

1.00 PROTECTION OF LEGAL RIGHTS: OVERVIEW

Introduction

Consumers and potential consumers of NYSCB services are afforded certain basic rights with respect to:

1. nondiscriminatory availability of services
2. confidentiality of consumer records
3. an opportunity to appeal decisions regarding their planned services or their eligibility for such services

Additionally, it is intended that consumers receive the most appropriate services available within NYSCB guidelines and funding capabilities.

Note

While the guidelines and procedures contained herein will serve as general policy, any specific legal questions which are not addressed will be referred to the Director of the Bureau of Field Operations through appropriate supervisory channels.

Contents of This Section

This chapter contains six sections. They are:

Section 1.01 Nondiscrimination Policy

Section 1.02 Confidentiality

Section 1.03 Client Assistance Project (CAP)

Section 1.04 Appeals Process and Procedures

Section 1.05 Guidelines for Oral and Written Communications with Consumers

Section 1.06 Informed Choice

1.01 NON-DISCRIMINATION POLICY

Title VI Compliance

The VR Program administered by NYSCB will be conducted in such manner that no

person will be excluded from participation, be denied the benefits of, or be subjected to discrimination under such program on the grounds of sex, race, age, creed, color or national origin.

Title VI compliance is based on:

1. Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) and
2. Federal Regulations (45 CFR Part 80)

Section 504 Compliance

The vocational rehabilitation program is administered in such a manner that no person in the state who is otherwise qualified, will be denied services on the basis of disability.

Section 504 compliance is based on:

1. Section 504 of the Rehabilitation Act of 1973 Public Law 93-112
2. Federal Regulations (45 CFR Part 84)

1.02 CONFIDENTIALITY

Introduction

Unless otherwise specified in the section titled Exceptions for Special Circumstances Allowing for Release of Confidential Information Without the Consumer's Consent, all personal information regarding applicants for, or consumers of vocational rehabilitation (VR) services furnished to or by NYSCB will be maintained in a confidential manner and released only in accordance with applicable regulations and guidelines, including:

1. Federal Regulations (34 CFR 361.38) regarding confidential information, and
2. Personal Privacy and Protection Law (Public Officers Law), Section 91 et. seq.

Informing Consumers about Release of Confidential Information

Consumers must be informed about the guidelines for release of confidential information during the intake interview. The "What is the NYSCB Record of Services" and "Consumer Confidentiality Personal Privacy and Protection Law" sections of the NYSCB Handbook for Vocational Rehabilitation Services provide the consumer with written information regarding confidentiality of information. These sections of the Handbook should be reviewed with the consumer at the initial intake interview. In particular, consumers must be informed about the exceptions allowing for release of

confidential information without the consumer's consent. This would include, but is not limited to the requirement that NYSCB counselors report knowledge of a consumer driving.

Rules

1. All NYSCB employees (or representatives) are responsible for protecting the confidentiality of consumer records.
2. All consumer information is the property of NYSCB.
3. Consumers will be informed as to the confidentiality of VR information and the conditions for release of such information as well as the circumstances under which such information may be released without their consent.
4. Consumers have access to their own records pursuant to and subject to any limitations set forth in the applicable federal and state law and regulations.

What is to be Held Confidential

All consumer-identifiable information available to employees or representatives of NYSCB in the course of the administration of the VR program will be maintained in a confidential manner, and released only consistent with applicable federal and state laws and regulations. Consumer-identifiable information includes but is not limited to:

1. lists of consumer names and addresses
2. records of agency assessments of the consumer
3. reports of medical/psychological examinations and treatment, and
4. financial information regarding the consumer.

Exceptions for Special Circumstances Allowing for Release of Confidential Information Without the Consumer's Consent

The NYSCB VR counselor, after consultation with the senior counselor, may release personal information without the written consent of the consumer in order to protect the consumer or others when the consumer poses a threat to his or her safety or to the safety of others. The VR counselor must document in the record of services, the reason for the release of information, the entities to which the information was released, and the nature of the information released [34 CFR Section 361.38 (e)].

NYSCB will release identifying information under certain circumstances in accordance with the following guidelines:

1. NYSCB staff who have credible knowledge that a NYSCB consumer is driving a motor vehicle (For example, the consumer has told the NYSCB staff that they

are driving or the NYSCB staff observes the consumer driving), must immediately report this information to their District Manager. Upon receipt of this information, the District Manager must notify the Associate Commissioner in writing and provide the following information:

- Consumer's name;
- Consumer's address;
- Consumer's date of birth; and
- The basis for the NYSCB staff member's knowledge that the consumer is driving.

A copy of this notification must be provided to the NYSCB counselor (in the event the notification did not originate from the counselor) and must be placed in the consumer's file. The consumer's name and address will be forwarded to the New York State Department of Motor Vehicles' Driver Improvement Program for appropriate action by that agency. Copies of the letter to the Department of Motor Vehicles will be sent to the counselor and to the consumer.

2. If a NYSCB counselor learns through a third party that a consumer is driving a motor vehicle, s/he should meet with the consumer to verify the accuracy of the information. The counselor must document the content and the outcome of the meeting in a letter to the consumer. If the consumer confirms that they do drive, the letter should specifically indicate whether the consumer has agreed to stop driving. A copy of the letter must be provided to the District Manager who will forward the letter to the Associate Commissioner to determine the appropriate follow-up actions, which could include reporting the information to the Department of Motor Vehicles.

In addition to the mandated notification described above, where appropriate, the NYSCB counselor should discuss with all consumers, the impact their vision loss has on their ability to drive safely and the potential danger of their driving. The counselor may find it helpful to include the consumer's family in this discussion.

Orientation and mobility training and/or reimbursement for travel costs to travel safely to participate in services is available to NYSCB consumers in accordance with NYSCB policy. The availability of these services should be discussed with all NYSCB consumers who participate in services outside of their home. See Section 8.04 Transportation for further information.

Consumer Consent for Release

Information shall not be disclosed directly or indirectly, other than in the administration of the VR program, or as otherwise required by law or regulation, unless the consumer is driving or thought to be driving or otherwise poses a threat to his or her safety or to

the safety of others. The prior informed consent must be obtained in writing unless the consumer is driving or thought to be driving or otherwise poses a threat to his or her safety or to the safety of others. If the consumer is a minor, the parent or legal guardian must sign the consent form.

