

CHAPTER 45

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Authority

N.J.S.A. 34:1-20, 34:1A-3(e), 34:16-20 et seq. and 34 C.F.R. § 361.1 et seq.

Source and Effective Date

R.1994 d.52, effective December 29, 1993.
See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

Executive Order No. 66(1978) Expiration Date

Chapter 45, Division of Vocational Rehabilitation Services, expires on December 29, 1998.

Chapter Historical Note

Chapter 45, Division of Vocational Rehabilitation Services (formerly "Legal Authority"), was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 45 ("Legal Authority") was readopted as R.1983 d.82, effective May 2, 1983. See: 14 N.J.R. 1438(b), 15 N.J.R. 693(a). Pursuant to Executive Order No. 66(1978), Chapter 45 ("Legal Authority") was readopted as R.1988 d.235, effective May 2, 1988. See: 20 N.J.R. 620(a), 20 N.J.R. 1230(a). Subchapter 2, Transportation for Employees of Sheltered Workshops, was adopted as R.1989 d.305, effective June 5, 1989. See: 21 N.J.R. 690(a), 21 N.J.R. 1576(b). Subchapter 3, Vehicle Modification Requirements, was adopted as R.1989 d.564, effective November 6, 1989. See: 21 N.J.R. 2213(b), 21 N.J.R. 3535(b). Chapter 45, formerly "Legal Authority," was retitled "Division of Vocational Rehabilitation Services" by R.1991 d.189, effective April 15, 1991. See: 22 N.J.R. 1045(c), 23 N.J.R. 1133(c). Subchapter 1, formerly "General Provisions," was repealed and replaced with new rules, "Procedures and Standards," by R.1991 d.189. Prior amendments to the repealed rules in Subchapter 1 were at 12:45-1.1 and 1.2, by R.1983 d.82, effective May 2, 1983. See: 14 N.J.R. 1438(b), 15 N.J.R. 693(a). Administrative Correction to expiration date. See: 23 N.J.R. 1416(b). Administrative Correction to expiration date. See: 23 N.J.R. 1416(a). Pursuant to Executive Order No. 66(1978), Chapter 45 was to expire on May 2, 1993. On April 23, 1993, Governor Florio waived the expiration date from May 2, 1993 to and including December 31, 1993. Pursuant to Executive Order No. 66(1978), Chapter 45 was readopted as R.1994 d.52 and Subchapter 3, Vehicle Modification Requirements, was repealed. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. PROCEDURES AND STANDARDS

12:45-1.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the procedures, standards and criteria used by the Division of Vocational Rehabilitation Services to rehabilitate individuals with disabilities.

(b) This subchapter applies to every individual who is seeking vocational rehabilitation services through the Division of Vocational Rehabilitation Services.

(c) Nothing in this subchapter shall be inconsistent with Federal law and regulations for the basic vocational rehabilitation services program and the Division of Vocational Rehabilitation Services shall comply with such requirements codified at 29 U.S.C. §§ 701-744 and its implementing regulations at 34 C.F.R. 361 et seq.

Amended by R.1994 d.52, effective February 7, 1994.
See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).
Amended by R.1997 d.466, effective November 3, 1997.
See: 29 N.J.R. 3696(a), 29 N.J.R. 4695(a).
Added (c).

12:45-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the Rehabilitation Act, 29 U.S.C. §§ 701 et seq., as amended by the Rehabilitation Act Amendments of 1992, P.L. 102-569.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is

being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, braille and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

“Assessment for determining eligibility and vocational rehabilitation needs” means, as appropriate in each case:

