

**CHAPTER 45**

**DIVISION OF VOCATIONAL REHABILITATION SERVICES**

**Authority**

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

**Source and Effective Date**

R.2004 d.93, effective February 4, 2004.  
See: 35 N.J.R. 4442(a), 36 N.J.R. 1195(a).

**Chapter Expiration Date**

Chapter 45, Division of Vocational Rehabilitation Services, expires on February 4, 2009.

**Chapter Historical Note**

Chapter 45, Legal Authority, was adopted 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, Legal Authority, was renamed 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 Subchapter 1, formerly General Provisions, was repealed and replaced with new rules, Procedures and Standards, by R.1991 d.189.

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. See: 25 N.J.R. 2216(b).

Pursuant to Executive Order No. 66(1978), Chapter 45, Division of Vocational Rehabilitation Services, was readopted as R.1994 d.52 and Subchapter 3, Vehicle Modification Requirements, was repealed, effective December 29, 1993. See: 25 N.J.R. 5130(b), 26 N.J.R. 813(a).

Pursuant to Executive Order No. 66(1978), Chapter 45, Division of Vocational Rehabilitation Services, was readopted as R.1998 d.573, effective November 12, 1998. See: 30 N.J.R. 3367(a), 30 N.J.R. 4240(a).

Chapter 45, Division of Rehabilitation Services, was readopted as R.2004 d.93, effective February 4, 2004. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 3. (RESERVED)**

**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 1998.

“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. 12:45-1.8;
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 plan for employment (IPE) 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 IPE 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 for 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; and

5. An exploration of the individual’s abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences in which the individual is provided appropriate supports and training.

“Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

“Assistive technology service” means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

1. The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

“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 including self-employment, telecommuting, or business ownership.

“Extended services” means ongoing support services and other appropriate services, needed to support and maintain an individual with the most significant disability in supported employment, and are provided by a State agency, a nonprofit 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 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 significant 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 significant 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.

“IPE” means individualized plan for employment.

“Ongoing support services” means services:

1. Needed to support and maintain an individual with a most significant disability in supported employment;
2. Identified based on a determination of the individual’s needs as specified in an individualized plan for employment;

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 plan for employment 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, job retention 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.

“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 or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals for individuals with the most significant 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 significant 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 significant disabilities due to mental illness.

“Supported employment services” means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant 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 employment plan;
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 employment outcome identified in the individualized employment plan.

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 employment outcome identified in the individualized employment plan; 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 the employment outcome identified in the student’s IPE. Transition services include technical consultation provided by DVRS for students beginning at the age of 14. See N.J.A.C. 6A:14-3.7(c)9 and (d)9.

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”.

Amended by R.1999 d.284, effective August 16, 1999.

See: 31 N.J.R. 1144(a), 31 N.J.R. 2387(a).

Substituted references to individualized plans for employment for references to individualized written rehabilitation programs and substituted references to significant disabilities for references to severe disabilities throughout; in “Act”, changed Rehabilitation Act Amendments reference; in “Assessment for determining eligibility and vocational rehabilitation needs”, changed N.J.A.C. reference in 1ii, rewrote 4, and added 5; inserted “Assistive technology device” and “Assistive technology service”; in “Employment outcome”, added references to self-employment, telecommuting and business ownership at the end; inserted “IPE”; in “Ongoing support services”, inserted a reference to job retention in 5iii; deleted “Public safety officer”; in “Supported employment”, rewrote the introductory paragraph; in “Supported employment services”, substituted references to employment outcomes for references to rehabilitation objectives in 3; and in “Transition services”, substituted a reference to employment outcomes for a reference to long term rehabilitation goals and intermediate rehabilitation objectives, and added the last sentence.

Amended by R.2002 d.47, effective February 4, 2002.

See: 33 N.J.R. 3883(b), 33 N.J.R. 4309(a), 34 N.J.R. 774(a).

Rewrote “Assistive technology device” and “Assistive technology service”.

**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. The Division is exploring the individual's abilities, capabilities and capacity to perform in work situations or, if appropriate, an extended evaluation is carried out under N.J.A.C. 12:45-1.7(b).