Conditions for Release

Any release of information to any member of the public, agency, or organization other than a referral to the NYS Department of Motor Vehicles for NYSCB consumers who are driving or thought to be driving or when the consumer poses a threat to his or her safety or to the safety of others shall be conditioned upon:

1. a signed release from the consumer; and
2. a satisfactory assurance by such member of the public, agency, or organization that the information will be used only for the purpose for which it is provided, and will not be released to any other consumer, agency or organization without written authorization from the consumer.

Release for Protected Consumers

Certain consumers in protected categories are afforded additional protection beyond the basic conditions for release cited above. For consumers with the disabilities of alcoholism and/or substance abuse, mental illness and for any HIV and/or AIDS related information, federal and state laws require that additional special conditions be met when releasing or obtaining confidential information. For each of these protected categories, there are common and specific conditions that must be met for all releases of information.

Common Conditions

For all consumers with the disabilities of alcoholism, substance abuse, mental illness, HIV or AIDS, the following common conditions for release of information are required:

1. A designated staff person must be responsible for approving the release of confidential information. The VR counselor is the staff designated by NYSCB to obtain and release information for consumers with any of the disabilities requiring special conditions related to confidentiality.
2. The name, title and address of the person to whom the information is being released or from whom it is being obtained must be clearly noted on the release form (FORM-3446).
3. The purpose and reason for the disclosure and a specific description of the

information being obtained or released must be entered on the release. Information must only be released when it is necessary for the provision of services (or when authorized by the consumer, a court order or when necessary to protect, etc.).

4. The signature of the consumer and the date the consent was signed must be included on the release permission form.
5. The release form must include a statement that acknowledges that the release can be revoked at any time by the consumer.

Note

If the consumer wants to rescind his/her permission, an oral rescission is valid, but the consumer should be requested to follow up in writing. When an oral rescission is made, the VR counselor should note it in the consumer's file and send a confirming letter.

Specific Conditions for Consumers with Alcoholism or Substance Abuse

1. For consumers with a disability of alcoholism or substance abuse, any disclosure of records that relate to alcoholism or substance abuse diagnosis or treatment must include the attachment of the following statement (FORM-3446A):

"This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. **A general authorization for the release of medical or other information is NOT sufficient for this purpose.** The Federal rules restrict any use to criminally investigate or prosecute any alcohol or drug abuse patient."

2. Use the Release of Confidential Information form (FORM-3446). The expiration date for the release must be included on the form. The expiration date should only extend as long as is reasonably necessary to serve the purpose of the disclosure and should not extend beyond one year.

Specific Conditions for Consumers with Mental Illness

For consumers with a disability related to mental illness, use the revised Release of Confidential Information form (FORM-3446). An expiration date for the release must be included on the form. The expiration date should only extend as long as is reasonably

necessary to serve the purpose of the disclosure and should not extend beyond one year.

Specific Conditions for Consumers with HIV and/or AIDS

1. The New York State Department of Health AIDS Institute *Authorization for Release of Confidential HIV Related Information* must be used in all circumstances for obtaining or releasing oral or written information when there is any indication that a consumer was tested for HIV antibodies or for diagnostic information pertaining to AIDS or HIV related illness. A separate release must be used for each request. Authorizations not on the Department of Health form are invalid and may not be used.
2. When documenting the purpose of the disclosure, the criteria for releasing information must be based on the consumer having a disability with functional limitations that may be barriers to vocational or independent living goals. HIV status alone usually has no purpose in being released. Supervisory approval should be noted in the file.
3. Authorized disclosure of confidential HIV or AIDS related information must be accompanied by the following statement (FORM-3446B):

"This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure."

This statement must be attached to the Department of Health release form.

4. Information can be shared with other NYSCB staff without a release, as long as the information is necessary for the provision of services.

Note

In the case of HIV information, if the consumer is a minor, the consumer is presumed competent unless the minor is so young or disabled that they cannot make or communicate a decision. In this situation, the parent or legal guardian must sign the consent form.

Who is Authorized To Disclose Consumer Information to Requesting Entities

Disclosure of information may be made only by the person responsible for the caseload, usually the VR counselor. When special conditions apply, it is recommended that disclosure occur after discussion with the senior counselor, and with senior counselor approval.

Release of Information to Consumer

Upon written request, information shall be released to the consumer, or as appropriate, a parent, guardian or other representative subject to the special provisions noted below.

Note

If 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. For example, a licensed psychologist may prohibit releasing psychological evaluation reports unless the request is made directly to the psychologist.

Special Provisions for Release of Medical, Psychological or Other Information to Consumer

Information may be released to consumers in accordance with these special provisions:

If in the opinion of the counselor, release of such information would clearly not be harmful to the consumer, then such information may be released directly to the consumer. If in the opinion of the counselor, release of such information may be harmful to the consumer, then such information must be released through a third party chosen by the consumer, 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 consumer, in which case the information must be released to the court-appointed representative.

Amendments to the Record of Services

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

Release of Information to Organizations Involved in Research

Personal information may be released to an organization or individual engaged in

research only if the purpose of the research is directly connected with the administration of the NYSCB VR program, or for purposes that would improve the quality of life for persons with disabilities, and the following conditions are met:

1. satisfactory assurance is given that the information will be used only for the purpose for which it is provided;
2. the information will only be released to persons connected with the study under consideration;
3. the information will not be released to the involved individual;
4. the information will be managed in a manner to safeguard confidentiality; and
5. the final product of the research will not reveal any information that may serve to identify any consumer without written consent of the involved individual or the consumer's representative and an authorization from the Director of NYSCB.

Security of Confidential Records

Individual records of a confidential nature will be kept in a secured area when NYSCB staff are not present to assure proper security. Additionally, it is strongly urged that all employees, in handling confidential records, make it a practice to place such records face down, or otherwise protected from view, when they are not in immediate use and before they are returned to the files.

Subpoena: Judicial Order of Consumer Records

In the event a judicial order is served (i.e. delivered by hand, mail or fax) to a NYSCB employee, no consumer information should be released or testimony given until the document is reviewed by the Office of Children and Family Services (OCFS) Division of Legal Affairs. If you receive a subpoena:

1. you must **IMMEDIATELY** notify your district manager (or other individual representing your district manager in his/her absence).
2. The district manager (or his/her representative) will **IMMEDIATELY** fax the subpoena to NYSCB Central Office and call to alert Central Office of the transmittal.
3. NYSCB Central Office will transmit the judicial order to the OCFS Division of Legal Affairs (DLA).
4. The Division of Legal Affairs will:

- a. review the subpoena and
 - b. advise the NYSCB Central Office of the proper action to be taken. Such action might include photocopying of individual records and the delivery of such records to the Court issuing the subpoena.
 - c. If necessary, the OCFS Division of Legal Affairs' office will advise the Attorney General.
5. NYSCB Central Office will telephone the District Office to notify them of the result of the review by DLA.

In order to get protection under the provision of the Public Officers Law, employees who are served with process must submit the original document to the Attorney General's Office together with a request for representation within five days of being served by following the same procedure as outlined above.

FORM-3446A

New York State Office of Children and Family Services
NEW YORK STATE COMMISSION FOR THE BLIND

Prohibition on Redisclosure of Information Concerning Individuals with a Disability of Alcoholism or Substance Abuse

NOTE: This form **must be attached** to all disclosures of information concerning individuals with a disability of alcoholism or substance abuse.

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use to criminally investigate or prosecute any alcohol or drug abuse patient.

FORM-3446

New York State Office Children and Family Services
NEW YORK STATE COMMISSION FOR THE BLIND
RELEASE OF CONFIDENTIAL INFORMATION

Consumer Name

Identification Number

I hereby authorize the New York State Commission for the Blind to obtain or release the following information as necessary to effectively plan for and provide vocational rehabilitation services to me. I can change my mind about this release, except for actions already taken with my permission, by telling NYSCB in writing that I do not want any further information to be given out. My permission to release or obtain this information is only valid until _____ and cannot extend beyond one year from the date I sign this form. This permission will also end if my case is closed by NYSCB.

Type of Information: _____

Purpose and reason information is needed: _____

Name, Title, Agency and Address of person releasing this information:

Name, Title, Agency and Address of person receiving this information:

I understand that the specified information is privileged and confidential and for the exclusive use of those persons and agencies or facility employees involved in my rehabilitation program.

Consumer Signature (parent/guardian if minor)

Date

FORM-3446B

New York State Office of Children and Family Services

NEW YORK STATE COMMISSION FOR THE BLIND

Prohibition on Redisclosure of HIV or AIDS Related Information.

NOTE: This form **must be attached** to all disclosures of HIV and AIDS Related information.

This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. **A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure.**

1.03 CLIENT ASSISTANCE PROGRAM (CAP)

What is CAP?

The Client Assistance Program (CAP) is a statewide network of advocates available to assist New Yorkers with disabilities in gaining access to NYSCB services. The CAP program is administered by the New York State Commission on Quality of Care (NYSCQC).

When Should an Individual Contact CAP?

Client Assistance Programs located around the state can assist individuals at any point in their efforts to obtain training, employment and related services. For example, CAP can assist:

1. when an individual is applying for services or has questions about which services they are entitled to;
2. when an individual disagrees with decisions made by their counselor with regard to their goal and services;
3. when an individual has problems or delays in obtaining services, equipment and training;

4. if an individual objects to their case closure;

How Can CAP Assist an Individual?

CAP can review an individual's plan of service, discuss options, and act as their representative in negotiating solutions in training and service disputes. CAP can speed up the process by working with the NYSCB counselor. CAP can provide information and referrals to a wide range of service options that complement services. CAP can also provide technical assistance accessing Social Security work incentives; resolving defaulted student loans; applying for college financial aid; accessing health insurance and securing other related services.

CAP typically attempts to mediate and negotiate a resolution to a complaint. CAP can also represent an individual at informal meetings, and at more formal reviews. In cases where a court appeal is necessary, CAP can provide an individual with a lawyer.

Determination of Services to be Provided

The CAP agency has the discretion to determine when it is appropriate to provide services to an individual. A designated CAP agency is not obligated to assist a consumer or consumer-applicant when the CAP has determined that the individual's dispute lacks merit.

Notifying NYSCB Consumers About CAP: NYSCB Counselor's Role

NYSCB counselors are required to notify applicants and consumers about CAP at several times during the rehabilitation process. Notification should be provided in the individual's preferred format. A copy of the CAP brochure should be included with each notification. Documentation of the notification should be entered into the record of services (this could include either a case note or a copy of a letter sent to the individual). Specifically, notification must be made when:

1. an individual applies for services. The CAP brochure is shared with applicants at the intake interview. Information about CAP is also included in the NYSCB Handbook which is part of the Intake Packet.
2. an Individualized Plan for Employment (IPE) is prepared.
3. an applicant or consumer's case is closed.
4. there is a disagreement or dispute between the counselor and consumer.
5. a consumer requests an initial review, administrative review or administrative hearing.

1.04 APPEALS PROCESS AND PROCEDURES - GENERAL GUIDELINES

Policy

It is the policy of NYSCB to provide applicants, eligible individuals and recipients of vocational rehabilitation services, independent living services and adaptive living program services with the opportunity to appeal counselor decisions. In addition, participants in the Randolph-Sheppard Program may appeal any NYSCB decision or action pertaining to the BEP program.

Purpose

The Commission's objective in the appeals process is to reach a mutually agreeable solution with the consumer, in a timely manner at the least formal level possible. Initial Reviews, Administrative Reviews, Mediation and Administrative Hearings are part of the appeals process through which consumers can, upon request, obtain a reexamination of the appropriateness of actions taken by NYSCB regarding vocational rehabilitation services. However, consumers may choose to bypass the initial review, administrative review, and/or mediation processes and proceed directly to mediation and/or an administrative hearing.

Note 1

The policy and procedures governing the NYSCB appeals process through which members of the Randolph-Sheppard Program can, upon request, obtain a reexamination of the appropriateness of actions taken by NYSCB are contained in **The Handbook for Vending Facility Operators.**

Note 2

The policy and procedures governing the NYSCB appeals process through which consumers of the Children's Program can, upon request, obtain a reexamination of the appropriateness of actions taken are contained in the **NYSCB Children's Services Case Management System.**

Definitions

As used here, unless the context requires otherwise, these terms will have the meanings indicated below:

1. **Administrative Hearing** is a formal hearing conducted by one or more employees of the Office of Children and Family Services (OCFS) who are members of the OCFS State Fair Hearing Board in accordance with the

guidelines established in this policy.

2. **Administrative Law Judge** is the member of the OCFS State Fair Hearing Board assigned to conduct an administrative hearing.
3. **Administrative review** is an informal review conducted by NYSCB administrative staff in accordance with the guidelines established in this policy.
4. **Agency** means NYSCB
5. **Consumer** is a person who is receiving services from the agency or a person who has applied or attempted to apply for services from the agency (applicant or eligible individual).
6. **Initial review** is an informal review conducted by a senior counselor (or the district manager if the senior counselor was involved in the decision being reviewed), with a consumer and counselor or other appropriate NYSCB staff in an effort to resolve a consumer's dissatisfaction.
7. **Mediation** is a voluntary process between the consumer and the appropriate NYSCB staff with the goal of resolving a dispute with NYSCB. Mediation is conducted by a qualified and impartial mediator who is trained in mediation techniques. While mediation can be requested at any time, both parties must agree that the issue being disputed is one that can be addressed through mediation.
8. **Reviewer** means the agency staff member who conducts the administrative review.
9. **State Fair Hearing Board** is a group of persons established by OCFS and authorized under State law to review administrative hearing decisions that affect the provision of NYSCB's services and carries out the responsibilities of the impartial hearing officers in accordance with Federal regulations.

Consumers' Rights

All consumers have the right to appeal any counselor action or decision in the following situations:

1. the denial of an application or the right to apply for services provided by NYSCB;
2. the suspension, reduction or termination of services;
3. disagreements pertaining to the scope of services provided;
4. consumer allegation of coercive or otherwise improper conduct on the part of the counselor or other agency employee involved in the consumer's case;
5. any other disagreement between the consumer and counselor.

Time Frame for Requesting or a Review

A consumer must request a review no later than 60 days after being informed of the action or decision the consumer seeks to review, unless the consumer can show good cause as to why the review request could not be made within the 60 day time frame. The reason for granting a waiver should be documented in the record of services.

Notification of Policy to Consumers

This appeals policy and the names and addresses of individuals with whom to file an appeal will be communicated to all consumers, in their preferred format, through at least the following means:

1. A handbook identifying the consumer's rights and obligations, and information about the Client Assistance Program (CAP), and containing instructions for initiating an appeal, will be given to all individuals who apply for service and will be available at all field offices.
2. A statement of the consumer's appeal rights will be included in or annexed to:
 - a. the individualized plan for employment (IPE), including amended IPEs and
 - b. letters sent to the consumer at case closure
3. At the initial meetings with the interviewer and/or counselor or other appropriate staff and at the time of reduction, suspension or cessation of vocational rehabilitation services, consumers will be counseled about their rights and the actions necessary to begin the appeal process. This will be documented in the record of services.

Continuity of Service

Pending a resolution through mediation or a final determination of a review (unless the consumer and reviewer otherwise agree), services currently provided for a consumer will not be suspended, reduced or terminated except:

1. where services have been obtained through misrepresentation, fraud, collusion, or criminal conduct by the consumer or the consumer's representative, or
2. continuation of services would result in a violation of Federal and/or State law or regulations.

If an individual appeals a case closure decision, the individual's case status should be returned to the status just prior to case closure, pending the outcome of the appeal.

Right to Representation

Any party who requests an administrative review, mediation or administrative hearing under these procedures will be notified in writing that she/he has the right to be accompanied and represented by an authorized representative such as legal counsel, a Client Assistance Program representative, lay advocate, relative or other spokesperson. All expenses caused by such representation, including but not limited to legal fees, will be the responsibility of the consumer.

If the consumer elects to be represented by another individual during an appeal, the consumer will inform the agency, in writing. The consumer may withdraw authorization for representation at any time by giving written notification to the agency of such withdrawal.

The consumer may be accompanied at a review, mediation or hearing by another individual, without prior written notification, if such individual does not act as representative. The reviewer, mediator or impartial hearing officer will have the right to exclude any individual whose presence is disruptive to the review, mediation or hearing.

Access to the Consumer's Record of Services and Other Information

At the consumer's (or his/her representative's) request, NYSCB will provide copies of pertinent laws, regulations, policies, procedures or record of services materials, in the consumer's preferred medium (to the extent possible), in conjunction with an administrative review, mediation or administrative hearing. These requests must be signed by the consumer or authorized representative and should be submitted in writing to the district office. The first 20 pages of information will be provided free of charge. Any additional pages will be provided at a cost of 25 cents per page.

Time Limitations

1. **Date of filing:** All written communications to and from the agency will be considered filed on the date they are postmarked or in the case of oral requests, the date they are received by NYSCB.
2. **Computation of time:** Computation of any period of time to which reference is made in this part will begin on the first day following the day on which the act which initiates the action occurs. The term days will mean calendar days unless otherwise noted.
3. **Extension of time:** The time limits set forth in this policy can be extended by the reviewer, mediator or impartial hearing officer when good cause is shown by one party or at the request of both parties. All requests for extensions will be made in writing by the consumer to the reviewer, mediator or impartial hearing

officer, before the expiration of the period originally prescribed or as previously extended.

Use of an Interpreter

Interpreters fluent in the dominant language of the consumer or skilled in communicating with individuals with disabilities who rely on special modes of communication will be provided, at agency expense, at the initial review, administrative review, mediation and administrative hearing, when requested and necessary.

Other Expenses

Round trip transportation for the consumer to attend an initial review, administrative review, mediation or administrative hearing will be provided at agency expense only within New York State. Waivers to obtain out-of-state travel may be provided by the district manager if such waiver would expedite the appeals process.

The appropriate transportation carrier and class for each consumer will be determined by the agency.

Lodging and other incidental expenses related to the consumer's attendance at a review, mediation or hearing will not be provided at agency expense.

Note

If a waiver is not granted and the consumer does not wish to postpone the review, mediation or hearing he/she may:

1. travel at his/her own expense; or
2. appoint another individual to represent him/her

Steps In The Appeals Process

NYSCB provides consumers with both informal and formal means of appealing counselor decisions.

1. An **initial review** is an informal review conducted by the senior counselor (or the district manager if the senior counselor was involved in the decision being reviewed) with the consumer and counselor or other appropriate NYSCB staff in an effort to resolve a consumer's dissatisfaction.
2. An **administrative review** is an informal review conducted by NYSCB administrative staff in accordance with the guidelines established in this policy.

3. **Mediation** is a voluntary process between the consumer and the appropriate NYSCB staff with the goal of resolving a dispute with NYSCB. Mediation is conducted by a qualified and impartial mediator who is training in mediation techniques. While mediation can be requested at any time, both parties must agree that the issue being disputed is one that can be addressed through mediation.
4. An **administrative hearing** is a formal hearing conducted by one or more employees of the Office of Children and Family Services (OCFS) who are members of the OCFS State Fair Hearing Board in accordance with the guidelines established in this policy.

The informal reviews give consumers and agency staff the opportunity to resolve differences more quickly than during the formal administrative hearing process. Consumers may choose to seek resolution of differences through mediation and/or the administrative hearing process without first utilizing the initial review or administrative review processes. Regardless of whether the individual chooses to pursue an informal review process, an administrative hearing, if held, must be held within 60 days of the initial request for a review unless both parties agree to a specific time extension.

Requesting a Review

A request for a review will be made orally or in writing to the district manager using the Request for an Appeal form. A letter containing the information in the Request for an Appeal form will also be considered a request for a review. Upon request by the consumer, the request for a review will be taken by dictation, using the Request for an Appeal form, by NYSCB staff at the district office. The consumer's signature should be obtained by mail if the request is made via telephone.

The Request for an Appeal form includes the following information:

1. consumer's name, address, phone number and preferred format,
2. representative's name, address and phone number,
3. district office and phone number of NYSCB counselor,
4. description of the decision or action being appealed,
5. type of review requested; and
6. the consumer's preferred mode of communication

The district manager will forward a copy of the Request for an Appeal to the NYSCB Appeals Coordinator in Central Office (even if the request was made orally and the consumer has not yet signed the form). If an initial review is requested, the district manager will make arrangements for the initial review to take place. If an administrative review is requested, the Coordinator will forward the request to the appropriate individual in Central Office. If mediation is requested, the Coordinator will initiate the procedure for scheduling mediation.

In addition, in order to meet the required time frame for holding an administrative hearing, the Coordinator will send a copy of the Request for Appeal form (regardless of the type of review requested) to the Bureau of Special Hearings so that an administrative hearing can be scheduled. The Bureau of Special Hearings will provide a copy of the scheduling notice to the appropriate NYSCB District Manager and to the Appeals Coordinator.

If the disputed issue is resolved at or before an initial review, administrative review or through mediation, the administrative hearing will be cancelled. The NYSCB counselor (or other NYSCB representative) will ask the consumer to sign a Cancellation of an Appeal form indicating that the dispute has been resolved and that the request for an administrative hearing is being withdrawn. The counselor or other NYSCB representative will forward the form to the Bureau of Special Hearings with a copy to the appropriate NYSCB District Manager and the Appeals Coordinator. For information regarding withdrawal from an initial review, mediation or administrative review, see separate guidelines in each section of this policy.

1.04 APPEALS PROCESS AND PROCEDURES - INITIAL REVIEW

Initial Review

The first option available to applicants and consumers in the appeals process is the initial review. Though the initial review is a highly recommended option, it is not a required step in the appeals process.

The Initial Review Process

The initial review will be scheduled at a time and place which is convenient for all parties. The senior counselor will hear facts of the case from the consumer and counselor and render a decision. The decision will either support the counselor's decision or recommend an alternative solution to the issue. The consumer will, at this time, be informed of his/her right to an administrative review, mediation and an administrative hearing.

If the senior counselor was involved in the decision which led to the consumer's request for an initial review, he/she will remove him/herself from the initial review and the district manager will conduct the initial review.

The counselor will summarize the issues and results of the initial review in a case note to be reviewed and initialed by the senior counselor or district manager, whomever rendered the decision.

If the issue of disagreement is resolved prior to the initial review, the consumer will notify the NYSCB senior counselor and request that the initial review be cancelled.

1.04 APPEALS PROCESS AND PROCEDURES - ADMINISTRATIVE REVIEW

Administrative Review Introduction

The second option available to consumers in the appeals process is the administrative review. The administrative review is another type of informal review, however it is not a required step in the appeals process. The following specific guidelines apply only to the Administrative Review process.

Scheduling an Administrative Review

Within 5 days after the receipt of a request for an administrative review, the Associate Commissioner will set a date, time and site for the review that is convenient for all parties. The date set will be within 15 days of the receipt of the request for an administrative review.

Notice of Scheduling

Notice of a scheduled administrative review will be mailed to the consumer in the medium of his/her choice (large print, Braille, tape) by NYSCB within sufficient time for the consumer to receive the notice no later than seven days before the review. This time requirement may be waived upon agreement of all parties. The notice will include but not be limited to the time, date, place and nature of the review, the name of the reviewer and an explanation of the review procedure and the consumer's right to representation.

Request for Rescheduling

Prior to the day on which the administrative review is scheduled, a reviewer may change the date, time, or place of the review upon written notice to the parties involved when:

1. good cause is shown by one party, or
2. at the request of both parties.

Rule

When a consumer chooses to be absent from his/her administrative review, she/he will be notified, in writing, by the local district manager that:

1. the information presented by the consumer's representative will be considered to be complete and fully representative of the consumer's views;
2. the decision(s) made at the administrative review will be made using the information presented by the consumer's representative; and
3. the consumer will not be offered another opportunity to seek remedy of the same issue through the administrative review process.

Default

The consumer's failure to appear at a scheduled review will be deemed a waiver to the right to a review, unless the consumer applies promptly to the reviewer for relief from his/her default. Such application will include documentation of the reasons for the consumer's failure to appear and will be granted if the consumer establishes good cause for such failure. The consumer's failure to appear at the administrative review has no bearing on the consumer's right to mediation or an administrative hearing.

Withdrawal from an Administrative Review

The parties to an administrative review may resolve the disagreement(s) at issue prior to an administrative review. If, as a result of this resolution, the consumer is satisfied and wishes to withdraw the request for the administrative review, the consumer will complete a Cancellation of an Appeal form or orally dictate their intent to withdraw to a NYSCB staff member. However, an administrative review will not be delayed or canceled because of the possibility of a negotiated agreement, unless the consumer requests a delay or cancellation.

Identity of the Reviewer

The reviewer for the administrative review will be designated by the Associate Commissioner of NYSCB. The designated reviewer must not have been involved in decisions or actions that resulted in the consumer's request for administrative review.

Duties and Powers of the Reviewer

The reviewer will conduct an impartial review of the issues and evidence presented at the review and file a fact finding report with the Associate Commissioner. The fact finding report must be submitted to the Associate Commissioner within seven days of completion of the review. The reviewer will request a statement of the specific issues from the consumer and NYSCB staff, including, at a minimum, the individual's vocational rehabilitation counselor.

Record of the Review

A fact finding report will be prepared by the reviewer. It will contain the following elements:

1. a statement of the issue or issues involved, and
2. a clear and complete statement of fact as supported by evidence presented at the review.

Rendering a Decision

The Associate Commissioner will render a decision and give notice of the decision within seven days from the completion of the review.

Notice of the Decision

1. The Associate Commissioner will mail a copy of the decision to:
 - a. appropriate agency staff
 - b. the consumer in the medium of his/her choice (large print, braille, tape, disk) and
 - c. the consumer's authorized representative, if any.
2. If the decision is favorable to the consumer, the Associate Commissioner will notify the consumer of the right to prompt implementation, and will advise the consumer to contact the appropriate district office senior counselor if the decision is not carried out promptly and fully.
3. If the decision is adverse to the consumer, the Associate Commissioner will include a statement in the decision informing the consumer of the right to mediation or an administrative hearing.

Note

Counselors will file a copy of the decision in the consumer's record of services.

Implementation of the Decision

The counselor or other appropriate staff will begin implementation of the decision within 30 days of its receipt unless the consumer requests an administrative hearing as set forth below.

1.04 APPEALS PROCESS AND PROCEDURES - MEDIATION

Mediation: Introduction

Mediation is the third option in the appeals process. Mediation can be requested even if an initial review and/or administrative review has not taken place. The following specific guidelines apply only to the Mediation process.

Description of the Mediation Process

Mediation provides an opportunity for NYSCB and consumers to work together to resolve a disagreement with the assistance of a trained mediator. By asking questions during the mediation session, the mediator works to open a dialogue between NYSCB and the consumer. The goal of mediation is for NYSCB and the consumer to reach an agreement that conforms to the Rehabilitation Act, Federal regulations, State law and NYSCB policy.

Mediation is a voluntary option for both NYSCB and the consumer. Participation in mediation will not delay or deny the opportunity for an administrative hearing or deny any other right afforded under the Rehabilitation Act, although the parties may agree to postpone the administrative hearing pending completion of the mediation process. While mediation can be requested at any time, both parties must agree that the issue being disputed is one that can be addressed through mediation.

Scheduling Mediation

Mediation will be requested using the Request for an Appeals form. The district manager will send the form to the Appeals Coordinator in Central Office. The Coordinator will obtain a Release of Confidential Information form from the consumer in order to share their name, address, phone number, information about their representative and a brief statement of the issue to be mediated, with the dispute resolution center or other entity that will be scheduling the mediation. The Appeals Coordinator will contact the dispute resolution center or other entity in the appropriate county and request that mediation be scheduled.

Staff at the dispute resolution center or other entity will schedule the mediation session and will notify all parties to the mediation. The mediation session will be scheduled in a timely manner and will be held in a location that is convenient to both parties in the dispute taking into consideration the need to identify an appropriate site and any need for accessible accommodations. Notification of scheduling will be made in writing to all parties. Notification to the consumer will be made in the consumer's preferred format.

Withdrawal from Mediation

The parties to the mediation may resolve the issues causing the disagreement prior to the scheduled mediation. If, as a result of this resolution, the consumer is satisfied and wishes to withdraw the request for the mediation, the consumer will complete a Cancellation of an Appeal form or orally dictate their intent to withdraw to a NYSCB staff member. However, mediation will not be delayed or canceled because of the possibility of a negotiated agreement, unless the consumer requests a delay or cancellation.

Confidentiality

The mediation proceeding is confidential; discussions occurring during mediation are not admissible in any subsequent hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the mediation process.

Representation and Presentation of Evidence

Individuals can select a person to accompany them to and represent them during the mediation session. However, it is critical to the success of mediation that the consumer participate as fully as possible in the mediation session. All costs associated with such representation are the responsibility of the individual. Individuals and/or their representatives can submit information to support their position.

NYSCB will be represented by the individual or individuals knowledgeable about the issue being disputed. NYSCB representatives will be designated by the Director of Field Operations in consultation with the Regional Coordinator and/or the appropriate District Manager.

Costs

NYSCB will bear the cost of the mediation process including round trip transportation for the consumer to attend the mediation, within New York State.

Waivers to obtain out-of-state travel may be provided by the district manager if such waiver would expedite the appeals process. The appropriate transportation carrier and class for each consumer will be determined by the agency. Lodging and other incidental expenses related to the consumer's attendance at mediation will not be provided at agency expense.

As noted above, all costs associated with representation at mediation are the responsibility of the individual.

Selection of Mediators

Mediation will be conducted by a qualified and impartial mediator who is trained in mediation techniques. Mediators will be selected from a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of vocational rehabilitation services. This list will be maintained by NYSCB.

Mediation Agreement

The agreement reached by the parties will be described in a written mediation agreement developed by the parties with the assistance of the mediator and will be signed by both parties. NYSCB representatives may not agree to any resolution that is in conflict with Federal or State law or regulations or NYSCB policy. The implementation will commence within 30 days of the agreement being signed by the parties. The mediator will provide copies of the agreement to NYSCB and to the consumer in the consumer's preferred format and to the consumer's representative, if any. A copy of the mediation agreement will be placed in the consumer's record of services

1.04 APPEALS PROCESS AND PROCEDURES – ADMINISTRATIVE HEARING

Administrative Hearing: Introduction

An administrative hearing is the final level of appeal available to consumers through NYSCB. An individual can choose to have an administrative appeal and bypass all other steps in the appeals process. The following specific guidelines apply only to the Administrative Hearing process.

Scheduling an Administrative Hearing

The Appeals Coordinator will forward all Requests for an Appeal to the Bureau of Special Hearings. An administrative hearing will be scheduled each time an appeal is requested (regardless of the type of appeal requested, in order to meet Federal timeframes for holding an administrative hearing). Within 15 days after the receipt of a request for a review, the Commissioner of OCFS will schedule a date, time and site for the administrative hearing which is convenient for all parties. The date scheduled will be within 60 days of the receipt of the request for a review unless a specific extension of time is agreed upon by the parties.