1. A review of existing data:
 - i. To determine whether an individual is eligible for vocational rehabilitation services; and
 - ii. To assign the priority described in the order of selection found at N.J.A.C. 12:45-1.9;
2. To the extent additional data is necessary to make the determination and assignment in 1 above, a preliminary assessment of such data (including the provision of goods and services during such assessment);
3. To the extent additional data is necessary, a comprehensive assessment (including the administration of the assessment) of the unique strengths, resources, priorities, interests and needs, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature and scope of vocational rehabilitation services to be included in the individualized written rehabilitation program of the individual, which comprehensive assessment:
 - i. Is limited to the information that is necessary to identify the rehabilitation needs of the individual and to develop the rehabilitation program of the individual;
 - ii. Uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements;
 - (1) Existing information; and
 - (2) Such information as can be provided by the individual and, where appropriate, by the family of the individual.
 - iii. May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational and environmental factors, that affect the employment and rehabilitation needs of the individual; and

iv. May include an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

4. Referral;

- i. Where appropriate, the provision of rehabilitation technology services to an individual with a disability to assess and develop the capacities of the individual to perform in a work environment;
- ii. The provision of vocational rehabilitation services to an individual for a total period not in excess of 18 months for the limited purpose of making determinations regarding whether an individual is eligible for vocational rehabilitation services and regarding the nature and scope of vocational rehabilitation services needed for such individual; and
- iii. An assessment at least once in every 90-day period during which such services are provided, of the results of the provision of such services to an individual to ascertain whether any of the determinations described in subparagraph 4ii above may be made.

“Community rehabilitation program” means a program that provides directly, or facilitates the provision of, vocational rehabilitation services to individuals with disabilities and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement:

1. Medical, psychiatric, psychological, social and vocational services that are provided under one management;
2. Testing, fitting, or training in the use of prosthetic and orthotic devices;
3. Recreational therapy;
4. Physical and occupational therapy;
5. Speech, language and hearing therapy;
6. Psychiatric, psychological and social services, including positive behavior management;
7. Assessment for determining eligibility and vocational rehabilitation needs;
8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;

- 13. Psychosocial rehabilitation services;
- 14. Supported employment services and extended services;
- 15. Services to family members when necessary to the vocational rehabilitation of the individual;
- 16. Personal assistive services; or
- 17. Services similar to the services described in paragraphs 1 through 16 above.

“Competitive employment” means work:

- 1. In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
- 2. For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

“Disability” means a physical or mental impairment that constitutes or results in a substantial impediment to employment.

“Division” means the Division of Vocational Rehabilitation Services (DVRS), New Jersey Department of Labor.

“Employment outcome” means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market (including satisfying the vocational outcome of supported employment) or satisfying any other vocational outcome the Secretary of the U.S. Department of Education may determine consistent with the Act.

“Extended services” means ongoing support services and other appropriate services, needed to support and maintain an individual with the most severe disability in supported employment, and are provided by a State agency, a non-profit private organization, employer, or any other appropriate resource, after an individual has made the transition from services provided by the Division.

“Extreme medical risk” means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

“Family member” or “member of the family” means any relative by blood or marriage of an individual with a disability and any other individual living in the same household with whom the individual with a disability has a close interpersonal relationship.

“Impartial hearing officer” means:

- 1. An individual who:

- i. Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

- ii. Is not a member of the State Rehabilitation Advisory Council created by the Governor by Executive Order;

- iii. Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or client;

- iv. Has knowledge of the delivery of vocational rehabilitation services, the State Plan and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties; and

- v. Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

2. An individual shall not be considered to be an employee of a public agency for purposes of subparagraph 1i above solely because the individual is paid by the agency to serve as a hearing officer.

“Individual with a disability” means any individual who:

- 1. Has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
- 2. Can benefit in terms of an employment outcome from vocational rehabilitation services.

“Individual with a severe disability” means an individual with a disability:

- 1. Who has a severe physical or mental impairment or combination of impairments which seriously limits one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and
- 2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

“Individual with a most severe disability” means an individual with a disability:

- 1. Who has a severe physical or mental impairment or combination of impairments which seriously limits two or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work

tolerance, or work skills) in terms of an employment outcome; and

2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

“Individual’s representative” means any representative chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual’s representative.