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 within 14 days after contacting the agency.

Amended by R.1999 d.284, effective August 16, 1999.

See: 31 N.J.R. 1144(a), 31 N.J.R. 2387(a).

Rewrote (f)2.

Amended by R.2002 d.47, effective February 4, 2002.

See: 33 N.J.R. 3883(b), 33 N.J.R. 4309(a), 34 N.J.R. 774(a).

In (f)2, inserted "or, if appropriate, an extended evaluation is carried out" following "situations".

#### 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. 12:45-1.8.

(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).

Amended by R.1999 d.284, effective August 16, 1999.

See: 31 N.J.R. 1144(a), 31 N.J.R. 2387(a).

In (a), changed N.J.A.C. reference.

#### 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 plan for employment of the individual will be conducted. The comprehensive assessment:

11. Referral and other services designed to assist individuals with disabilities in securing needed services from other agencies;

12. Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives;

13. On-the-job or other related personal assistance services provided while an individual with a disability is receiving vocational rehabilitation services in this section;

14. Supported employment services;

15. Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such 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

16. Other goods and services that can reasonably be expected to benefit an individual with a disability in terms of an employment outcome.

(b) Vocational rehabilitation services, when provided for the benefit of groups of individuals, may also include the following:

1. The establishment, development or improvement of community rehabilitation programs, including, under special circumstances as described at 34 C.F.R. 361.49, the construction of a facility, and the provision of other services (including services offered at community rehabilitation programs) which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized plan for employment of any one individual with a disability. Such programs shall be used to provide services that promote integration and competitive employment.

2. Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12111 et seq.) and that are seeking to employ individuals with disabilities.

3. Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities including employment.

Recodified from N.J.A.C. 12:45-1.13 and amended by R.1999 d.284, effective August 16, 1999.

See: 31 N.J.R. 1144(a), 31 N.J.R. 2387(a).

In (a), inserted a reference to adequate training in the use of public transportation vehicles and systems in the introductory paragraph of 8, inserted a new 15, and recodified former 15 as 16; and in (b), substituted a reference to individualized plans for employment for individualized written rehabilitation programs in 1 and added 3. Former N.J.A.C. 12:45-1.12, Contents of the individualized written rehabilitation program (IWRP), recodified to N.J.A.C. 12:45-1.11.

**12:45-1.13 Individuals determined to be rehabilitated**

(a) Individuals will be determined to have been rehabilitated, only if the following requirements are met:

1. The provision of services under the individual's IPE has contributed to the achievement of the employment outcome;

2. The employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

3. The employment outcome is in the most integrated setting possible, consistent with the individual's informed choice;

4. The individual has maintained the employment outcome for a period of at least 90 days; and

5. At the end of a minimum of 90 days employment, the individual and the rehabilitation counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

Recodified from N.J.A.C. 12:45-1.14 and amended by R.1999 d.284, effective August 16, 1999.

See: 31 N.J.R. 1144(a), 31 N.J.R. 2387(a).

In (a)1, substituted "IPE" for "IWRP" following "individual's". Former N.J.A.C. 12:45-1.13, Vocational rehabilitation services, recodified to N.J.A.C. 12:45-1.12.

**12:45-1.14 Participation by clients in the cost of vocational rehabilitation services**

(a) The Division shall conduct a financial needs assessment for each client prior to or at the individualized plan for employment (IPE) conference to establish how much financial participation, if any, a client will provide toward the cost of services. The Division will encourage all consumers to participate in the cost of their program. This needs assessment will include the income and liquid assets of the family unit within which the client resides. The needs assessment shall be conducted as set forth below to ensure that equitable treatment is accorded to all clients in similar circumstances.

(b) The Division shall inform each client that the agency reserves the right to request verification of the current financial situation of the client and his or her family unit. "Family unit" means the individual and spouse and their dependent children residing in the same household and parents and their dependent children in the cases where the individual is less than 22 years of age and residing at home with his or her parents. An individual under 22 years of age living outside the home will be considered to be living at home if the living expenses are paid for by the parents. For example, in a case where the individual is living outside the home in a school setting. Living expenses paid by the parents refers to those costs which an individual must incur to live (that is, food, lodging, utilities, etc.).

(c) Prior to or at the time of the IPE conference, the Division may require each client to submit a signed copy of

the most recent New Jersey or Federal income tax return forms (including family member's forms where they did not file jointly) and other supporting documentation such as pay stubs or check stubs from benefits.

(d) Each client who is 22 years of age or older on January 1, of the year that services are scheduled to commence and living in his or her parents' home, shall have only his or her own and spouse's income considered in the financial participation calculation. For clients not yet 22 years old and living with parents, both the client's and spouse's or parents' income from all sources will be considered. The client's receipt of social security or whether client is claimed as an exemption on the parents' tax return will have no bearing.

(e) Each client shall provide the following information on form DVR-17 "Financial Need Assessment," prior to the IWRP conference:

1. Name, social security number and date;
2. Number of dependents in the family including the client;
3. Liquid assets of the family;
4. Family gross income;
5. Extraordinary medical expenses of the family;
6. Disability related expenses of the client and family unit;
7. Medical insurance of the client; and
8. A signed certification that the information provided on DVR-17 is true.

(f) The Division may require the client to provide additional supporting data to verify the information on the DVR-17.

(g) Each client must submit a revised DVR-17 annually, any time there is a significant change in family unit financial status, or when a request for post-employment services is made.

(h) Immediately upon receipt of a completed DVR-17, the Division shall review the form and calculate the amount of financial participation for which the client will be responsible. The amount of required financial participation shall be calculated as follows:

1. The total amount of weekly expenses directly attributable to the disability, as calculated on the DVR-17, shall be subtracted from the amount of excess weekly income reported by the client. "Excess weekly income" means the weekly gross income of the family unit minus the weekly income allowance set forth in (i) below, plus the liquid assets reported by the family unit minus the liquid asset allowance set forth in (i) below. "Liquid asset" means any cash or cash equivalents that can be converted to cash within a reasonable length of time, the unencumbered value of which shall be greater than the amounts established by (i) below.

2. The individual shall contribute an amount equal to the "excess weekly income" each week for the duration of the service. In cases where the goods or services being provided are a total cost item, the client shall contribute an amount equal to 10 times the amount of excess weekly income. "Total cost of goods or services" means, but is not limited to, wheelchairs, hearing aids and other assistive devices. The formula as set forth above shall be applied as follows:

- i. If, after calculating the amount of client participation, the figure is greater than the cost of the item, then the client must pay for the entire cost of the item.
- ii. If, after calculating the amount of client participation, the figure is less than the cost of the item, then DVRS will pay the difference between the total cost of the item and the amount of client participation.

3. The Division may waive financial participation if the client has extraordinary medical/disability, disability related expenses or other unusual circumstances which significantly effect the quality of family life which would preclude his or her participation in the cost of services.

4. The Division will not require financial participation as a condition for furnishing any vocational rehabilitation service if the individual has been determined eligible for Social Security benefits under Titles II (Social Security Disability Insurance) or XVI (Supplemental Security Income (SSI) for Disabled) of the Social Security Act.

(i) Allowable income and liquid assets shall be as follows:

Number in Family	Annual Income	Weekly Income	Liquid Asset Allowance
1	\$27,300	\$ 525	\$ 22,000
2	46,644	897	24,000
3	53,352	1,026	26,000
4	60,320	1,160	28,000
5	66,092	1,271	30,000
6	71,864	1,382	32,000
7	77,584	1,492	34,000
8	83,304	1,602	36,000
Each Additional	\$ 5,720	\$ 110	\$ 2,000

These allowances will be amended periodically as deemed necessary by the Director of the Division of Vocational Rehabilitation Services.

(j) The following services shall not be based on economic need:

1. Assessments for determining eligibility, priority for services and vocational rehabilitation needs;
2. Counseling, guidance and referral services;
3. Placement;
4. On-the-job training;
5. Supported employment;
6. Work adjustment training;

7. Job coaching;
8. Personal assistance services; and
9. Auxiliary aids or services (for example, interpreter services for individuals who are deaf or hard of hearing) that an individual with a disability requires under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act, or regulations implementing those laws, in order for the individual to participate in the VR program.

