

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, DC 20202

POLICY DIRECTIVE
RSA-PD-09-03
Date: March 10, 2009

TO: STATE VOCATIONAL REHABILITATION AGENCIES
CLIENT ASSISTANCE PROGRAMS

SUBJECT: Announcement of OMB Approval for Annual Report on Appeals Process
(RSA-722).

POLICY
STATEMENT:

The Office of Management and Budget (OMB) has approved the continued use of the Annual Report on Appeals Process (RSA-722), through November 30, 2011. The OMB control number for this collection is 1820-0563. Copies of the form and instructions are attached to this Policy Directive

RSA uses the Annual Report on Appeals Process to meet the data collection requirements of Section 102(c)(8) of the Rehabilitation Act of 1973, as amended. Information on transmittal of the RSA-722, including electronic transmission, is found on pages 14 through 16 of the reporting instructions. The form is due on or before November 30 each year.

CITATIONS

IN LAW: Section 102(c)(8) of the Rehabilitation Act of 1973, as amended, and the Paperwork Reduction Act of 1995, as amended.

CITATIONS IN
REGULATIONS:

34 CFR Part 361

EFFECTIVE

DATE: Immediately upon issuance.

EXPIRATION

DATE: November 30, 2011

INQUIRIES: RSA (202) 245-7488

Edward Anthony, Ph.D.
Delegated the authority to
Perform the functions of
Commissioner for Rehabilitation
Services Administration

Attachments

cc: Council of State Administrators of Vocational Rehabilitation
National Council of State Agencies for the Blind
National Disability Rights Network
National Council for Independent Living

UNITED STATES DEPARTMENT OF EDUCATION
Office of Special Education and Rehabilitative Services
Rehabilitation Services Administration
Washington, DC 20202

ANNUAL REPORT ON APPEALS PROCESS

State & Agency: _____ General/Combined Blind Fiscal Year: _____

I. MEDIATION:	
A. Requests for Mediation:	
1. Pending requests for mediation, October 1 (carryover from prior fiscal year)	
2. New requests for mediation since October 1	
3. Total requests for mediation this fiscal year (I.A1+I.A2)	
B. Disputes Resolved during Mediation Process:	
1. Disputes settled prior to the development of a written mediation agreement	
2. Disputes resulting in a written mediation agreement	
3. Total disputes resolved during mediation process (I.B1+I.B2)	
4. Disputes not resolved during mediation process	
C. Mediation Requests Carried Over:	
1. Mediation requests pending resolution, September 30 (I.A3-I.B3-I.B4)	
II. IMPARTIAL HEARING PROCESS:	
A. Requests for Impartial Hearings:	
1. Pending impartial hearing requests, October 1 (carryover from prior fiscal year)	
2. New requests for impartial hearings since October 1	
3. Total requests for impartial hearings this fiscal year (II.A1+II.A2)	
4. Number from Line II.A3 which had also been through the mediation process this fiscal year	
B. Disputes Resolved during Impartial Hearing Process:	
1. Disputes resolved without IHO decision	
2. IHO decisions favoring the individual	
3. IHO decisions favoring the agency	
4. Total IHO decisions (II.B2+II.B3)	
5. Total disputes resolved during impartial hearing process (II.B1+II.B4)	
6. Disputes not resolved during impartial hearing process	
C. Impartial Hearing Requests Carried Over:	
1. Impartial hearing requests pending, September 30 (II.A3-II.B5-II.B6)	