“Integrated setting” means:

1. With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals; or

2. With respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

“Ongoing support services” means services:

1. Needed to support and maintain an individual with a most severe disability in supported employment;

2. Identified based on a determination of the individual’s needs as specified in an individualized written rehabilitation program;

3. Furnished by the Division from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual’s term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

4. Including an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:

i. At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

ii. If under special circumstances, especially at the request of the individual, the individualized written rehabilitation program provides for off-site monitoring, twice-monthly meetings with the individual; and

5. Consisting of:

i. A particularized assessment supplementary to the comprehensive assessment;

ii. The provision of skilled job trainer(s) who accompany the individual for intensive job skill training at the worksite;

iii. Job development and placement;

iv. Social skills training;

v. Regular observation or supervision of the individual;

vi. Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

vii. Facilitation of natural supports at the worksite;

viii. Any other vocational rehabilitation service; or

ix. A service similar to another service described in this paragraph.

“Personal assistance services” means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual’s control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

“Public safety officer” means a person serving the United States or a State or unit of general local government, with or without compensation, in any activity pertaining to:

1. The enforcement of the criminal laws, including highway patrol, or the maintenance of civil peace by the National Guard or the Armed Forces;

2. A correctional program, facility, or institution where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees;

3. A court having criminal or juvenile delinquent jurisdiction where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees; or

4. Firefighting, fire prevention, or emergency rescue missions.

“Rehabilitation technology” means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

“Supported employment” means competitive work in integrated work settings with on going support services for individuals with the most severe disabilities:

1. For whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

2. Who, because of the nature and severity of their disability, need intensive supported employment services and extended services in order to perform such work. Such term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness.

“Supported employment services” means ongoing support services and other appropriate services needed to support and maintain an individual with the most severe disability in supported employment, that:

1. Are provided singly or in combination and are organized and made available in such a way to assist an eligible individual in entering or maintaining integrated competitive employment;

2. Are based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program;

3. Are provided by the Division for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized written rehabilitation program.

i. Special circumstances that would warrant consideration of an extension of services beyond 18 months may include an interruption of service during the 18 month period, significant changes in either job functions or supervision during the 18 month period or any other special circumstances providing there is reason to believe that an extension would allow the eligible individual to achieve the rehabilitation objectives identified in the individualized written rehabilitation program; and

4. Are provided following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

“Transition services” means a coordinated set of activities for a student designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student’s needs, taking into account the student’s preferences and interests, and shall include instruction, community experiences, the

development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the accomplishment of long term rehabilitation goals and intermediate rehabilitation objectives identified in the student’s IWRP.

Amended by R.1994 d.52, effective February 7, 1994.

See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

Amended by R.1997 d.466, effective November 3, 1997.

See: 29 N.J.R. 3696(a), 29 N.J.R. 4695(a).

Amended “Community rehabilitation program”, “Extended services”, “Impartial hearing officer”, “Integrated work setting”, “Ongoing support services”, “Personal assistance services”, “Supported employment”, “Supported employment services”, and “Transition services”; and added “Appropriate modes of communication”, “Competitive employment”, and “Individual’s representative”.

12:45-1.3 Processing applications and referrals

(a) Each individual seeking vocational rehabilitation services shall complete an application which can be obtained from any local Division office. If the individual is a referral, the person or agency making the referral may complete the application on behalf of the individual. If the individual is incapable of completing an application, the individual’s parent, guardian or representative may complete the application. The Division shall make a good faith effort to advise all applicants through appropriate modes of communication of the Division’s application and eligibility requirements.

(b) Each individual or representative shall submit the application and any available medical or psychiatric records relating to disability to the nearest Division office.

(c) Upon reviewing the application, a Division counselor shall arrange an appointment for the individual at the nearest local Division office. If the individual cannot travel, the counselor may visit the individual.

(d) Each individual seeking or referred for vocational rehabilitation services shall be scheduled for an intake interview as soon as possible, but no longer than 14 days after contacting the agency.

(e) If the information received from an individual or his or her representative indicates legal blindness (N.J.S.A. 30:6-18(a)), visual impairment (N.J.S.A. 30:6-18(c)) or demonstrates other indications of possible eligibility for services provided by the New Jersey Commission for the Blind and Visually Impaired, as outlined in the Agreement of Cooperation between the Division and the New Jersey Commission for the Blind and Visually Impaired, that individual shall be referred to the New Jersey Commission for the Blind and Visually Impaired for vocational rehabilitation and other services.

