

**CONSIDERATION OF A NOTICE OF PROPOSED RULEMAKING TO AMEND  
RULE 5 CSR 20-500.190, RELATING TO DUE PROCESS HEARING**

**STATUTORY AUTHORITY:**

Section 178.590 – 178.620, RSMo; Section  
161.092, RSMo

Consent  
Item

Action  
Item

Report  
Item

**DEPARTMENT GOAL NO. 4:**

The Missouri Department of Elementary and Secondary Education will improve departmental efficiency and operational effectiveness.

**SUMMARY:**

The proposed amendment updates the rule relating to the vocational rehabilitation (VR) applicant’s or eligible individual’s right to request a due process hearing. The proposed amendment changes the term “coordinator” to “consumer affairs office” and the Division of Vocational Rehabilitation to the Office of Adult Learning and Rehabilitation Services. It also adds the terms “applicant” and “eligible individual” and the word “impartial” to hearing officer. It states that the impartial hearing officer’s decision will include findings of facts and conclusions of law and indicates that the commissioner may not delegate a review of the hearing officer’s written decision to VR staff.

**PRESENTER(S):**

Jeanne Loyd, Assistant Commissioner, Office of Adult Learning and Rehabilitation Services, will assist with the presentation and discussion of this item.

**RECOMMENDATION:**

The Department recommends that the State Board of Education authorize publication in the *Missouri Register* the proposed amendments of 5 CSR 20-500.190 relating to due process hearing in the provision of Vocational Rehabilitation Services.

**Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**  
**Division 20—Division of Learning Services**  
**Chapter 500—Office of Adult Learning and Rehabilitation Services**

**PROPOSED AMENDMENT**

**5 CSR 20-500.190 Due Process Hearing.** The State Board of Education is amending the purpose and sections (2) – (4) and sections (6) – (12) and adding section (13).

*PURPOSE: This amendment is to update the rule to reflect the name change from the Division of Vocational Rehabilitation to the Office of Adult Learning and Rehabilitation Services and to update the language for clarity and specificity.*

*PURPOSE: This rule establishes the procedures for due process hearings for applicants or eligible individuals dissatisfied with a determination made regarding the provision of services by the [Division of Vocational Rehabilitation]**Office of Adult Learning and Rehabilitation Services**, Department of Elementary and Secondary Education pursuant to the Rehabilitation Act of 1973 as amended, 29 USC § 701 et. seq. and the Code of Federal Regulations, 34 CFR §361.57(e), (f), and (g).*

- (1) An applicant or eligible individual may request a due process hearing without informal review or mediation.
- (2) An applicant or eligible individual may request a due process hearing in writing or by personally contacting [*a coordinator,*] the [*Division of V*]vocational [*R*]rehabilitation (*[D]VR*) **consumer affairs office**.
- (3) The assistant commissioner of [*DVR*] **the office of adult learning and rehabilitation services or his/her designee** will [*set*] **schedule** a hearing and assign an **impartial** hearing officer [*selected pursuant to the federal regulations and/or applicable regulations*]**to hear the matter**.
- (4) A hearing will be held within sixty (60) days of the request unless [*a party*] **the applicant, the eligible individual, or VR** requests a specified time extension.
- (5) A hearing will be conducted as a contested case pursuant to the provisions of Chapter 536, RSMo.
- (6) The applicant or **the** eligible individual, or if appropriate, the individual's [*parent,*] guardian or other representative **of the applicant or the eligible individual**[*,*] will be allowed an opportunity to present additional evidence, information, and witnesses during the due process hearing.
- (7) Copies of all correspondence, reports of contact and written decisions rendered by the **impartial** hearing officer shall be placed in the applicant's or **the** eligible individual's case file.

(8) The **impartial** hearing officer will make a decision, **including findings of fact and conclusions of law**, based upon the provisions of the approved state plan, the federal act and/or applicable regulations, and appropriate state law and/or regulations. A written report *[of the findings of fact and conclusions of law]* **from the impartial hearing officer** will be submitted to the applicant or eligible client or, if appropriate, the individual's *[parent,]* guardian or other representative and to the assistant commissioner within thirty (30) days of completion of the due process hearing.

(9) Within twenty (20) days of the **mailing of the impartial** hearing officer's written decision, either party may request in writing, a review of the written decision *[to]* by the commissioner of the *[D]*department of *[E]*elementary and *[S]*secondary *[E]*education (**department**), or his/her designee.

(10) The commissioner or designee shall provide an opportunity for submission of additional evidence and information relevant to a final decision. **The commissioner may not delegate the responsibility for reviewing the written decision of the impartial hearing officer to any VR staff.**

(11) The commissioner or designee shall not overturn or modify the **impartial** hearing officer's decision, or part of the decision supporting the position of the applicant or eligible individual, unless the reviewing official determines based upon clear and convincing evidence that the decision of the **impartial** hearing officer is clearly erroneous on the basis of being contrary to the approved state plan, the federal act and/or applicable regulations, or the appropriate state law and/or regulations.

(12) The commissioner or designee shall provide a written final findings of fact and conclusions of law to the applicant or eligible individual*[,]* or, if appropriate, the applicant's representative*[,]* and *[D]*VR *[in a timely manner]* **within thirty (30) days of the request for administrative review.**

**(13) A decision of the commissioner or designee constitutes notice of a final decision on the matter by the department.**

*AUTHORITY: section 161.092, RSMo Supp. [2002]2013 and sections 178.600, 178.610, and 178.620, RSMo 2000. This rule previously filed as 5 CSR 90-4.420. Original rule filed Dec. 17, 1999, effective Aug. 30, 2000. Amended: Filed March 27, 2003, effective Oct. 30, 2003. Moved to 5 CSR 20-500.190, effective Aug. 16, 2011.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education,*

*Attention: Jeanne Loyd, Assistant Commissioner, Office of Adult Learning and Rehabilitation Services, 3024 Dupont Circle, Jefferson City, MO 65109 or by email at [info@vr.dese.mo.gov](mailto:info@vr.dese.mo.gov). To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*