Recodified from N.J.A.C. 12:45-1.15 and amended by R.1999 d.284, effective August 16, 1999.

See: 31 N.J.R. 1144(a), 31 N.J.R. 2387(a).

In (a), (c) and (e), substituted references to individualized plans for employment for references to individualized written rehabilitation programs. Former N.J.A.C. 12:45-1.14, Individuals determined to be rehabilitated, recodified to N.J.A.C. 12:45-1.13.

Amended by R.2002 d.47, effective February 4, 2002.

See: 33 N.J.R. 3883(b), 33 N.J.R. 4309(a), 34 N.J.R. 774(a).

In (a), inserted "(IPE)" following "employment" and "The Division will encourage all consumers to participate in the cost of their program.;" in (h), added 4; in (j), added 8 and 9.

Amended by R.2004 d.93, effective March 1, 2004.

See: 35 N.J.R. 4442(a), 36 N.J.R. 1195(a).

Rewrote (i).

**12:45-1.15 Protection; use and release of personal information**

(a) All personal information in the possession of the Division shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program, the Division may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under (d), (e), and (f) below.

(b) The Division shall inform through appropriate modes of communication each applicant, client, representative of an applicant or client, and, as appropriate, service provider, cooperating agency, and interested person of the confidentiality of personal information and the conditions for accessing and releasing this information.

(c) The Division shall provide individuals who are unable to communicate in English or who rely on special modes of communication with explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them.

(d) The requirements for the release of information to an involved individual are set forth below. Involved individual means an individual for whom the Division has a case record (see N.J.A.C. 12:45-1.10).

1. When requested in writing by the involved individual or his or her representative, the Division shall make all information in the case record accessible to the individual

or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but shall be provided through a third party chosen by the individual, which may include, among others, 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 individual, in which case the information shall be released to the court-appointed representative.

2. When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

3. An applicant or eligible individual who believes the information in the individual's record of services is inaccurate or misleading, may request that the Division amend the information. If the information is not amended, the request for an amendment shall be documented in the record of services.

(e) The requirements for release of information for audit, evaluation, and research are as follows:

1. Personal information may be released to an organization, agency or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for individuals with disabilities, and only if the organization, agency, or individual assures that:

- i. The information will be used only for the purposes for which it is being provided;
- ii. The information will be released only to persons officially connected with the audit, evaluation or research;
- iii. The information will not be released to the involved individual;
- iv. The information will be managed to safeguard confidentiality; and
- v. The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(f) The requirements for release of information to other programs or authorities is as follows:

1. Upon receiving the informed written consent of the individual, the Division may release to another agency or organization for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological

information which the Division believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purposes for which it is being provided and will not be further released to the involved individual;

2. The Division shall release personal information if required by Federal or State law;

3. The Division shall release personal information to the Social Security Administration, in conjunction with the individual's application for benefits or re-examination for continued entitlement to Social Security Disability (SSDI) or Supplemental Security Income (SSI) benefits;

4. The Division shall release personal information to public assistance agencies, in conjunction with the individual's application for benefits or re-examination for continued entitlement to benefits;

5. The Division shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order;

6. As a partner in the local One-Stop system, the Division may release personal data to other workforce development partners in conjunction with the development of the individual plan for employment (IPE) and/or for core access to services of the One-Stop System. In all other respects, the shared information shall remain confidential; and

7. The Division may also release personal information in a medical emergency or in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others (except where expressly prohibited by Federal or State laws or regulations).

Recodified from N.J.A.C. 12:45-1.16 by R.1999 d.284, effective August 16, 1999.

See: 31 N.J.R. 1144(a), 31 N.J.R. 2387(a).

Former N.J.A.C. 12:45-1.15, Participation by clients in the cost of vocational rehabilitation services, recodified to N.J.A.C. 12:45-1.14. Amended by R.2002 d.47, effective February 4, 2002.

See: 33 N.J.R. 3883(b), 33 N.J.R. 4309(a), 34 N.J.R. 774(a).

In (f), inserted new 3 and 4 and recodified former 3 and 4 as 5 and 6. Amended by R.2004 d.93, effective March 1, 2004.

See: 35 N.J.R. 4442(a), 36 N.J.R. 1195(a).

In (f), inserted a new 6 and recodified former 6 as 7.

#### **12:45-1.16 Appeal of vocational rehabilitation decision by applicant or recipient**

(a) All applicants/clients for vocational rehabilitation services and, as appropriate, their representatives shall be advised through appropriate modes of communication of their right to request an administrative review, mediation and/or a fair hearing in the event that they are dissatisfied with any determination with regard to the furnishing or denial of vocational rehabilitation services.

1. An administrative review, mediation and/or a fair hearing must be requested in writing by the applicant, client or individual's representative. This written request should be submitted to the Director, Division of Vocational Rehabilitation Services.

2. Administrative reviews shall be held before a Division administrator within 14 days of the request by the applicant or client for a review and shall be conducted in accordance with this section. The 14-day time period may be extended for a reasonable time upon request of the applicant, client, or individual's representative.

3. Within 10 days of receiving a request for mediation, the Division shall notify the applicant or client whether or not it agrees to participate in voluntary mediation. If it agrees to participate in mediation, the Division shall notify the applicant or client that it has forwarded the request to the Public Defender's Office of Dispute Settlement. The Public Defender's Office of Dispute Settlement shall conduct a mediation session within 20 days of receiving the request for mediation. The Public Defender's Office of Dispute Settlement shall schedule the mediation session.

4. Fair hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules, N.J.A.C. 1:1, and Federal regulations. See N.J.A.C. 1:12C.

5. The review or mediation session shall be held at a time and place convenient for the applicant or client.

6. The applicant or client will be notified of the date, time and place of the review. The notification will be sent in advance of the review and provide enough time for the applicant or client to prepare for the review.

7. The applicant or client may be represented by counsel, friend, Client Assistance Program located in New Jersey Protection and Advocacy, Inc., parent, guardian, self, or other representative. All correspondence, decisions, or scheduling of an administrative review or mediation session or other documents sent to the client, which are related to the appeal will be copied and sent to the representative.

8. The applicant or client and his or her representative, if he or she desires to have one, will be given an adequate opportunity for cross examination and to present evidence and/or witnesses on his or her behalf during the review and an opportunity to submit evidence and information at the mediation session.

9. The Division administrator shall render a decision in writing and provide a full written report of his or her findings and the grounds for the decision to the client or his or her representative and to the DVRS Director within 30 days of the completion of the review.

10. The decision of the Division administrator shall be deemed final unless the applicant or client requests mediation and/or a fair hearing in accordance with (a)1 above.

11. The Office of Dispute Settlement shall oversee and manage the mediation process. This shall include providing qualified and impartial mediators whose selection and conduct is guided by the "Model Standards of Conduct for Mediators" approved by the American Arbitration Association, the Litigation Section and the Dispute Resolution Section of the American Bar Association, and the Society of Professionals in Dispute Resolution.

12. The role of the mediator is to:

- i. Facilitate the exchange of information pertinent to the mediation session;
- ii. Help the parties define the issues and identify options;
- iii. Facilitate communication between the parties in an impartial manner;
- iv. Assist the parties in reaching a voluntary agreement;
- v. Adjourn the mediation at the request of the parties to obtain additional information or explore options; and
- vi. Terminate mediation if in the mediator's judgment the parties are not making progress toward resolving the issue(s) in dispute.

13. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement and signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made.

14. Discussions that occur during the mediation process, whether in joint session or in separate meetings, shall be confidential and shall not be used as evidence in any subsequent due process hearings or civil proceedings.

15. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation.

16. Mediation is a voluntary process in which a mediator, an impartial third party, facilitates problem-solving discussions in order to assist the parties to a dispute in reaching agreement. The mediator acts as neither a judge nor an advocate. The mediator does not decide which party is at fault, nor does he or she determine the manner in which the dispute should be resolved.

Recodified from N.J.A.C. 12:45-1.17 and amended by R.1999 d.284, effective August 16, 1999.

See: 31 N.J.R. 1144(a), 31 N.J.R. 2387(a).

Rewrote (a). Former N.J.A.C. 12:45-1.16, Protection; use and release of personal information, recodified to N.J.A.C. 12:45-1.15.

**12:45-1.17 (Reserved)**

Recodified to N.J.A.C. 12:45-1.16 by R.1999 d.284, effective August 16, 1999.

See: 31 N.J.R. 1144(a), 31 N.J.R. 2387(a).

**SUBCHAPTER 2. TRANSPORTATION FOR EMPLOYEES CERTIFIED FOR EXTENDED EMPLOYMENT**

**12:45-2.1 Purpose and scope**

This subchapter sets forth the procedures and standards used by the Department and community rehabilitation programs to defray the costs of public transportation, personal auto, and paratransit expenses of individuals with disabilities certified by the Division of Vocational Rehabilitation Services as extended employees in community rehabilitation programs.

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

**12:45-2.2 Definitions**

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

"Department" means the New Jersey Department of Labor.

"Community rehabilitation program" means a facility possessing a valid certificate to vend extended employment services to the Division issued by the Director thereof, in compliance with the rules governing Extended (Sheltered) Employment found at N.J.A.C. 12:51-8.

"Fiscal year" means the 12 month period from July 1 to June 30.

"Paratransit" means and includes any service, other than motorbus regular route service and charter services, including, but not limited to, dial-a-ride, nonregular route, jitney or community minibus, and shared-ride services such as vanpools, limousines or taxicabs which are regularly available to the public. Paratransit shall not include limousine or taxicab service reserved for the private and exclusive use of individual passengers.

"Personal auto" means an automobile owned and operated by the extended employee, or an immediate family member of the extended employee.

"Public transportation" means all rail passenger service operated by the New Jersey Transit Corporation, and all motorbus regular route service operated pursuant to P.L. 1979, c.150 (N.J.S.A. 27:25-1 et seq.) or operated pursuant to N.J.S.A. 43:4-3.

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.1998 d.573, effective December 7, 1998.  
See: 30 N.J.R. 3367(a), 30 N.J.R. 4240(a).

In "Community rehabilitation program", changed N.J.A.C. reference.

**12:45-2.3 Responsibilities of community rehabilitation programs**

(a) Each community rehabilitation program shall complete, on a biannual basis, a survey of the transportation needs of each client certified as an extended employee (see Appendix A incorporated herein and made part of by reference).

1. Each survey shall include the community rehabilitation program name, the name and phone number of each person completing the survey, and the following information for each client:

- i. Name, address and social security number;
- ii. Mode of transportation (that is, public transportation, personal auto or paratransit);
- iii. Round trip mileage from residence to the community rehabilitation program;
- iv. Daily out-of-pocket cost; and
- v. Actual number of days in attendance per client during the prior six month period.

(b) Each community rehabilitation program with an extended employment contract shall submit a completed survey by July 15 and January 15 of each year to:

Chief of Rehabilitation Services  
Division of Vocational Rehabilitation Services  
PO Box 398  
Trenton, New Jersey 08625-0398

1. Failure to submit the surveys by the due dates may result in a delay in the allocation of funds to the community rehabilitation program.

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

**12:45-2.4 Method of payment**

(a) Upon receipt of the completed surveys, the Division shall conduct an analysis of all surveys and determine the percentage of allowable expenses that can be reimbursed.

(b) Each certified individual with a disability will be reimbursed a percentage of his or her costs, which percentage shall be calculated based upon the ratio between the total amount of the appropriation allocated for the reimbursement of travel expenses in each fiscal year and the aggregate total of allowable reimburseable expenses submitted for that fiscal year.

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

**12:45-2.5 Disbursement of funds**

(a) The Department shall allocate available funds to each community rehabilitation program by August 1 and February 1 of each year based on their reported allowable transportation costs.

(b) Each certified community rehabilitation program shall issue checks to clients to be used to defray transportation costs by August 15 and February 15 of each year.

(c) The Department shall reimburse each community rehabilitation program for the reasonable administrative costs associated with the disbursement of checks to clients.

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