(f) The counselor shall determine eligibility within a reasonable period of time, not to exceed 60 days after the individual has submitted an application to receive services, unless the counselor notifies the individual that exceptional and unforeseen circumstances beyond the control of the

Division preclude it from completing the determination within the prescribed time, and:

1. The individual agrees that an extension of time is warranted; or
2. An extended evaluation is required.

Amended by R.1994 d.52, effective February 7, 1994.

See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

Amended by R.1997 d.466, effective November 3, 1997.

See: 29 N.J.R. 3696(a), 29 N.J.R. 4695(a).

In (a), added the fourth sentence; and in (d), added requirement that intake interview be scheduled with 14 days after contacting the agency.

12:45-1.4 Eligibility for vocational rehabilitation services

(a) An individual shall be eligible for vocational rehabilitation services if the counselor determines that the following exists:

1. A physical or mental impairment which for the individual constitutes or results in a substantial impediment to employment; and
2. A need for vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities and informed choice.

(b) Each counselor shall apply the eligibility requirements without regard to sex, race, age, creed, color, or national origin of the individual applying for service.

(c) No group of individuals shall be excluded or found ineligible solely on the basis of the type of disability.

(d) No residence requirement, durational or other, shall be established which excludes from services any individual who is present in the State.

(e) Each counselor shall advise his or her client, at least once annually, of the prohibitions against discrimination set forth in (b) above.

Amended by R.1994 d.52, effective February 7, 1994.

See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

Amended by R.1997 d.466, effective November 3, 1997.

See: 29 N.J.R. 3696(a), 29 N.J.R. 4695(a).

Rewrote (a)2; deleted (d); and recodified (e) and (f) as (d) and (e).

12:45-1.5 Preliminary assessment

(a) A preliminary assessment based upon the review of existing data shall be conducted to determine whether an individual is eligible for vocational rehabilitation services and to assign the priority category for the order of selection for services pursuant to N.J.A.C. 12:45-1.9.

(b) To the extent additional data is necessary to make such determination and assignment, such data will be secured by the counselor.

Repeal and New Rule, R.1994 d.52, effective February 7, 1994.

See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

12:45-1.6 Comprehensive assessment

(a) A comprehensive assessment of the unique strengths, resources, priorities, interest, and needs, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature and scope of vocational rehabilitation services to be included in the Individualized Written Rehabilitation Program of the individual will be conducted. The comprehensive assessment:

1. Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the rehabilitation program of the individual;

2. Uses, as the primary source of such information to the maximum extent possible and appropriate and in accordance with confidentiality requirements:
 - i. Existing information; and
 - ii. Such information as can be provided by the individual and where appropriate, by the family of the individual;

3. May include, to the degree needed to make such a determination, an assessment of the personality, interest, interpersonal skills, intelligence, related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments of and employment opportunities for the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual;

4. May include an appraisal of the patterns of work behavior of the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance including the utilization of work in real job situations to assess and develop the capacities of the individuals to perform adequately in a work environment; and

5. May provide rehabilitation technology services, where appropriate, to an individual with a disability to assess and develop the capacities of the individual to perform in a work environment.

5. May provide rehabilitation technology services, where appropriate, to an individual with a disability to assess and develop the capacities of the individual to perform in a work environment.

Repeal and New Rule, R.1994 d.52, effective February 7, 1994.

See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

12:45-1.7 Extended evaluation

(a) Eligibility for vocational rehabilitation services under a plan for extended evaluation shall be determined based only upon:

1. The presence of a physical or mental disability which for the individual constitutes or results in a substantial impediment to employment; and

2. An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of achieving an employment outcome due to the severity of the disability.

(b) The extended evaluation period shall begin on the date of certification for extended evaluation.

1. Only one 18-month maximum period shall be permitted during the time that the case is open.

2. If a case has been closed because of a determination that the individual's needs have changed, the case may be re-opened and a subsequent evaluation of vocational rehabilitation potential may be carried out.