Notice of the Hearing

Notice of the scheduled hearing will be mailed to all parties by the Bureau of Special Hearings at least six working days before the hearing. The notice will include the time, date, place and nature of the hearing. The consumer's copy will be prepared in the medium of his/her choice (large print, Braille, tape or disk).

Request for Rescheduling

Prior to the day on which an administrative hearing is scheduled, the Administrative Law Judge assigned to conduct the administrative hearing may change the date, time or place of the hearing upon written notice to the parties involved when:

1. good cause is shown by one party, or
2. at the request of both parties.

Default

The consumer's failure to appear at a scheduled hearing will be deemed a waiver of the right to a hearing, unless the consumer applies promptly to the State Fair Hearing Board for relief from his/her default. Such application will include documentation of the reasons for the consumer's failure to appear. The State Fair Hearing Board and/or the Administrative Law Judge assigned to conduct the administrative hearing will determine whether the consumer has established good cause for such failure and vacate the default.

Withdrawal from an Administrative Hearing

The parties to an administrative hearing may resolve the issues causing the disagreement prior to an administrative hearing. If, as a result of this resolution, the consumer is satisfied and wishes to withdraw the request for an administrative hearing, the consumer will submit a signed Cancellation of Administrative Hearing withdrawing the request for the administrative hearing. However, an administrative hearing will not

be delayed or canceled because of this possibility of a negotiated agreement, unless the consumer requests a delay or cancellation.

Subpoenas

At the request of any party to the proceeding, the Administrative Law Judge assigned to conduct the administrative hearing may issue subpoenas in the name of the agency, requiring the:

1. attendance and testimony of witnesses, and/or
2. production of documents and other evidence.

Rights of the Consumer

The consumer will have the right to:

1. present and establish all relevant facts by oral testimony and documentary evidence;
2. advance any pertinent arguments without undue interference;
3. question or refute any evidence or testimony, including an opportunity to confront and cross-examine adverse witnesses;
4. examine and introduce pertinent evidence from the record of services; and
5. examine and introduce any other pertinent agency documents as determined by the Administrative Law Judge assigned to conduct the administrative hearing.

Duties and Powers of the State Fair Hearing Board

The member or members of the State Fair Hearing Board assigned to conduct the administrative hearing will:

1. define the issues,
2. receive and consider all relevant and reliable evidence,
3. ensure an orderly presentation of the evidence and issues, and
4. oversee the preparation of the record of the proceedings.

The final hearing decision will be made either collectively or by a majority vote of the State Fair Hearing Board and will be:

1. a fair, independent and impartial decision
2. based solely upon the issues and evidence presented at the hearing,
3. made in accordance with the relevant provisions of statutes, regulations, the approved VR State Plan and the NYSCB Vocational Rehabilitation Services Manual.

The Administrative Law Judge assigned to conduct the administrative hearing will have the powers provided by the State Administrative Procedure Act, Section 304.

Evidence

The introduction of evidence will be governed by the provisions of the State Administrative Procedure Act, Section 306. All documents and other evidence offered or taken for the record will be open to examination by the parties.

Record of the Hearing

A record of the administrative hearing will be prepared in accordance with the provisions of the State Administrative Procedure Act, Section 302, and will contain the following elements:

1. a statement of the issue or issues involved in the hearing;
2. a clear and complete statement of fact as supported by evidence presented at the hearing;
3. reference to all laws, regulations and other legal bases for the decision;
4. a concise statement of the conclusions drawn, and the basis for the decision;
5. a clear statement of the actions to be taken to implement the decision.

Administrative Hearing Decision

The State Fair Hearing Board will issue a full written report of the findings and the grounds for the decision within 30 days of the completion of the hearing. Copies of his/her decision will be sent to the:

1. Associate Commissioner of NYSCB,
2. consumer, in the medium of his/her choice (large print, Braille, tape or disk), and
3. the consumer's authorized representative, if any.

If the decision is favorable to the consumer, the Associate Commissioner of NYSCB will notify the consumer of the right to prompt implementation, and will advise the consumer to contact the appropriate district office manager if the decision is not carried out promptly and fully.

If the decision is adverse to the consumer, the Associate Commissioner of NYSCB will include a statement in the decision informing the consumer that all avenues of the administrative appeal process within the agency have been exhausted and will identify avenues through which further review may be pursued.

Note

The counselor will file a copy of the decision in the consumer's record of services.

Implementation of the Decision

The counselor or other appropriate staff will begin implementation of the decision within 30 days of its receipt.

Judicial Review

When an individual seeking or being provided vocational rehabilitation is dissatisfied with the final decision resulting from an administrative hearing, he/she may file a petition for judicial review by the courts.

NYSCB Staff Rights

With respect to the appeals process and procedures outlined in this section, NYSCB employees will be afforded all the rights guaranteed by their collective bargaining agreement, OCFS policies and applicable law.

Request for an Appeal Form

This form is filed by a consumer when requesting an appeal of a NYSCB decision, such as an initial review, mediation, administrative review, etc. The form indicates that the consumer is aware of their appeal rights and the Client Assistance Program. (See the Request for an Appeal Form in your office for additional information.)

Cancellation of an Appeal Form

If the consumer chooses to withdraw their request for one of the types of review outlined in this section, they may file a Cancellation of Appeal form. (See Cancellation of an Appeal form in your office for additional information.)

1.05 GUIDELINES FOR ORAL AND WRITTEN COMMUNICATIONS WITH CONSUMERS

Policy

It is the expectation of NYSCB that NYSCB and contract agency staff communicate with consumers in their preferred format.

Communications with Individuals Who Are Deafblind

Although it is important at all points in the rehabilitation process to communicate effectively with consumers, this is especially important at the time of case closure for an individual who is deafblind. It is often at case closure that consumers most require information regarding their due process rights and the availability of the Client Assistance Program (CAP).

For this reason, it is mandatory that counselors have a face-to-face meeting with any deafblind consumer prior to closing that consumer's case.

For individuals who communicate through sign language, it is mandatory that a certified interpreter be present during both the initial interview and the closure interview. This procedure should be followed regardless of the counselor's signing skills. Exceptions may be made by the District Manager when the counselor holds the title Vocational Rehabilitation Counselor (Manual Communications). At other times during the rehabilitation process, counselors should consider whether or not the services of a certified interpreter are needed. During the interviews, the counselor should stop frequently to check for the consumer's understanding and confirm that understanding through the interpreter.

The closure interview should be followed by correspondence, in the consumer's preferred medium and language reiterating:

1. the reasons for the closure
2. the availability of post-employment services, if appropriate
3. a reminder of the availability of the appeals process and assistance through the Client Assistance Program (CAP)
4. referral action to other resources, if appropriate

The counselor must take every action required to ensure that the consumer and the counselor understand each other. Special arrangements may also be needed for individuals who are deafblind and do not rely on sign language for communication, for example:

1. presence of an oral interpreter to convey the counselor's speech if the consumer is unable to understand the counselor's speech or read his or her lips
2. use of a teletouch machine for individuals relying on braille for communication

See Section 8.07 for further information regarding the use of sign-language interpreters.

Communications with Individuals who are Non-English Speaking

In order for counselors to communicate effectively with individuals who do not speak English, it may be necessary to secure the services of a foreign language interpreter during the initial interview and during other contacts with the consumer.

If the counselor is fluent in the language that the consumer speaks, obtaining the services of an interpreter would not be necessary. In some situations, a family member or friend can assist the consumer in his or her communications with the counselor, however, this may not always be the most appropriate option.

When an interpreter is used, the counselor should stop frequently to check for the consumer's understanding and confirm that understanding through the interpreter.

See Section 8.08 for further information on the use of foreign language interpreters.

Providing Written Communications in the Consumers Preferred Medium

In order to communicate effectively in writing with consumers, it is important that consumers receive written materials in a format that is accessible to them. Counselors are required to ask consumers, at the time of their initial contact with the consumer, to identify their preferred format for receipt of written communications. This information should be entered in a prominent place in the consumer's record of service and is also entered as a required field on the Client Profile Form. In addition, since the preferred format may change during the time a consumer is involved with NYSCB, the counselor should periodically check with the consumer to learn whether or not the initially identified preferred format is current. If the preferred format changes, the record of services should be updated and the updated information should be entered into the Client Tracking System using the Client Profile Form. Once the consumer's preference has been identified, the counselor must send written communications to the consumer in the identified format.

1.06 INFORMED CHOICE

Overview of Informed Choice

Each individual who is referred for NYSCB services must be given the opportunity to make informed choices about the selection of the goal, objectives and plan for services and the types of services and service providers. The opportunity to make informed choices continues throughout the rehabilitation process. The counselor must provide or assist the individual in obtaining information necessary to make an informed choice about specific services needed to reach the vocational goal, including information about providers. At a minimum, this information must include the cost, accessibility, and duration of services. In addition, information about consumer satisfaction with services,

to the extent it is available, must be shared with the individual. When describing providers, consumers must also be made aware of the types of services offered by the provider and the extent to which services are provided in an integrated setting.

With respect to the provision of services, integrated setting means 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.

Definition of Informed Choice

Informed choice is a decision-making process in which the individual analyzes relevant information and selects, in partnership with the rehabilitation counselor, a vocational goal, intermediate rehabilitation objectives, VR services, and VR service providers. Through informed choice, the consumer participates fully in considering and choosing options for training and services to obtain employment and options to explore career advancement and upward mobility.

Policy

NYSCB will assist consumers in developing and gathering the information necessary for making informed choices during the entire rehabilitation process from application, through case closure, as part of the counseling and guidance provided to all NYSCB consumers.

Facilitating Informed Choice

NYSCB is committed to transforming the role of counselor into an evolving supportive partnership in which the consumer is actively involved in making career decisions, developing their Individualized Plan for Employment (IPE) and putting those decisions into action.

NYSCB is required to provide individuals with information about services and service providers that includes, at a minimum, information about the types of services, the cost and duration of services, accessibility, consumer satisfaction (as available), qualifications of the individuals providing the service and the degree to which the service is provided in an integrated setting.

Informed choice is provided primarily through the counseling and guidance provided by the NYSCB counselor. Each district office will develop, with support of the NYSCB Program and Policy Unit, statewide and local materials or resources to enhance informed choice by consumers. These materials and resources may include the use of regional lists or databases of services providers, results of consumer satisfaction

surveys conducted for specific services, access to references from consumers who received specific services, local consumer and advocacy groups, and information on the qualifications or certification of service providers.

When necessary during counseling and guidance, the counselor and consumer will gather the information necessary for the consumer to make an informed choice about a particular service or service provider. Any NYSCB-developed materials and resources will be provided using accessible formats preferred by the consumer, including cassette tape; large print; braille or computer disk.

This information will be provided to the consumer at any decision point where it would be necessary for the consumer to make an informed choice. It has particularly strong relevance for the development of the IPE, but can also be applied during the entire rehabilitation process.

Counselor Strategies for Enhancing Informed Choice

The counselor enhances informed choice by guiding the consumer in making decisions and supporting the consumer in putting decisions into action. Counselors can use the following strategies to enhance informed choice by consumers:

1. Get to know the individual's strengths, interests, abilities, priorities and resources.
2. Share information about NYSCB vocational rehabilitation services, occupational and labor market information, and a wide range of potential services, service providers and options. Clearly explain the scope and limits of vocational rehabilitation services.
3. Provide support, assistance and opportunities to visit service providers and gather experiential information necessary to develop the IPE.
4. Assist with identifying career goals and job opportunities of interest.
5. Maintain frequent and on-going communication.
6. Assess individual satisfaction with NYSCB and affiliated services on a regular basis, as part of the counseling and guidance process.

Consumer Responsibility

Consumers are responsible for the choices they make while pursuing their vocational goals and for keeping the commitments necessary to benefit from services. As part of their involvement with NYSCB, they are expected to make choices that contribute to

their career development and lead to achieving a vocational goal. Consumers should be encouraged to use the following strategies for self-determination in the vocational rehabilitation process:

1. Gather information as necessary to get to know the services available both locally and state-wide.
2. Explore a variety of potential resources for gaining employment.
3. Communicate and meet frequently with the VR counselor and other affiliated staff who are available to assist the consumer.
4. Ask questions about the services being provided and ask for explanations of any professional jargon.
5. Determine present and future options by taking an active role in developing the capabilities necessary for employment.

NYSCB will provide support services for individuals who require assistance in exercising informed choice, such as individuals with cognitive or other disabilities. Such assistance may be obtained through family members, peer counselors or advocates, as necessary.

Federal Regulations

This policy is based on Federal Regulation 34 CFR Section 361.52.