on an individual basis.

(b) The training program will generally be no less than 6 months but may take longer if individual situations require, provided that the candidate is showing successful progress.

Ed 1019.16 Election, Organization and Functions of State Committee of Licensed Operators.

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

(b) The committee chairperson shall be elected by a majority vote of committee members. The chairperson shall be elected every 2 years and serve 2 years. The chairperson shall not succeed him or herself. The election shall also include an election for an alternate chair that may succeed him or herself. The alternate chair shall assume the responsibilities of the chair if the chair is unable to attend to his or her duties.

(c) Quarterly meetings shall be held between the committee and SBVI to discuss policy administrative changes affecting the program provide a training opportunity and carry on other business of the committee and/or SBVI.

(d) 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.

(e) 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). When policy or administrative changes that have been discussed with the committee members cannot be adopted, the chairperson(s) of the committee shall be notified in writing stating the reasons therefore. The committee shall receive and transmit to SBVI grievances at the request of operators and serve as advocates for such grievances.

Ed 1019.17 Administrative Reviews, Evidentiary Hearings, and Arbitration of Operator Complaints. If an operator is aggrieved by any action of SBVI with regard to the administration of the program the operator may file a written complaint to resolve the matter as follows:

(a) If the blind operator and SBVI agree, the dispute may be submitted to the designated state unit's administrator for policy and law for review and decision using the following criteria:

(1) The decision to elect informal dispute resolution shall not preclude the blind operator from seeking an evidentiary hearing if the informal dispute resolution process does not resolve the matter to the operator's satisfaction;

(2) The decision from an informal dispute resolution session may not be used in an evidentiary hearing;

(3) In the case of disputes involving candidates for a license, pursuant to Ed 1019.04, the parties shall submit the dispute to said administrator. The decision rendered shall represent the final administrative remedy for issues arising out of the licensing process;

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- (4) A request for an administrative dispute resolution session shall be filed with SBVI within 15 business days of action out of which the dispute arises;
  - (5) Within 10 business days, the administrator shall set a date and time for the parties to present their case. The hearing itself shall be held within 30 days of the request having been made;
  - (6) The administrator shall render a decision in writing in the matter within 14 calendar days of the completion of the hearing;
  - (7) The decision shall include:
    - a. The facts and law relied on to make the decision; and
    - b. A rationale for the decision, based on the information submitted; and
  - (8) An operator aggrieved by the administrator's decision may request an evidentiary hearing within 10 business days from the receipt of the administrator's report.
- (b) Evidentiary hearings shall comply with the following:
- (1) The operator shall make written application for an evidentiary hearing to the office of legislation and hearings and state the reasons for such application, within 15 days after the occurrence of the condition which caused the operator to file the request for an evidentiary hearing, or as prescribed in Ed 1019.17,(a)(8) when appealing the decision of an informal dispute resolution process;
  - (2) The operator shall be advised of the following:
    - a. The date, time, and place the hearing will be held;
    - b. That the hearing will be held within 15 days after receipt of application and at a time and place reasonably convenient to the operator;
    - c. The right to be represented or accompanied at the hearing by counsel, friends, and witnesses;
    - d. The right to adequate opportunity to present the operator's case;
    - e. The right to give evidence pertinent to the issue involved;
    - f. The right to cross examine witnesses appearing against the operator; and
    - g. The request for a full evidentiary hearing indicates consent by the operator for the release of information necessary for the conduct of the hearing;
  - (3) The hearing shall be conducted by a hearing officer, assigned by the office of legislation and hearings within the department of education pursuant to Ed 200;

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(4) Within 15 working days of completion of the hearing, the hearing officer shall prepare an official written report and recommendations to the director of the designated state unit;

(5) The director of the designated state unit, within 5 working days of receipt of the report, shall review the report and make a final decision which shall constitute the official action in regard to the subject of the hearing. The decision shall be:

a. In writing and shall set forth the issue, the relevant facts brought out at the hearing, the pertinent provisions in law and the division policy, and the reasoning that led to the decision; and

b. Forwarded to the operator immediately upon its issuance and a copy shall be furnished to the designated state unit; and

(6) Reasonable accommodations for disability(ies) shall be arranged by the designated state unit for the operator at the operator's request.

(c) Persons aggrieved by a decision of the designated state unit in an evidentiary hearing under Ed 1019.15(b) may appeal as follows:

(1) In accordance with RSA 541 for causes of action arising out of the action or operation of the program pursuant to RSA 186-B:13, I; or

(2) In accordance with 20 U.S.C. §107d-2 for causes of action arising out of the action or operation of the program pursuant to 20 U.S.C. §107e (3) or 23 U.S.C. §111.

Ed 1019.18 Access to Program and Financial Information. Each operator 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 an operator, SBVI shall arrange a convenient time to assist in interpretation of such financial data.

Ed 1019.19 Operator and SBVI Responsibilities.

(a) Each operator 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 operator by SBVI. SBVI shall retain complete access to the operator's records.

(b) The operator shall:

(1) Perform faithfully and to the best of operator's ability the necessary duties in connection with the operation of the vending facility in accordance with the department's rules;

(2) Cooperate with officials and duly authorized representatives of SBVI in connection with their official program responsibilities;

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(3) Operate the vending facility in accordance with all applicable health laws and regulations, as well as the regulations of the agency controlling property upon which the facility is located; and

(4) Furnish such reports as SBVI may from time to time require.

(c) SBVI shall assume responsibility for providing to operators such supervision and assistance as may be necessary to insure the operation of each vending facility in the most productive and efficient manner possible.

Ed 1019.20 State Licensing Rules. SBVI shall furnish a copy of the state licensing rules to each candidate or operator in addition to all written documents pertaining to the administration and management of the program.

PARTS Ed 1020 through Ed 1022 - RESERVED

PART Ed 1023 INTERPRETER CLASSIFICATION SYSTEM

Ed 1023.01 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 1023.02 Program Designation. This program shall be designated “The New Hampshire Interpreter Classification System” (NHICS).

Ed 1023.03 Classification. An individual who applies for and meets the requirements for classification under Ed 1023.10 shall be qualified as a sign language interpreter by the program for the deaf and hard of hearing of the department.

Ed 1023.04 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, division of career technology and adult learning, vocational rehabilitation, department. The classification system program shall be managed by a coordinator appointed by the director of the division of career technology and adult learning.

Ed 1023.05 Definitions. The following terms are defined for the purposes of part Ed 1023:

(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 the division of career technology and adult learning.

(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, division of career technology and adult learning, vocational rehabilitation, department to coordinate the classification.

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(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 1023.12 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 1023.08 for the purposes of determining an interpreter’s classification as a qualified interpreter under Ed 1023.10.

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

Ed 1023.06 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 1023.07 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) An application form;
- (3) A description of the fee charged for testing; and
- (4) A description of the appeal procedure.

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(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 1023.08 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/fail performance test scored by a minimum of 4 raters.

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

(1) Knowledge of and ability to make practical use of the code of professional conduct of the RID;

(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;

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(3) The interpreting process, including:

- a. Phrasing; and
- b. Process management; and

(4) The applicant's professionalism, including:

- a. Composure; and
- b. Objectivity.

Ed 1023.09 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 candidates tape, scoring sheets and the rater instruction information.

(c) Candidates who pass both the performance section and the interview section will 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. They shall need to 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 1023.10 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 1023.11 Maintenance of Classification.



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(a) “Continuing education units,” 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 and/or the interpreting process;
- (2) Conventions/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 those who hold their NIC, Certificate of Interpretation (CI) or NAD level V.

(c) Classification as a qualified interpreter under Ed 1023.10 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/interpreting related, and 20% of which shall be either deafness/interpreting related or in other areas as defined in Ed 1023.11(a)(4). 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) Determination of compliance with Ed 1023.11(e) shall be made by the coordinator of the program for the deaf and hard of hearing.

(f) An individual’s classification shall lapse for an individual who fails to obtain national certification before the expiration of the 6-year classification period. 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 NewHampshire.

Ed 1023.12 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.

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(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. "Immediate family" means 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. 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 (CD), shall be sent back to the coordinator for record keeping. This process shall ensure confidentiality of the applicant. A breach in this process could create the need for a review and recommendation of the situation and possible removal as a rater by the director.

Ed 1023.13 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 designated state unit's website and an annual printing will occur.

Ed 1023.14 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 digital media (CD) of each applicant's interview and performance test;

(e) The date classification under Ed 1023.10 was awarded; and

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(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 1023.15 Appeal. An applicant aggrieved by a decision of the program relating to classification may file a petition for reconsideration along with supporting documentation to the Director within 20 working days after receipt of the decision regarding classification. If the petition for reconsideration is denied, the applicant may 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.

### Appendix I

<b>RULE NUMBER</b>	<b>STATUTE OR FEDERAL REGULATION IMPLEMENTED</b>
Ed 1001.01	34 CFR 361.1
Ed 1002.01	34 CFR 361.5
Ed 1002.02	34 CFR 361.42
Ed 1002.03 - 1002.04	34 CFR 361.5
Ed 1002.05	34 CFR 361.41(b)(2)
Ed 1002.06 - 1002.23	34 CFR 361.5
Ed 1002.24	34 CFR 364; RSA 200-C:24
Ed 1002.25 - 1002.39	34 CFR 361.5
Ed 1002.40	RSA 200-C:18
Ed 1002.41- 1002.49	34 CFR 361.5
Ed 1002.50	34 CFR 363.1; RSA 200-C:21
Ed 1002.51	34 CFR 361.5
Ed 1003.01	34 CFR 361.38(a)(1); 34 CFR 361.38 (b)
Ed 1003.01(a)-(e)	34 CFR 361.38(a)(1)
Ed 1003.01(f)	34 CFR 361.38(b)
Ed 1003.02	34 CFR 361.42(a)(3)(iii)
Ed 1003.03	34 CFR 361.38(c) & (d)
Ed 1003.04	34 CFR 361.38(e)
Ed 1004.01	34 CFR 361.57
Ed 1004.02	34 CFR 361.57(b)(1); 34 CFR 361.57(b)(2)
Ed 1004.03 -1004.05	34 CFR 361.57(c) -(f)
Ed 1004.06-1004.18	34 CFR 361.57(e) & (f)
Ed 1004.19	34 CFR 361.57(b)(4)&(h)
Ed 1004.20	34 CFR 361.57(i)
Ed 1005.01	34 CFR 361.36(a) &(b)
Ed 1006.01	34 CFR 361.36(c)
Ed 1006.02	34 CFR 361.36(d)
Ed 1006.03	34 CFR 361.36(e)

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Ed 1007.01	34 CFR 361.53(a); Chapter 252:2 of the Laws of 1993
Ed 1007.02	34 CFR 361.53(b)
Ed 1007.03	34 CFR 361.53(c)
Ed 1008	34 CFR 361.54(b)
Ed 1009	34 CFR 361.37
Ed 1010.01	34 CFR 361.41(a)
Ed 1010.02	34 CFR 361.41(b)
Ed 1010.03	34 CFR 361.42, Intro. para.
Ed 1010.04	34 CFR 361.42(a)-(h)
Ed 1010.05	34 CFR 361.42(c)
Ed 1010.06	34 CFR 361.42(d)
Ed 1010.07	34 CFR 361.42(e)
Ed 1010.08	34 CFR 361.42(f)
Ed 1010.09	34 CFR 361.42(g)
Ed 1010.10	34 CFR 361.42
Ed 1010.11	34 CFR 361.43
Ed 1010.12	34 CFR 361.44
Ed 1010.13	34 CFR 361.45; Chapter 252:2 of the Laws of 1993
Ed 1010.14	34 CFR 361.46
Ed 1010.15	34 CFR 361.47
Ed 1010.16	34 CFR 361.48
Ed 1011.01	34 CFR 361.51(c)
Ed 1012.01	34 CFR 361.52(b)
Ed 1012.02	34 CFR 361.52(c)
Ed 1012.03	34 CFR 361.52(d)
Ed 1013.01	34 CFR 361.55
Ed 1014.01	34 CFR 361.56 Intro. para.
Ed 1014.02	34 CFR 361.56(a)
Ed 1014.03	34 CFR 361.56(b)
Ed 1014.04	34 CFR 361.56(c)
Ed 1014.05	34 CFR 361.56(d)
Ed 1015	34 CFR 363.57
Ed 1015.01	RSA 200-C:21; 34 CFR 363.1
Ed 1015.02	34 CFR 363.6(c); 34 CFR 369.4(b); 34 CFR 77.1(c)
Ed 1015.03	34 CFR 363.3
Ed 1015.04	34 CFR 363.4; RSA 200-C:22
Ed 1015.05	34 CFR 363.50
Ed 1015.06	34 CFR 363.52
Ed 1015.08	34 CFR 363.54
Ed 1015.09	34 CFR 363.55
Ed 1015.10	34 CFR 363.56
Ed 1016.01	RSA 200-C:24; 34 CFR 364.2
Ed 1016.02	34 CFR 364.4(b); 34 CFR 77.1(c); 34 CFR 74.2; 34 CFR 366.5; 34 CFR 367.5; 34 CFR 364.21
Ed 1016.03	34 CFR 364.50
Ed 1016.04 - 1016.06	34 CFR 364.51
Ed 1016.07 - 1016.11	34 CFR 364.52

Doc. #13069, (eff 7-14-20) @ 1:37 p.m.  
 Emergency Rule EXPIRES: 1-11-21

Ed 1016.12	34 CFR 364.53
Ed 1016.13	34 CFR 364.54
Ed 1016.14	34 CFR 364.55
Ed 1016.15 - 1016.18	34 CFR 364.56
Ed 1016.19	34 CFR 364.58
Ed 1017.01	34 CFR 364.4(b); 34 CFR 77.1(c); 34 CFR 74.2; 34 CFR 366.5; 34 CFR 367.5; 34 CFR 364.21
Ed 1017.02	34 CFR 365.21
Ed 1017.03	34 CFR 365.22
Ed 1017.04	34 CFR 365.30
Ed 1017.05	34 CFR 365.31
Ed 1017.06	34 CFR 366.29
Ed 1017.07	34 CFR 366.34
Ed 1017.08	34 CFR 366.37
Ed 1017.09	34 CFR 366.38
Ed 1017.10	34 CFR 366.40
Ed 1017.11	34 CFR 366.41
Ed 1017.12	34 CFR 366.42
Ed 1017.13	34 CFR 366.43
Ed 1017.14	34 CFR 366.44
Ed 1017.15	34 CFR 366.45
Ed 1018.01	34 CFR 367.1
Ed 1018.02	34 CFR 367.5
Ed 1018.03	34 CFR 367.3
Ed 1018.04	34 CFR 367.41
Ed 1019.01	RSA 186-B:9
Ed 1019.02	34 CFR 395.1
Ed 1019.03 - 1019.07	RSA 186-B:12, 34 CFR 395.7
Ed 1019.08	RSA 186-B:11-a
Ed 1019.09	34 CFR 395.10
Ed 1019.10	34 CFR 395.6
Ed 1019.11	34 CFR 395.9
Ed 1019.12	RSA 186-B:14; 34 CFR 395.8
Ed 1019.13	34 CFR 395.7
Ed 1019.14	34 CFR 395.7(c)
Ed 1019.15	34 CFR 395.11
Ed 1019.16	34 CFR 395.14
Ed 1019.17	RSA 186-B:15; 34 CFR 395.13; 20 USC 6A
Ed 1019.18	34 CFR 395.12
Ed 1019.19	34 CFR 395.7(c)
Ed 1019.20	34 CFR 395.7(c); 34 CFR 395.12
Ed 1023	RSA 326-I:5; RSA 200-C:19, IV