(c) Vocational rehabilitation services, authorized after the expiration of the extended evaluation period, shall be provided only if the certification of eligibility has been executed by the counselor.

(d) The individual's progress during the extended evaluation plan shall be assessed as frequently as necessary but at least once every 90 days. This assessment shall include periodic reports from the facility or person providing the services and be used to determine whether the individual may be eligible or ineligible.

(e) The extended evaluation shall be terminated at any time before the end of the 18-month extended evaluation when:

1. It is determined that the individual with a disability can benefit in terms of an employment outcome from vocational rehabilitation services and thus is found eligible for such services; or

2. The individual is found ineligible for additional vocational rehabilitation services because it has been determined, on the basis of clear and convincing evidence, that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome.

i. A review of existing information generally would not provide clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.

Amended by R.1994 d.52, effective February 7, 1994.
See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).
Amended by R.1997 d.466, effective November 3, 1997.
See: 29 N.J.R. 3696(a), 29 N.J.R. 4695(a).
Added (e)2i.

12:45-1.8 Certification: eligibility; extended evaluation; ineligibility

(a) Before or at the same time that an individual with a disability is accepted for vocational rehabilitation services, there shall be a certification by the counselor that the individual has met the basic eligibility requirements as set forth at N.J.A.C. 12:45-1.4.

1. The certification of eligibility shall be dated and signed by the counselor.

(b) Before and as a basis for providing an extended evaluation to determine vocational rehabilitation eligibility, there shall be a certification by the counselor that the individual has met the requirements at N.J.A.C. 12:45-1.7(a).

1. The certification for extended evaluation shall be signed and dated by the counselor.

(c) Whenever the counselor determines on the basis of clear and convincing evidence that an applicant or recipient of vocational rehabilitation is ineligible for services, the counselor shall sign and date a certification. In cases where it appears that an ineligibility decision will be reached because of the severity of the disability of an individual not yet determined to be eligible, the counselor shall first conduct an extended evaluation.

1. The certification shall contain the following:

i. The reasons for the ineligibility determination;

ii. A statement that the determination is made only after full consultation with the individual or, as appropriate, the individual's parent, guardian, or other representative, or after giving a clear opportunity for this consultation; and

iii. A detailed explanation of the availability of the resources within a client assistance project established under section 112 of the Act, and a statement that referral is made to other agencies and facilities, including when appropriate, the State's independent living program.

2. Applicants shall be informed in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination including the reasons for that determination, and the means by which they may express and seek remedy for any dissatisfaction.

(d) The ineligibility determination shall be reviewed within 12 months and annually thereafter, if requested by the individual, or if appropriate, by the individual's representative, if the determination was based on a finding that the individual was incapable of achieving an employment outcome.

1. A review of an ineligibility determination shall not be conducted in situations where the individual has re-

fused the review, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(e) The counselor may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an assessment and the counselor has made repeated efforts to contact the individual and to encourage his or her participation.

Amended by R.1994 d.52, effective February 7, 1994.
See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).
Amended by R.1997 d.466, effective November 3, 1997.
See: 29 N.J.R. 3696(a), 29 N.J.R. 4695(a).
Added (c)2 and rewrote (d).

12:45-1.9 Order of selection for services

(a) In the event a shortage of funds precludes the provision of services to all eligible clients, the Director shall invoke an order of selection.

(b) After documentation of eligibility and execution of Certification of Eligibility, the following priorities will be followed according to the Director's determination of how many priorities can be served. The order of selection is as follows:

1. Clients classified as individuals with a most severe disability;
2. Clients classified as individuals with a severe disability; and
3. All other eligible clients.

(c) A public safety officer whose impairment arose from a disability sustained in the line of duty, and the immediate cause of disability being a criminal act, apparent criminal act, or a hazardous condition resulting from the officer's performance of duties in direct connection with the enforcement, execution, and administration, of law or fire prevention, firefighting, or related public safety activities, will receive services on a priority basis within any of the three priority categories to which he or she is assigned.

(d) If the Division cannot serve every individual within the designated priority group due to the amount of available funds, then the Division will provide services to clients in the order in which they applied for services.