III. REVIEW OF IHO DECISIONS:				
<i>Has your agency established a process for review of IHO decisions?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No				
NOTE: If no, skip Section III.				
A. Requests for Review of IHO Decisions:				
1. Requests for review of IHO decisions in process, October 1 (carryover from prior fiscal year)				
2. New requests for review of IHO decisions since October 1				
3. Total requests for review of IHO decisions this fiscal year (III.A1+III.A2)				
B. Reviews of IHO Decisions Completed:				
1. IHO decisions favoring the individual sustained				
2. IHO decisions favoring the individual reversed				
3. IHO decisions favoring the agency sustained				
4. IHO decisions favoring the agency reversed				
5. Total reviews of IHO decisions completed (Sum of III.B1 through III.B4)				
6. IHO decisions not reviewed (III.B4-III.B5)				
C. Reviews of IHO Decisions Carried Over:				
1. Reviews of IHO decisions pending, September 30 (III.A3-III.B5)				
IV. CIVIL ACTIONS:				
A. Civil Actions Filed:				
1. Civil actions pending, October 1 (carryover from prior fiscal year)				
2. New civil actions filed this fiscal year				
3. Total civil actions this fiscal year (IV.A1+IV.A2)				
B. Civil Actions Resolved:				
1. Civil actions resolved in individual's favor (sustaining final administrative decision)				
2. Civil actions resolved in individual's favor (reversing final administrative decision)				
3. Civil actions resolved in agency's favor (sustaining final administrative decision)				
4. Civil actions resolved in agency's favor (reversing final administrative decision)				
5. Total civil actions resolved (Sum of IV.B1 through IV.B5)				
6. Civil actions not resolved				
C. Civil Actions Carried Over:				
1. Civil actions pending, September 30 (IV.A3-IV.B5-IV.B6)				
V. TYPES OF COMPLAINTS/ISSUES INVOLVED IN DISPUTES:				
	Mediation (a)	Impartial Hearings (b)	Reviews of IHO Decisions (c)	Civil Actions (d)
1. Applicant eligibility for VR				
2. Nature/contents/scope of IPE				
3. Quality of counseling services				
4. Delivery/quality of other VR services				
5. Cost of services				
6. Termination of services/service record closure				
7. All other complaints/issues				

VI. DESCRIPTION OF DUE PROCESS PROCEDURES

(See instructions)

VII. FINAL IHO AND REVIEW DECISIONS

(See instructions)

Person to contact if
questions arise about
this form (print name): _____

Phone: _____

E-mail address
(if applicable): _____

Authorized Signature

Date

FORM RSA-722
ANNUAL REPORT ON APPEALS PROCESS
INSTRUCTIONS

PURPOSE:

Form RSA-722 was developed to comply with the specific reporting requirements of Section 102(c) of the Rehabilitation Act as amended in 1998 (Act). This section delineates the procedures by which applicants for and eligible individuals of State vocational rehabilitation (VR) programs may appeal decisions made by personnel of the VR unit/agency that affect the provision of VR services to them. Individuals may request that their disputes be resolved through mediation and/or an impartial due process hearing. (In some States, a Fair Hearing Board, established by a State before January 1, 1985, carries out the responsibilities of the impartial hearing officer (IHO).) The State may elect to establish a procedure that enables either party to seek review of a decision rendered by the IHO. Finally, either party may file a civil action if either remains unsatisfied with the final administrative decision.

Section 102(c)(8) of the Act requires the State VR Director to collect and report data on the appeals process to the Commissioner. A summary of this information is included in the Commissioner's Annual Report submitted to Congress pursuant to section 13 of the Act. Section 102(c)(8)(B) specifies the information that is to be collected:

1. A copy of the standards used by State reviewing officials for reviewing decisions made by IHOs;
2. Information on the number of hearings and reviews sought from the IHOs and the State reviewing officials, including the type of complaints and the issues involved;
3. Information on the number of hearing decisions made that were not reviewed by the State reviewing officials;
4. Information on the number of the hearing decisions that were reviewed by the State reviewing officials, and, based on the reviews, the number of hearing decisions that were:
 - a. sustained in favor of the individual;
 - b. reversed in favor of the individual;
 - c. sustained in favor of the agency; and
 - d. reversed in favor of the agency; and
5. Copies of all decisions rendered by the IHOs and State reviewing officials.

While Form RSA-722 was designed initially to respond to the mandate of law, it also will enable the Commissioner to monitor the appeals process in the State agencies that has been set up to safeguard the rights of individuals with disabilities. The form itself is devised to approximate the sequence of the appeals process and contains a series of checks and balances throughout to simplify the completion of the report.

LINE-BY-LINE INSTRUCTIONS:

State & Agency: Enter the name of the State and check the appropriate box to indicate whether the agency is a general or combined agency, or whether the agency serves only individuals who are blind.

Fiscal Year: Enter the Federal fiscal year to which the form relates.

I. MEDIATION:

A. REQUESTS FOR MEDIATION:

NOTE: Section 102(c)(4) of the Act sets forth the requirements for the mediation process. A "mediation request" can be counted in several ways, including: (1) when an individual actually requests mediation directly; (2) when an individual requests a hearing, but agrees to mediation when it is suggested by the agency; and (3) when an individual is in the hearing process and the individual agrees to engage in mediation upon the IHO's recommendation. Each of these examples would constitute a "request for mediation."

Line 1: Enter the number of requests for mediation that were pending on October 1. These mediation requests were carried over from the prior fiscal year.

Line 2: Enter the number of mediation requests made since October 1. It does not matter who actually made the request.

Line 3: Enter the total number of mediation requests during the fiscal year. Add lines I.A1 and I.A2. It does not matter whether a mediator actually acted on these requests during the fiscal year. This number also forms the basis for the data in column (a) of Part V of this form (Types of Complaints/Issues Involved in Disputes).

B. DISPUTES RESOLVED DURING THE MEDIATION PROCESS:

Line 1: Enter the number of disputes resolved/settled prior to a written mediation agreement. There may have been one or more mediation sessions. However, there is no requirement that any mediation sessions occurred. The key here is that settlement was reached prior to the development of a mediation agreement.

Line 2: Enter the number of disputes resolved with a mediation agreement. In these instances, the parties met with a mediator and reached a settlement that was put into writing.

Line 3: Add lines I.B1 and I.B2. This is the total number of disputes resolved during the mediation process.

Line 4: Enter the number of disputes that were not resolved during the mediation process. In these instances, one or both of the parties halted the mediation process before it was completed.

C. MEDIATION REQUESTS CARRIED OVER:

Line 1: Enter the number of requests for mediation that were pending on September 30 and will go through the mediation process during the next fiscal year. There was insufficient time to act on these requests during the fiscal year. Subtract lines I.B3 and I.B4 from I.A3.

II. IMPARTIAL HEARING PROCESS:

A. REQUESTS FOR IMPARTIAL HEARINGS:

NOTE: Section 102(c)(5) of the Act sets forth the requirements for the impartial hearing process.

- Line 1:** Enter the number of appeals that have yet to be concluded by the impartial hearing officer (IHO) and remain in any stage of processing as of October 1, the beginning of the Federal fiscal year. This figure should be the same as the number of appeals in process on September 30 from the report submitted for the prior fiscal year.
- Line 2:** Enter the number of requests for an impartial hearing filed during the fiscal year. This number does not include the number of requests that were pending at the start of the fiscal year.
- Line 3:** Add lines II.A1 and II.A2. This is the total number of appeals requiring action by the IHO during the fiscal year. It does not matter whether the IHO actually heard these cases during the fiscal year. This number is also the basis for data reported in column (b) of Part V of this form (Types of Complaints/Issues Involved in Disputes).
- Line 4:** Enter the total number of appeals, for which a request for a hearing was made (from line II.A3), in which the parties attempted mediation prior to requesting a hearing. The Act makes it clear that parties are not required to attempt mediation first; however, many will attempt to resolve the dispute at the lowest possible level (i.e., mediation) prior to requesting a formal hearing.

B. DISPUTES RESOLVED DURING THE IMPARTIAL HEARING PROCESS:

- Line 1:** Enter the number of disputes that were resolved before an IHO could render a decision. In most of these cases, the parties settled the dispute prior to actually getting to the hearing. However, sometimes, the parties reached a settlement just as the hearing was beginning or soon after it began. The key fact to keep in mind when recording data for this line entry is that the dispute was resolved without the IHO rendering a decision.
- Line 2:** Enter the number of decisions rendered by an IHO that largely or entirely supported the position of the individual on the major issue(s). A major issue is one deemed vital to the individual in his/her initiation or successful completion of VR services.
- Line 3:** Enter the number of decisions rendered by an IHO that largely or entirely supported the position of the State VR agency on the major issue(s).

Line 4: Add lines II.B2 and II.B3. This is the total number of decisions actually rendered by an IHO during the fiscal year.

Line 5: Add lines II.B1 and II.B4. This is the total number of disputes that were resolved somehow at some point during the hearing process (i.e., after a request for a hearing was made)

Line 6: Enter the number of disputes that were not resolved during the hearing process during the fiscal year. This line entry includes those situations in which the individual died, left the State, or withdrew his/her request for a hearing for whatever reason.

C. IMPARTIAL HEARING REQUESTS CARRIED OVER:

Line 1: Enter the number of requests for impartial hearings that were pending on September 30 and will go through the impartial hearing process during the next fiscal year. There was insufficient time to act on these requests during the fiscal year. Subtract lines II.B5 and II.B6 from II.A3.

III. REVIEW OF IHO DECISIONS:

NOTE 1: Section 102(c)(5)(D) gives States the option of establishing procedures by which a party may seek an impartial review of an IHO decision prior to filing a civil action. If the State has established such a procedure, either party may request a review of the IHO decision.

The form asks agencies to check the appropriate box as to whether their State has established these review procedures. If your State has NOT established these procedures, then you should skip the entire section III. If your State HAS established these review procedures, you must provide the data requested in section III.

NOTE 2: For those State VR agencies that must complete Section III, it is important to enter information (in section III.B of this form) for only those times when the reviewing official actually reviewed the IHO decision in accordance with the "standards of review" established by the agency.

A. REQUESTS FOR REVIEW OF IHO DECISIONS:

Line 1: Enter the total number of requests for review of IHO decisions that were pending on October 1 of this fiscal year. These are requests that were carried over from the prior fiscal year because these requests had not been acted upon before the end of the prior fiscal year.

Line 2: Enter the total number of new requests for review of IHO decisions that were made since October 1 of this fiscal year.

Line 3: Add lines III.A1 and III.A2. This is the total number of requests for review of IHO decisions available during this fiscal year. This information forms the basis of the data reported in column (c) of Part V of this form.

B. REVIEWS OF IHO DECISIONS COMPLETED:

Line 1: Enter the number of IHO decisions largely or entirely favoring the individual that were substantially, if not totally, sustained by the reviewing official. In other words, the position of the individual was upheld on the major issue(s) by the reviewing official in this final administrative decision.

Line 2: Enter the number of IHO decisions largely or entirely favoring the individual that were substantially, if not totally, reversed by the reviewing official. In other words, the reviewing official found clear and convincing evidence that the IHO's decision was erroneous as a matter of law and/or policy. As a result of this final administrative decision, the position of the State agency was ultimately upheld on the major issue(s).

Line 3: Enter the number of IHO decisions largely or entirely favoring the State agency that were substantially, if not totally, sustained by the reviewing official. In other words, the reviewing official upheld the position of the agency on the major issue(s) in this final administrative decision.

Line 4: Enter the number of IHO decisions largely or entirely favoring the State agency that were substantially, if not totally, reversed by the reviewing official. As a result of this final administrative decision, the reviewing official ultimately upheld the position of the individual on the major issue(s).

Line 5: Add lines III.B1 through III.B4. This is the total number of reviews of IHO decisions that were completed during the fiscal year.

Line 6: Enter the number of IHO decisions that were not reviewed. Subtract line III.B5 from II.B4.

C REVIEW OF IHO DECISIONS CARRIED OVER:

Line 1: Subtract line III.B5 from line III.A3. This is the total number of requests for reviews that were unable to be completed during the fiscal year. These will be carried over to the next fiscal year.

IV. CIVIL ACTIONS:

A. CIVIL ACTIONS FILED:

NOTE: Section 102(c)(5)(J) grants the right for either party to file a civil action.

Line 1: Enter the total number of civil actions that were pending on October 1 of this fiscal year. These civil actions had been filed (regardless of by whom) in a previous year, but had not been resolved by the end of the prior fiscal year. These were carried over from last fiscal year.

Line 2: Enter the number of new civil actions that were filed since October 1. It does not matter which party filed the civil action.

Line 3: Add lines IV.A1 and IV.A2. This is the total number of civil actions requiring resolution by the court system during this fiscal year. This information forms the basis for the data reported in column (d) of Part V of this form.

B. CIVIL ACTIONS RESOLVED:

Line 1: Enter the number of civil actions in which the court resolved the dispute largely, if not entirely, in favor of the individual's position on the major issue(s) and, in so doing, sustained the final administrative decision, which also had favored the individual's position.

Line 2: Enter the number of civil actions in which the court resolved the dispute largely, if not entirely, in favor of the individual's position on the major issue(s) and, in so doing, reversed the final administrative decision, which had favored the agency's position.

Line 3: Enter the number of civil actions in which the court resolved the dispute largely, if not entirely, in favor of the agency's position on the major issue(s) and, in so doing, sustained the final administrative decision, which also had favored the agency's position.

Line 4: Enter the number of civil actions in which the court resolved the dispute largely, if not entirely, in favor of the agency's position on the major issue(s) and, in so doing, reversed the final administrative decision, which had favored the individual's position.

Line 5: Add lines IV.B1 through IV.B4. This is the total number of civil actions resolved during this fiscal year.

Line 6: Enter the number of disputes that were not resolved during the civil action process during the fiscal year. This line entry includes those situations in

which at least one of the parties filed a civil action but the action was dismissed for some reason. The individual may have died or left the State or one of the parties may have withdrawn the request for civil action for any reason.

C. CIVIL ACTIONS CARRIED OVER:

Line 1: Subtract lines IV.B5 and IV.B6 from IV.A3. This is the total number of civil actions that were still pending on September 30 of this fiscal year and will be carried over to the next fiscal year.

V. TYPES OF COMPLAINTS/ISSUES INVOLVED IN DISPUTES:

It is possible for two or more of the complaints/issues listed on lines 1 through 7 to be involved in any given appeal. To complete Part V, State agencies are asked to record each complaint/issue that can be identified per dispute in the appropriate column.

Column (a)—Mediation: For each line entry in Part V, enter the number of requests for mediation, according to the type of complaint or issue involved. It does not matter whether the dispute was resolved during the mediation process. The total number of requests for mediation is found on Line I.A3.

Column (b)—Impartial Hearings: For each line entry in Part V, enter the number of requests for an impartial hearing, according to the type of complaint or issue involved. It does not matter whether the issue was resolved during the hearing process or whether the IHO actually rendered a decision. The total number of requests for an impartial hearing is found on Line II.A3.

Column (c)—Reviews of IHO Decisions: For each line entry in Part V, enter the number of requests for review of IHO decisions, according to the type of complaint or issue involved. It does not matter whether the reviewing official actually completed the review. The total number of requests for a review of IHO decisions is found on Line III.A3.

Column (d)—Civil Actions: For each line entry in Part V, enter the number of civil actions filed, according to the type of complaint or issue involved. It does not matter whether the civil action was resolved. The total number of civil actions available to the court is found on Line IV.A3.

Line 1: Applicant Eligibility for VR: Enter the number of disputes in which the major issue involved the applicant's eligibility for VR services. An example of a situation that would fit this category is: the State VR agency closes an individual's service record before a determination of eligibility, but the applicant believes he/she should receive services.

Line 2: Nature/content/scope of IPE: Enter the number of disputes in which the individual's major issue involved the nature or content or scope of the Individualized Plan for Employment (IPE). This would include disagreements about what course of action should be taken and what services should be provided to affect an employment outcome. It would also include disagreements about the employment goal desired by the individual.

Line 3: Quality of Counseling Services: Enter the number of disputes in which the individual's major issue involved the delivery and quality of counseling services that the individual received. Examples would include complaints about counselor responsiveness, attentiveness and competence.

- Line 4: Delivery/quality of other VR Services:** Enter the number of disputes in which the individual's major issue involved the delivery or quality of one or more services other than counseling (i.e., diagnostic and evaluative testing, restoration, training, placement, etc.). This category also includes those disputes in which the individual is complaining about how useful or effective the services were, the location of sites where the services were to be provided, and the timing and frequency of services.
- Line 5: Cost of Services:** Enter the number of disputes in which the individual's major issue involved some aspect of the cost of services. This category could include complaints regarding issues of comparable services and benefits, fee for services, needs-based determinations, an agency's refusal to pay for certain services, etc.
- Line 6: Termination of Services/Service Record Closure:** Enter the number of disputes in which the individual's major issue involved the suitability and desirability of the service record closure. For example, this category could include situations in which the individual is dissatisfied with a particular job placement for which the State agency has claimed or will claim that an employment outcome has been achieved. This category should also be used to report those disputes in which the agency wants to terminate services and close the service record on the ground that the individual is not cooperating.
- Line 7: All other Complaints/Issues:** Enter the number of disputes in which the individual's major issue involves a complaint that is not covered by any of the above categories.

VI. DESCRIPTION OF DUE PROCESS PROCEDURES:

Section 102(c)(1) of the Act requires that State agencies establish procedures for mediation and review through an impartial due process hearing in order for disputes regarding determinations made by agency personnel to be resolved. Section 102(c)(8)(B)(i) requires that the State develop standards of review to be used by the reviewing official when reviewing IHO decisions.

State agencies should describe fully in this narrative portion of the report their mediation, due process procedures, and standards for review. This description should be sufficiently detailed so that responses can be summarized and reported to the Congress in the Annual Report. State agencies are required to describe the review process as an attachment to their State plan. Any agency that has revised its procedures for review since the last State Plan submission should attach a copy of those revisions to Form RSA-722. In no event, however, should the data in Parts I through V of Form RSA-722 be withheld because of any timing, legal or other problem in providing a revised description of the review process.

VII. FINAL IHO AND REVIEW DECISIONS

Section 102(c)(8)(A) requires RSA to collect copies of the final decisions issued by IHOs and reviewing officials conducting the reviews of IHO decisions. Please send copies of all of these decisions along with the completed RSA-722.

Person to Contact about this Form: Print the name of a person who can answer questions about the contents of Form RSA-722 should they arise. Include this person's phone number and e-mail address (if applicable).

Authorized Signature: The appropriate State agency official should sign the form to certify that it is complete and correct. The person should also date the form.

TRANSMITTAL OF THE REPORT:

Within 30 days after the end of the fiscal year covered by the report, send copy of Form RSA-722 to RSA.

The RSA-722 reports may be sent by mail or electronically using one of the options listed below.

Electronic Mail addresses:

Specific instructions and the URL for key entry/on-line and editing of data directly into the RSA MIS:

<http://rsamis.ed.gov>

The RSA Central Office E-Mail address for the RSA-722 is:

Vernita.Washington@ed.gov.

U.S. Mail and Facsimile:

This report may be faxed to the RSA Central Office at 202-245-7593, or mailed via U.S. mail to:

U.S. Department of Education
State Monitoring and Program Improvement Division
Data Collection and Analysis Unit
Attn: Vernita Washington
550 12th Street, SW
PCP 5047
Washington, DC 20202-2800