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CHAPTER 21 - ADMINISTRATIVE ISSUES

2100 CONFIDENTIALITY AND RELEASE OF CLIENT INFORMATION

2100.1 Federal Regulations

[34 CFR 361.5](#) – Definition

[34 CFR 361.38](#) – Protection and use of information

State Rules

[5 CSR 90-4.110](#) – Confidentiality and Release of Information

2100.2 [Release of Information Forms](#)

2100.3 Definitions

- Client Information - refers to any identifiable personal information about a client which is in the possession of the division.
- Representative - refers to the person the client has authorized to act on the client's behalf.

2100.4 Procedure

2100.4.1 Confidentiality and Release of Information

- 5 CSR 20-500.130 outlines protection of applicant and client confidential information in accordance with 34 CFR 361.38. All client information, including counseling sessions, phone conversations and personal discussions should be safeguarded and only conducted in private offices including when counselors are in travel status.
- Information about the client **will not** be released without the client's or client representative's written permission except, under certain conditions as outlined in this section, and in accordance with the federal act or applicable regulations when:
 - it directly relates to the client's rehabilitation program, and
 - necessary to provide/coordinate services

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2100.4.1 Confidentiality and Release of Information (continued)

- The VR counselor may release the client’s name, address, SS#, phone numbers, educational/work histories, and income information without the client’s/representative’s written consent, in response to requests from:
 - Other agencies that Vocational Rehabilitation has a cooperative agreement with include, but not limited to:
 - Dept. of Economic Development
 - Dept. of Elementary and Secondary Education
 - Dept. of Higher Education
 - Dept. of Labor and Industrial Relations
 - Dept. of Mental Health
 - Dept. of Social Services
 - Dept. of Workforce Development
 - Local school districts
 - Local, state or federal elected officials. In this case, VR Central Office should be informed of the inquiry immediately, and the request must be handled with a sense of urgency.
- The VR counselor may release information about the client, including information regarding the client’s disability(s) without the client’s/representative’s written consent to:
 - Community Rehabilitation Programs
 - Supported Employment Service Providers
 - Medical Care Professionals or Service Providers
 - Missouri Disability Determinations
- When considering the release of client information, if the VR counselor determines the situation warrants a release signed by the client, it is appropriate to request the client sign a release.
- A client’s refusal to release information may affect eligibility or result in denial of services.

2100.4.2 Client Requests for Information

- When requested in writing by the client/representative, VR must make all information in the client’s file accessible in a timely fashion.
- **Harmful Information** - If it is determined that information in the client’s file may be harmful to the client, this information will not be released directly to the client, but may be released as follows:

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2100.4.2 Client Requests for Information (continued)

- To court appointed representatives or a third party chosen by the client including an advocate, client’s adult family member, qualified medical or mental health professional; and
- Each page of the information determined to be harmful in the client records must be stamped as “Information not to be directly released to the client (Harmful Information)” before this information can be released.
- If the client believes information in their record of services is inaccurate or misleading, they may request in writing that VR amend the information. If the information is not amended, the request for the amendment must be documented in the client’s case file.

2100.4.3 Release of Information Without Client Consent

- VR must release any information in response to investigations in connection with law enforcement, fraud, abuse, and in response to judicial orders.
- VR may release client information in an emergency situation without written client /representative consent.
- An emergency situation generally falls under the category of “duty to warn” and may include, but is not limited to any of the following:
 - When the client poses a threat to his or her own safety
 - When the client poses a threat to the safety of others
- Consult with the district supervisor or regional manager immediately to verify appropriate action taken and record in a case note all of the facts and circumstances involved in releasing this information.

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2100.4.4 Subpoenas/Depositions/Summons for Court Appearance

- Subpoenas, depositions, summons for court appearances, or other legal requests for information are time sensitive documents.
- Upon receipt of a subpoena, deposition, or summons, the VR counselor should:
 - Immediately fax the entire document to Central Office “Coordinator of Consumer Affairs,” or other designee, discuss with district supervisor, and
 - Follow up with a phone call or e-mail to Central Office, to verify receipt of the document and discuss an appropriate response.
- If the VR counselor must appear in court, schedule an entire day for the testimony.

2100.4.5 Preparing for Court/Deposition Testimony

- Testifying under oath can be an intimidating prospect. Preparation will assist you in making the experience more beneficial for all parties involved.
- Suggestions for preparation include the following:
 1. Contact VR Central Office
 2. Discuss with DESE attorney, at the guidance of VR Central Office
 3. Know the major issues about the VR case
 4. Know the chronology of the case and record important dates to include the major activities/services such as eligibility, IPE, etc.
 5. Make a simple outline of pertinent facts
 6. Review your documentation for:
 - Accuracy
 - Clarity
 - Objectivity
 - Timeliness
 - Relevance
 - Consistency
 7. If possible, verify court date and time with the attorney’s office.

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2100.4.5 Preparing for Court/Deposition Testimony (continued)

- Once testimony begins, the VR counselor should conduct themselves in the following manner:
 - Be truthful
 - Listen carefully to questions
 - Answer questions asked in as few words as possible
 - Do not volunteer information
 - If you don't recall an answer, don't speculate or guess
 - Take your time
 - Always be respectful

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2110 APPEALS, DUE PROCESS HEARINGS, AND MEDIATION

2110.1 Federal Regulations

[34 CFR 361.48](#) – Informing Individuals

State Rules

[5 CSR 90-4.400](#) – Appeals

[5 CSR 90-4.410](#) – Informal Reviews

[5 CSR 90-4.420](#) – Due Process Hearing

[5 CSR 90-4.430](#) – Mediation

2110.2 Appeals

- The applicant or client will be apprised in writing of their rights to a due process hearing and/or mediation:
 - Upon application for VR services
 - If determined ineligible for services
 - Assigned to a category in the order of selection
 - At the time the IPE is developed or executed
 - Upon reduction, suspension or cessation of VR services
- When an applicant or client is dissatisfied with any determination made by the Division of Vocational Rehabilitation (DVR) regarding the provision of services, the applicant/client:
 - may request informal review, a due process hearing or mediation
 - will be given information about the Client Assistant Program
- VR will not suspend, reduce or terminate services provided to a client under an existing IPE pending a decision from informal review, due process hearing or written mediation agreement, **unless**:
 - the individual or their representative requests in writing that services be suspended, reduced or terminated, or
 - VR services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual, or the individual's representative
- Informal reviews will be conducted within **20 working days** of the request.
- Mediation and/or due process hearings will be conducted **within 60 days** of the request for an appeal.

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2110.3 Procedure

2110.3.1 Informal Review

- The counselor should encourage the client to ask for an informal review whenever there is a disagreement which cannot be resolved.
- The client may request an informal review in writing or verbally, with the supervisor of the respective district office.
- The informal review will be conducted by either the district supervisor or regional manager. If at all possible, the informal review should be held in person with the individual and/or representative.
- The informal review is conducted in an effort to provide a timely resolution of disagreements and should be conducted **within twenty (20) working days** from receipt of the client's request.
- If the informal review is not successful, a formal due process hearing will be conducted **within 60 days** from the client's request for informal review, unless both parties agree to a specified time extension.
- The client will be informed of the results of their informal review in writing and the right to a due process hearing or mediation.
- The district supervisor shall also send a written copy of the review findings to the VR Coordinator of Client Services and Coordinator of Development and Consumer Affairs.
- A client may request a due process hearing or mediation without going through an informal review.

2110.3.2 Mediation

- Clients have a right to request mediation regarding disputes involving any determination by VR that affects the provision of services.
- The client may request mediation by contacting the VR Coordinator of Client Services or Coordinator of Development and Consumer Affairs.
- A qualified and impartial mediator who is trained in effective mediation techniques, will be assigned by the Assistant Commissioner of VR to coordinate the mediation process.

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2110.3.2 Mediation (continued)

- Clients will have an opportunity to select a person to represent them in the mediation session.
- A list of qualified and trained mediators will be maintained by VR.
- VR will pay for costs associated with the mediation process.
- Mediation will be held within the same time period (60 days) of a request for an informal review, or due process hearing.
- Mediation is voluntary on the part of both the client and VR; and should not be used to deny or delay the client's due process hearing or any other client rights.
- A written mediation agreement reached by the client and VR will be provided to the client and to the Assistant Commissioner of VR within thirty (30) days after the completion of the mediation.
- Discussions that occur during the mediation process are confidential and should not be used as evidence in any subsequent due process hearing or civil proceeding. Both the client and VR may be required to sign a confidentiality pledge prior to the commencement of mediation.

2110.3.3 Due Process Hearing

- A client may request a due process hearing without informal review or mediation.
- The client may request a due process hearing by contacting the VR Coordinator of Client Services or Coordinator of Development and Consumer Affairs.
- An impartial hearing officer will then be assigned by the Assistant Commissioner of VR, along with a date for the hearing that is mutually agreeable.
- The due process hearing will be held **within sixty (60) days** of the request, unless:
 - informal resolution is achieved prior to the 60th day, or
 - the parties agree to a specific extension of time

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2110.3.3 Due Process Hearing (continued)

- The client or, if appropriate, the client’s parent, guardian, representative or anyone selected by the client, will be afforded an opportunity to present additional evidence, information and witnesses during the due process hearing.
- The client will have the opportunity to examine all witnesses and other relevant sources of information and evidence in connection with the due process hearing.
- The impartial hearing officer will make a decision based on the provisions of the approved State Plan, the Act, Regulations and State policies consistent with Federal requirements.
- The impartial hearing officer will provide to the client or, if appropriate, the client’s parent, guardian or other representative, and to the assistant commissioner, a full-written report of the findings and grounds for the decision within thirty (30) days of the completion of the due process hearing.
- Either party may request review of the decision of the hearing officer within 20 days after the decision. The reviewing official shall be the Commissioner of the Department of Elementary and Secondary Education (DESE) or his/her designee-who will not be an employee of the Missouri Division of Vocational Rehabilitation.
- The Commissioner or designee of DESE shall:
 - Provide an opportunity for the submission of additional evidence and information relevant to a final decision concerning the matter under review;
 - Not overturn or modify the decision of the hearing officer that supports the position of the applicant or eligible individual unless the reviewing official concludes the decision is clearly erroneous and contrary to the approved State plan, or any State regulation or policy that is consistent with Federal requirements; and
 - Make a final decision in a timely manner and provide such decision in writing to the applicant or eligible individual, or, as appropriate, the applicant’s representative, and to VR, including a full report on the findings on the grounds for such decision.

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2110.3.3 Due Process Hearing (continued)

- A decision made by the Commissioner of DESE shall be final unless such party brings civil action:
 - **Implementation** - If a party brings a civil action to challenge a final decision of a hearing officer or the reviewing official, the final decision shall be implemented pending review by the court.
 - **Civil Action** - Any party aggrieved by a final decision by a hearing officer or the reviewing official, may bring a civil action for review of such decision. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

2110.3.4 Extension of time

- Reasonable time extensions for good cause may be requested by either the client or VR or at the request of both parties. Such extensions must be agreed to in writing.

2110.3.5 Documentation and Confidentiality

- Copies of all correspondence, reports of contacts and written decisions rendered by the impartial hearing officer shall be placed in the client's case file.
- All documentation and discussions involved in mediation are confidential. If an agreement is reached by the parties to the dispute, however, the written agreement may be placed in the client's case file.

2110.3.6 Preparing for Due Process Hearing or Mediation

- Make a copy of the case file to submit to the Impartial Hearing Officer
- Organize Information
- Discuss thoroughly with supervisor
- Be extremely familiar with all documents and chronology of events
- Prepare an outline of the pertinent aspects of the case; results of assessments; important communication; services provided, etc.
- Keep schedule relatively free the day of the hearing