Example: If all individuals with a most severe disability in priority 1 cannot be served due to lack of available funds, then services will be provided to those clients determined to be priority 1, in the order in which they applied for services.

(e) When imposed, the order of selection shall not preclude:

1. Diagnostics necessary to establish a client's eligibility; and

2. Post-employment services.

Amended by R.1994 d.52, effective February 7, 1994.
See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

12:45-1.10 Case record for the individual

(a) Each counselor shall maintain for each applicant for, and recipient of, vocational rehabilitation services a case record which shall include, to the extent pertinent, the following information:

1. Documentation concerning the preliminary assessment supporting the determination of eligibility, the need for an extended evaluation, and, as appropriate, documentation concerning the comprehensive assessment supporting the nature and scope of vocational rehabilitation services to be provided;
2. In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than 12 months after the determination was made;
3. Documentation supporting any determination that the individual has a severe disability or a most severe disability;
4. Documentation as to periodic assessment of the individual during an extended evaluation;
5. An individualized written rehabilitation program and any amendments to the program;
6. In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the individual with a disability is stable or slowly progressive unless the individual is being provided an extended evaluation;
7. Documentation supporting any decision to provide services to family members;
8. Documentation relating to the participation by the individual with a disability in the cost of vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;
9. Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;
10. Documentation that the individual has been advised of the confidentiality of all information pertaining to his or her case, and documentation and other material concerning any information released about the individual with a disability with his or her written consent;

11. Documentation supporting the development of the long-term vocational goal, intermediate rehabilitation objectives, and nature and scope of services included in the individual's IWRP and, for students with disabilities who are receiving special education services, in the student's IEP;

12. In the event that an individual's IWRP provides for services or a job placement in a non-integrated setting, a justification for that non-integrated setting;

13. Documentation of the periodic reviews and evaluations of progress toward achieving intermediate rehabilitation objectives;

14. 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 employers for the same or similar work performed by non-disabled individuals;

15. Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved; and

16. Documentation concerning any action and decision involving the individual's request for review of rehabilitation counselor or coordinator determinations.

Amended by R.1994 d.52, effective February 7, 1994.

See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

Amended by R.1997 d.466, effective November 3, 1997.

See: 29 N.J.R. 3696(a), 29 N.J.R. 4695(a).

Deleted (a)11; inserted new (a)11 through (a)14; and recodified existing (a)12 through (a)13 as (a)15 through (a)16.

12:45-1.11 Individualized written rehabilitation program: procedures

(a) When a counselor determines that an individual is eligible for vocational rehabilitation services, an individualized written rehabilitation program shall be prepared for the individual as soon as the required services are identified and before initiation of services.

(b) The counselor shall develop the individualized written rehabilitation program with the participation of the client or his or her parent, guardian or other representative.

(c) The counselor shall monitor the individualized written rehabilitation program to assure that services are being provided in accord with the written program.

(d) The counselor shall provide a copy of the written program and any amendments to the client or his or her parent, guardian or other representative including other suitable professional and informed advisors.

(e) The counselor shall inform the individual of all the requirements affecting the development, initiation and re-

view of the individualized written rehabilitation program, including the availability of appropriate modes of communication.

(f) In developing an IWRP for a student with a disability who is receiving special education services, the counselor shall consider the student's IEP.

(g) The counselor shall review the individualized written rehabilitation program as often as necessary but at least on an annual basis.

1. Each individual with a disability or, as appropriate, that individual's parent, guardian, or other representative, shall be given an opportunity to review the program and, if necessary, jointly redevelop, and agree to its terms.

Amended by R.1994 d.52, effective February 7, 1994.

See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

Amended by R.1997 d.466, effective November 3, 1997.

See: 29 N.J.R. 3696(a), 29 N.J.R. 4695(a).

Inserted new (f); and recodified (f) as (g).

12:45-1.12 Contents of the individualized written rehabilitation program (IWRP)

(a) The individualized written rehabilitation program (IWRP) must contain the individual's name and social security number, along with a statement that he or she has been found eligible for vocational rehabilitation services or that the IWRP is an amendment to an earlier plan. Each IWRP shall include statements concerning:

1. The employment objective of the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities and informed choice of the individual;

2. A rationale for the employment objective which is based on the assessment used to determine eligibility and vocational rehabilitation needs, including an assessment of career interests, for the individual, which goals shall, to the maximum extent appropriate, include placement in integrated settings;

3. The intermediate rehabilitation objectives related to the attainment of the consumer's goals, determined through assessment carried out in the most individualized and integrated setting (consistent with the informed choice of the individual);

4. The specific vocational rehabilitation services to be provided, and the projected dates for the initiation of and the anticipated duration of each service and the projected timeframe for the achievement of the individual's vocational goal;

5. If appropriate, the specific rehabilitation technology services to be provided to assist in the implementation of the individual's intermediate rehabilitation objectives and long-term rehabilitation goals;

6. If appropriate, the specific on-the-job and related personal assistance services to be provided to the client,

and, if appropriate and desired by the individual, the training in managing, supervising, and directing personal assistance services to be provided;

7. An assessment of the expected need for post-employment services and, if appropriate, an assessment of the need for extended services;

8. At the time of successful closure, the IWRP must reassess the need for post-employment services and, if appropriate, the need for extended services, including a statement detailing how such services shall be provided or arranged through cooperative agreements with other service providers;

9. The objective criteria, the evaluation procedure, and the review schedule to be used in determining whether the stated goals and objectives are being achieved;

10. The terms and conditions under which the goods and services described in the IWRP will be provided to the individual in the most integrated setting, consistent with the informed choice of the individual, and the identity of the entity or entities that will provide the vocational rehabilitation services and the process used to provide or procure such services;

11. The consideration given to the availability of comparable benefits (similar benefits) to the client or to members of the client's family under any program to meet, in whole or in part, the cost of any vocational rehabilitation services;

12. A description by the individual, in the words of the individual (or, if appropriate, in the words of a parent, a family member, a guardian, an advocate or an authorized representative of the individual) regarding how the individual was informed about and involved in choosing among alternative goals, objectives, services, entities providing such services and the methods used to provide or procure such services;

13. The responsibilities of the individual in implementing the individualized written rehabilitation program and the extent of client participation in the cost of services, if any;

14. An assurance that the individual has been informed of that individual's rights and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review and fair hearing of rehabilitation counselor or coordinator determinations;

15. An assurance that the individual has been provided a description of the availability of a client assistance program established under section 112 of the Act;

16. The basis on which the individual has been determined to be rehabilitated;

17. If necessary, an amendment specifying the reasons that an individual for whom a program has been prepared is no longer eligible for vocational rehabilitation and the rights and remedies available to such an individual; and

18. The coordination of services for students with disabilities who are receiving special education services with the IEP.

(b) Each individualized written rehabilitation program shall also contain, for individuals with the most severe disabilities for whom a vocational objective of supported employment has been determined to be appropriate:

1. A description of the time-limited services to be provided by the State; and

2. A description of the extended services needed and an identification of the source of extended services, which may include natural supports, or to the extent that it is not possible to identify the source of extended services at the time the individualized written rehabilitation program is developed, a statement describing the basis for concluding that there is a reasonable expectation that such sources will become available.

Amended by R.1994 d.52, effective February 7, 1994.

See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

Amended by R.1997 d.466, effective November 3, 1997.

See: 29 N.J.R. 3696(a), 29 N.J.R. 4695(a).

Inserted (a)18.

12:45-1.13 Vocational rehabilitation services

(a) Vocational rehabilitation services are any goods or services necessary to render an individual with a disability employable, including, but not limited to, the following:

1. An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

2. Counseling, guidance, and work-related placement services for individuals with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and follow-up, follow-along, and specific postemployment services necessary to assist such individuals to maintain, regain, or advance in employment;

3. Vocational and other training services for individuals with disabilities, which shall include personal and vocational adjustment, books, or other training materials, and such services to the families of such individuals as are necessary to the adjustment or rehabilitation of such individuals, except that no training services in institutions of higher education shall be paid for unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training;

4. Physical and mental restoration services, including, but not limited to: