

SUBCHAPTER 63F - VOCATIONAL REHABILITATION

SECTION .0100 - SERVICES

10A NCAC 63F .0101 ELIGIBILITY FOR AND AUTHORIZATION OF SERVICES

(a) An Individualized Plan for Employment shall be developed to provide services to applicants to the vocational rehabilitation program who meet the following criteria:

- (1) the applicant for services has a physical or mental impairment;
- (2) the physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and
- (3) the applicant requires vocational rehabilitation services in order to prepare for, secure, retain, advance in, or regain employment.

(b) It shall be presumed that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services unless it can be demonstrated through clear and convincing evidence that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability.

(c) Applicants who have been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act shall be presumed eligible for vocational rehabilitation services; however, the applicant shall intend to achieve an employment outcome.

(d) Authorization of Services:

- (1) The Division shall issue a written authorization for services prior to or simultaneously with the provision of the service. A copy of the authorization shall be retained in the case file.
- (2) The Division shall authorize services that are required for a consumer to participate in an assessment to determine eligibility for services. The Division shall also authorize services required for a consumer to complete the goals identified on his or her Individualized Plan for Employment (IPE).
- (3) Authorizations shall be issued based on availability of funds.

History Note: Authority G.S. 134B-157; 34 C.F.R. 361.1; 34 C.F.R. 361.3; 34 C.F.R. 361.42(a); 34 C.F.R. 361.45; Eff. February 1, 1976; Amended Eff. November 8, 1976; June 25, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; Readopted Eff. October 1, 2018.

10A NCAC 63F .0102 TRAINING AND TRAINING MATERIALS

(a) The Division shall furnish training to all eligible individuals to the extent necessary to achieve their vocational rehabilitation outcome and to the extent that entry level qualifications of the job, profession, or employment are achieved.

(b) Training provided by the Division shall include vocational, prevocational, personal adjustment training, and other rehabilitation training that contributes to the determination of the rehabilitation potential or to the individual's personal and vocational adjustment and it shall cover training provided directly by the Division or procured from other public or private training facilities, including community rehabilitation programs.

(c) The Division shall provide necessary books and other training materials to applicants accepted for evaluation of the rehabilitation potential and to financially eligible consumers.

(d) The Division shall provide financial support for post-secondary education of consumers under the following terms and conditions:

- (1) Financial support for consumers attending institutions of higher learning shall not exceed the maximum rate for tuition and fees established at State-supported colleges and universities in North Carolina.
- (2) Requests for support shall be considered only when the consumer has applied for grants and scholarships at the accepting institution. The Division shall deduct the grant amount from the consumer's training allotment.
- (3) Consumers who are sponsored for an undergraduate degree shall not receive more than 10 semesters or 15 quarters of sponsorship to complete their undergraduate degree or five

semesters/eight quarters to complete a community college program. The Division may grant an exception to the semester or quarter requirements when necessary to accommodate the special training needs of consumers with severe disabilities.

- (4) Consumers who are sponsored for undergraduate programs shall maintain a grade point average (GPA) of 2.0. Agency sponsorship shall be withdrawn from any consumer in an undergraduate program whose GPA falls below 2.0 for two consecutive semesters or quarters. If the consumer continues in the educational institution under his or her own sponsorship and brings his or her cumulative GPA to 2.0, the consumer may again be considered for sponsorship through the VR Program of the agency. Consumers under agency sponsorship for graduate or professional programs shall maintain a grade point average commensurate with the standards established by the educational institution they are attending for degree requirements. Agency sponsorship shall be withdrawn from any consumer in graduate or professional programs whose GPA falls below the standards established by the educational institution for degree requirements for two consecutive semesters or quarters. If the consumer continues in the educational institution under his own sponsorship and brings his cumulative GPA to the standard established by the educational institution, the consumer may again be considered for sponsorship through the VR Program of the agency. Consumers may receive agency sponsorship for vocational training or on-the-job training outside of programs offered in undergraduate, graduate, and professional schools. A consumer who is participating in such a program shall maintain grades or standards of performance commensurate with the standards established by the institution or trainer for satisfactory completion of the training program within an established time frame. The agency shall not sponsor a consumer in a vocational training or on-the-job training program for more than one additional unit of time as defined by the particular institution or trainer in order to complete the program. The Division may grant an exception to the length of training sponsorship when necessary to accommodate the special training needs of consumers with severe disabilities.
- (5) The Division may provide graduate training for consumers when the training is required to enter a position. The consumer's case file shall contain a letter from an official of the appropriate graduate school of higher learning designating the number of semesters or quarters required to achieve the graduate degree. The Division shall not sponsor consumers in excess of one quarter or one semester above that specified in the letter as a time required to receive the graduate degree. The Division may grant an exception to the length of training when necessary to accommodate the special training needs of consumers with severe disabilities.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.42; 34 C.F.R. 361.47; C.F.R. 361.48(f); Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. February 1, 1982; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Readopted Eff. October 1, 2018.

10A NCAC 63F .0103 PHYSICAL AND MENTAL RESTORATION SERVICES

(a) The following physical and mental restoration services may be provided to consumers if required in order to complete an assessment for the purposes of determining eligibility or as part of an Individualized Plan for Employment for consumers determined eligible for vocational rehabilitation services:

- (1) surgery or treatment;
- (2) psychological and psychiatric treatment;
- (3) dental treatment;
- (4) nursing services;
- (5) hospitalization (either in-patient or out-patient care) and clinic services;
- (6) drugs and supplies;
- (7) prosthetic devices essential to obtaining or retaining employment;
- (8) physical therapy;
- (9) occupational therapy;
- (10) medically directed speech or hearing therapy;

- (11) eyeglasses, lenses, and visual aids including the services necessary to prescribe and train in the use of specialized visual aids;
 - (12) treatment of medical complications and emergencies, either acute or chronic, which are associated with or arise out of the provision of physical restoration services, or are inherent in the condition under treatment; and
 - (13) other medical or medically related rehabilitation services.
- (b) The Division may furnish physical restoration services to eligible individuals if the following criteria are met:
- (1) The clinical status of the individual's condition is stable or slowly progressive (i.e., the condition must not be acute or transitory); and
 - (2) Physical restoration services are likely to eliminate or substantially reduce the impairment that constitutes an impediment to employment within a reasonable period of time.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.5(b)(40);
 Eff. February 1, 1976;
 Readopted Eff. November 16, 1977;
 Amended Eff. August 1, 2002; February 1, 1986;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0104 TRANSPORTATION

- (a) The Division shall furnish transportation to eligible individuals and to members of their family, in connection with the provision of diagnostic and other services when such transportation is necessary to the individual's vocational rehabilitation.
- (b) Such transportation includes:
- (1) costs of travel and subsistence during travel (or per diem allowance in lieu of subsistence) for eligible consumers and their attendants or escorts, where such assistance is needed; and
 - (2) relocation and moving expenses necessary for the achievement of a job after it is determined that the eligible consumer has adjusted to the employment situation and the job is permanent.
- (c) The Division shall pay an amount representing the down payment of the purchase price of an automobile for an eligible consumer who has been determined to be rehabilitated when the employment goal requires the individual to travel in the performance of his responsibilities and the employment goal is at or above the substantial gainful activity level as defined by the Social Security Administration. The Division shall not:
- (1) make monthly automobile payments; or
 - (2) retain title to the automobile.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(h) and 361.5(b)35;
 Eff. February 1, 1976;
 Amended Eff. August 1, 1976;
 Readopted Eff. November 16, 1977;
 Amended Eff. August 1, 2002; February 1, 1982;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0105 MAINTENANCE

- (a) Maintenance shall be provided by the Division only in order to enable an applicant or eligible consumer to derive the full benefit of other vocational rehabilitation services being provided. Service costs shall be limited to the amount of increased costs that are in excess of the normal expenses that are necessitated by the applicant or the eligible consumer's participation in a rehabilitation program.
- (b) The major types of living expenses covered by maintenance payments are as follows:
- (1) board;
 - (2) room;
 - (3) laundry;
 - (4) clothing; and
 - (5) other subsistence expenses necessary to achieve the eligible consumer's vocational rehabilitation outcome.

(c) The Division may provide maintenance or partial maintenance following placement only until the eligible consumer receives his first full minimum remuneration. In case of a self-employed person, maintenance may not exceed a period of 30 days.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.41(a)(5); 34 C.F.R. 361.48(g); 34 C.F.R. 361.5(b)(35); Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. February 1, 1982;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0106 JOB PLACEMENT

(a) Successful employment in a competitive integrated setting is the ultimate goal of the vocational rehabilitation program and the goal toward which all services are directed. Division staff shall assist eligible consumers pursue employment in a job that is, to the greatest extent possible, consistent with that consumer's skills, interests, needs, and informed choice. Job seeking skills training, job development, job placement, on-the-job training, supported employment, follow-up after placement, and employer education about vision loss and other employment-related incentives shall be used by staff in providing job placement service.

(b) The case file shall be closed for a consumer who has achieved a successful employment outcome when the following requirements have been met:

- (1) The consumer has achieved the employment outcome as stated on his or her Individualized Plan for Employment consistent with that consumer's skills, abilities, interests, and informed choice, and the consumer is employed in the most integrated setting possible consistent with his or her informed choice;
- (2) The consumer has maintained the job for period of time sufficient to demonstrate the stability of the employment outcome and that the consumer no longer needs vocational rehabilitation services. The job must be maintained for at least 90 days; and
- (3) At the time of case closure the consumer and the Division's rehabilitation counselor must agree that the employment outcome is satisfactory and that the consumer is performing well in the job.

(c) The Division shall advise the consumer of the availability of post-employment services. These services shall be provided consistent with the following:

- (1) The service is provided subsequent to the achievement of an employment outcome;
- (2) The service is necessary in order for the consumer to maintain, regain, or advance in employment; and
- (3) The services are designed to meet rehabilitation needs that do not require a complex or comprehensive program of services and are limited in scope and duration.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.47(a)(7),(8),(9),(10),(14),(15); 34 C.F.R. 361.48(l),(m)(o); 34 C.F.R. 361.5(b)(42); 34 C.F.R. 361.56;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0107 ESTABLISHMENT OF SMALL BUSINESS OPERATIONS

(a) The Division shall provide technical assistance and other services to eligible individuals for whom it has been determined that self-employment through a small business operation is the employment outcome to be achieved through services outlined on the Individualized Plan for Employment. These services include market analyses, development of a business plan, and provision of funds that will in full or in part support the business operation as outlined on the IPE at a level agreed upon by the consumer and the Division's counselor. The employment outcome must allow the eligible individual to become a successful entrepreneur with projected income equivalent to, or above, the level of Substantial Gainful Activity (SGA) as established by the Social Security Administration annually. Outside resources, such as the University of North Carolina's Small Business and Technology

Development Centers, shall be used to develop a proposal for the establishment or expansion of a small business. The proposal shall consist of a business plan with the following data:

- (1) A summary of product/service or the proposed business;
 - (2) Company background information;
 - (3) Detailed description of product/service;
 - (4) Market information specific to the proposed business location;
 - (5) Competition information specific to the proposed business location;
 - (6) Marketing strategies;
 - (7) Location of the small business with specific details;
 - (8) Management and operation plans, to include the eligible individual's role;
 - (9) Financial information including a projection of anticipated income per month (or per completed task) and the anticipated expenses of operating the business (If the consumer is unable to establish this independently, an accountant or CPA may be hired to conduct an independent objective assessment; and
 - (10) Specific costs of the establishment, including information of the eligible individual's contributions.
- (b) All proposals must contain written approval by the Rehabilitation Counselor, the Area Rehabilitation Supervisor, and the Chief of Rehabilitation Field Services for sponsorship by the Division. The feasibility of the venture and the eligible individual's skills, knowledge, experience, competency and contribution of time and money are factors that shall be considered in the review of the proposals.
- (c) Review and written approval by the Division's Projects Review Committee is required for the following and shall consider the feasibility of a business plan to include a summary, company background, product/service, competition, marketing of product/service, location, personnel management, and financial information:
- (1) Proposals requesting Division sponsorship of less than under five thousand dollars (\$5,000) as requested by the Chief of Rehabilitation Field Services when feasibility of the proposal is not clear, and
 - (2) All proposals requesting Division sponsorship of five thousand dollars (\$5,000) or above.
- (d) The Division shall set thirty thousand dollars (\$30,000) as the maximum amount of Division contribution for the establishment of small business ventures by eligible individuals. The Division may modify the maximum level based on availability of funds. The Division may exceed the maximum level on a case-by-case basis when all of the following conditions are met:
- (1) The business plan as described in Paragraph (a) of this Rule contains evidence that:
 - (A) Funds in excess of thirty thousand dollars (\$30,000) are required in order to establish or expand the proposed small business; and
 - (B) All other sources of funding have been researched by the consumer;
 - (2) The projected annual income is above the Substantial Gainful Activity (SGA) level established by the Social Security Administration; and
 - (3) Funds are available.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(s); 34 C.F.R. 361.50(c)
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0108 READER SERVICES

- (a) Reader service may be provided in order to assist a consumer in completing an assessment or as part of the services required under a consumer's Individualized Plan for Employment in order to achieve the stated employment outcome.
- (b) When reader service is provided, the consumer shall employ and manage the reader and shall report to the Division any and all information necessary for the Division to reimburse the reader for services rendered as submitted by the consumer.
- (c) Reader services shall be provided at a hiring rate not to exceed the State minimum wage or the university or college work-study rate, whichever is higher.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(k);

Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0109 INTERPRETER SERVICES

The Division shall provide sign language interpreter services for deaf and hard of hearing consumers and foreign language interpreter services for consumers for whom English is not their native language as follows:

- (1) Interpreter service shall be provided to consumers to enable them to participate in an assessment or as part of the services identified on the Individualized Plan for Employment as required for the consumer to achieve the stated employment outcome.
- (2) The authorization for services shall be issued by the Division to the interpreter and the interpreter will bill the Division for services rendered based upon an agreed to number of hours, competence, and certification.
- (3) The Division shall obtain the services of interpreters who can meet the needs of the consumer.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(j);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0110 SERVICES TO FAMILY MEMBERS

- (a) For purposes of this Subchapter, "family members" is used as defined in 34 C.F.R. 361.5(b)(23).
- (b) Services may be provided to family members of applicants or consumers receiving services under an Individualized Plan for Employment if the services are necessary for the applicants or eligible consumer to participate in an assessment or to achieve the employment outcome stated on the consumer's Individualized Plan for Employment.
- (c) Such services shall include only those services which may be expected to contribute to the determination of rehabilitation potential or to the rehabilitation of the applicant or eligible individual.

History Note: Authority G.S. 111-28 34; C.F.R. 361.48(l);
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0111 SERVICES TO GROUPS OF INDIVIDUALS

- (a) Consistent with the provision of 34 C.F.R. 361.49 the Division may provide vocational rehabilitation services to groups of individuals including construction of a facility for community rehabilitation purposes as contained in 34 C.F.R. 361.60 and 361.61.
- (b) Such facilities and services may include, but are not limited to, the removal of architectural barriers from buildings to be used for the training or employment of people with disabilities, the provision of instructional materials or services for a group of blind or visually impaired individuals, or the provision of a special bus or other vehicle for the transportation of individuals with disabilities.
- (c) All such services shall be provided based upon the availability of federal rehabilitation funds and non-federal matching funds as stated in 34 C.F.R. 361.60.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.49; 34 C.F.R. 361.60; 34 C.F.R. 361.61;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0112 OTHER SERVICES: MEDICAL CARE

(a) The Division shall provide to eligible consumers other goods and services available as provided in 34 C.F.R. 361.48(t), when such services are necessary to determine the rehabilitation potential of the client or to render him fit for gainful employment.

(b) The Division shall furnish medical care for up to 30 days for acute conditions arising in the course of vocational rehabilitation, which, if not cared for, would constitute a hazard to the achievement of the vocational rehabilitation objective, or the completion of the extended evaluation to determine rehabilitation potential.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.48(d)(t); 34 C.F.R. 361.5(b)(40); Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0113 RATES OF PAYMENT

Vendors providing any services authorized by the state agency must agree not to make any charge to or accept any payment from the consumer or his family for services unless the amount of the charge or payment is previously known and approved by the state Division consistent with the consumer's Individualized Plan for Employment.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.46; Eff. December 1, 1981; Amended Eff. August 1, 2002; February 1, 1986; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0200 - CONSTRUCTION OF REHABILITATION FACILITY

10A NCAC 63F .0201 PURPOSE

The primary purpose of the construction of any rehabilitation facility is to provide vocational rehabilitation services to individuals with disabilities that include work evaluation and training that will lead to competitive employment in an integrated setting.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.49(a)(1); Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; February 1, 1986; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0202 DEFINITIONS

The Division shall comply with definitions and guidelines as specified for "Construction of a public or nonprofit community rehabilitation program" as found in 34 C.F.R. 361.5(b)(12).

History Note: Authority G.S. 111-28; 34 C.F.R. 361.5(b)(12); Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; February 1, 1986; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0300 - STANDARDS FOR FACILITIES

10A NCAC 63F .0301 TYPES OF FACILITIES

(a) The Division shall use whenever feasible facilities that are accredited by a public authority or professional organization to provide medical care, education, and other services. Facilities shall be selected for use in providing the eligible consumer's rehabilitation program based on the individualized rehabilitation needs of the consumer. Facilities may include hospitals, convalescent and nursing homes, rehabilitation centers, colleges, universities, community colleges and technical schools, community rehabilitation program or other facilities as needed by the eligible consumer.

(b) Students shall receive their training in schools and colleges accredited by the Southern Association of Secondary Schools and Colleges or state accrediting agencies.

(c) Any facility in which vocational rehabilitation services are provided and any provider of vocational rehabilitation services shall meet the program accessibility and special communication requirements specified in 34 C.F.R. 361.51.

History Note: Authority G.S. 111-6; 111-6.1; 111-28; 34 C.F.R. 361.51; 34 C.F.R. 361.52; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; April 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0400 – ECONOMIC NEED

10A NCAC 63F .0401 BENEFITS

(a) The Division of Services for the Blind shall give consideration to all other benefits available to the consumer with a visual disability by way of pension, compensation, or insurance to meet, in whole or in part, the cost of any vocational rehabilitation services provided to the consumer except the following:

- (1) assessment for determining eligibility and vocational rehabilitation needs;
- (2) counseling and guidance, including information and support services to assist the applicant or consumer in exercising informed choice;
- (3) referral and other services to secure needed services from other agencies if those services are not available;
- (4) job-related services, including job search and placement assistance, job retention services, and follow-up services;
- (5) rehabilitation technology, including telecommunications, sensory, and other technological aids; and
- (6) post-employment services listed in Subparagraphs (1) through (5) of this Paragraph.

(b) When and to the extent that a consumer is eligible for such benefits, such benefits shall be utilized unless such a determination would interrupt or delay:

- (1) the progress of the consumer toward achieving the employment outcome in the individualized plan for employment;
- (2) an immediate job placement; or
- (3) the provision of vocational rehabilitation services to any consumer who is determined to be at extreme medical risk, based on medical evidence provided by a medical professional.

(c) If benefits exist, but are not available at the time needed to achieve the consumer's rehabilitation outcome, the services shall be provided until those benefits become available. Such benefits include but need not be limited to:

- (1) medicare, medicaid hospital and physician's services plans in relation to physical restoration services; and
- (2) workmen's compensation, veterans' benefits, private insurance benefits, old age and survivors disability insurance benefits and unemployment compensation in relation to basic maintenance.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.5; 34 C.F.R. 361.53; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. January 1, 1996; April 1, 1990; February 1, 1982; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0402 ECONOMIC NEEDS POLICIES

(a) The Division of Services for the Blind shall establish the economic need of each eligible consumer either simultaneously with or prior to the provision of those services for which the Division requires a needs test. The financial need of a consumer shall be determined by the financial needs test specified in Rule .0403 of this Section. If the consumer has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act, (SSA), the Division of Services for the Blind shall not apply a financial needs tests or require the financial participation of the consumer. A financial needs test shall be applied for all consumers determined eligible to receive services through the Independent Living Rehabilitation Program regardless of SSA Title II or Title XVI eligibility.

(b) The Division of Services for the Blind shall furnish the following services not conditioned on economic need:

- (1) an assessment for determining eligibility and priority for services, except those non-assessed services that are provided during an exploration of the applicant's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation and an assessment by personnel skilled in rehabilitation technology;
- (2) an assessment for determining rehabilitation needs by a qualified vocational rehabilitation counselor;
- (3) vocational rehabilitation counseling and guidance, including information and support services to assist an applicant or consumer in exercising informed choice; and
- (4) tuition and supplies for Community Rehabilitation Program training;
- (5) tuition and fees for:
 - (A) community college and university educational and vocational programs up to the catalog rate; and
 - (B) post-secondary education up to the maximum rate charged for the North Carolina public university system.

The Division shall require eligible consumers applying for training programs listed in Parts (b)(5)(A) and (B) of this Rule to first apply for all available grants and financial aid. The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Part (b)(5)(B) of this Rule when necessary to accommodate the special training needs of severely disabled individuals who must be enrolled in special programs designed for severely physically disabled students;

- (6) interpreter services, including sign language and oral interpreter services for applicants or consumers who are deaf or hard of hearing, and tactile interpreting services for applicants or consumers who are deaf-blind;
- (7) reader services, rehabilitation teaching services, and orientation and mobility services;
- (8) job-related services, including job search, job placement employment assistance, and job retention services;
- (9) DSB Rehabilitation Center services or fundamental independent living rehabilitation adjustment services, including transportation and training supplies, contingent on a consumer's participation in the program;
- (10) diagnostic transportation;
- (11) on-the-job training;
- (12) training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (13) upward mobility training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (14) equipment and initial stocks and supplies for state-owned (Randolph-Sheppard) vending stands;
- (15) supported employment services;
- (16) personal assistance services provided while a consumer with a disability is receiving vocational rehabilitation services;
- (17) referral and other services designed to assist applicants or consumers with disabilities in securing needed services from other agencies through agreements developed under Section 101(a)(11) of Rehabilitation Act Amendments (the Act, P.L. 102-569), if such services are not available under this Act, and to advise those individuals about client assistance programs established under the Act;

- (18) transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the student's individualized plan for employment, except for those services based on economic need;
 - (19) technical assistance and other consultation services to consumers who are pursuing self-employment, telecommuting, or establishing a business operation as an employment outcome; and
 - (20) provision of pre-employment transition services to students with disabilities who are 14-21 years of age, whether they are presently a VR client or a potentially eligible individual.
- (c) The following services shall be provided by the Division of Services for the Blind and shall be conditioned on economic need:
- (1) physical and mental restoration services that are medical services other than diagnostic;
 - (2) maintenance for additional costs incurred while participating in rehabilitation;
 - (3) transportation in connection with rendering any vocational rehabilitation service except where necessary in connection with determination of eligibility or nature and scope of services;
 - (4) services to members of a disabled consumer's family necessary to the adjustment or rehabilitation of the consumer with a disability;
 - (5) post-employment services necessary to assist consumers with visual disabilities to maintain, regain, or advance in employment, except for those services not conditioned on economic need listed in Paragraph (b) of this Rule;
 - (6) fees necessary to obtain occupational licenses;
 - (7) tools, equipment, and initial stocks and supplies for items listed in Subparagraphs (1) through (7) of this Paragraph;
 - (8) expenditures for short periods, not to exceed 30 days of medical care for acute conditions arising during the course of vocational rehabilitation that if not cared for, will constitute a hazard to the achievement of the vocational rehabilitation objective; and
 - (9) other goods and services not prohibited by the Act (P.L. 102-569) that can reasonably be expected to benefit an individual with a disability in terms of his employability or independent living skill development.
- (d) Notwithstanding Paragraph (c) of this Rule, the following services shall not be subject to economic need for individuals being served through the Vocational Rehabilitation Program:
- (1) books and other training materials required for post-secondary training; and
 - (2) rehabilitation technology, including telecommunications, sensory aids, and other technological aids and devices for consumers who have an Individualized Plan for Employment (IPE) who are working toward an employment goal that requires specified technology to attain, regain, or maintain employment and who have the capability to use the equipment.
- (e) The Division of Services for the Blind shall publish the standard for measuring the financial need of consumers with respect to normal living requirements, for determining their financial ability to meet the cost of necessary rehabilitation services, and for determining the amount of agency supplementation required to procure the necessary services.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.5; 34 C.F.R. 361.48; 34 C.F.R. 361.52; 34 C.F.R. 361.54; P.L. 102-569, Section 103; S.L. 2009-475; Eff. February 1, 1976; Amended Eff. August 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. January 1, 1996; June 1, 1993; October 1, 1990; April 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Emergency Amendment Eff. September 23, 2009; Temporary Amendment Eff. November 16, 2009 to expire on June 30, 2012(See G.S. 150B-21.1B); Amended Eff. July 1, 2012; Readopted Eff. October 1, 2018.

10A NCAC 63F .0403 ECONOMIC NEEDS SCHEDULE

(a) The Division of Services for the Blind shall determine a consumer's financial eligibility for services subject to a financial needs test by application of the financial eligibility scale established by the General Assembly. Copies of the economic needs schedule can be found at any Division office.

(b) The Division shall obtain financial information from consumers to determine their financial eligibility to receive services listed in Rule .0402(c) of this Section. Financial information obtained may include wage and earning statement, State and Federal income tax forms, W2 form, bank statements and other information to document income or other financial resources. If the consumer does not have documents to verify income, the consumer shall complete a verification form provided by the agency and signed by the consumer's last employer, the individual who financially supports the consumer, or the agency representative who processes the consumer's public support. For the purpose of this Rule, "public support" means economic payment provided by state or federal government to someone in economic need.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.54; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. April 1, 1990; February 1, 1986; February 1, 1982; July 1, 1979; Temporary Amendment Eff. August 1, 2001; Amended Eff. September 1, 2012; August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0500 - APPLICANTS

10A NCAC 63F .0501 REFERRALS

Applicants for services shall be assigned to a rehabilitation counselor. The rehabilitation counselor shall contact all referrals as promptly as possible. The counselor must make a decision regarding eligibility of the applicant within 60 days of completion of application for services or, unless exceptional and unforeseen circumstances beyond the control of the Division preclude making an eligibility decision, the counselor must obtain the signature of the applicant agreeing to extend the time frame for making the eligibility determination. The counselor shall use all existing information available from other sources in order to assure that an eligibility decision is made as promptly as possible.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.41; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; February 1, 1986; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0502 ORDER OF SELECTION FOR SERVICES

All vocational rehabilitation services shall be provided without delay to all individuals determined to be eligible for services; however, if a situation should develop under which vocational rehabilitation services cannot be extended without delay to all eligible individuals, because the Division does not have the financial or staff resources to serve all eligible individuals who apply for services, an order of selection for provision of services shall be implemented. Rules .0504, .0505, and .0506 in this Section set out the order of selection for services that shall be followed by the Division of Services for the Blind Rehabilitation Program. The Rules in this Section do not apply to the Independent Living Rehabilitation Program. As used in this order of selection, the following terms have the meaning specified:

- (1) "Division" means the Division of Services of the Blind of the Department of Health and Human Services.
- (2) "Division Director" or "Director" means the Director of the Division of Services for the Blind.
- (3) "Eligible individual" means an applicant whom the Division has determined meets the eligibility criteria as stated in Rule .0101 of this Subchapter.
- (4) "Individual with a significant disability" has the meaning specified in P.L. 105-220, Title IV, Section 7(21) which is incorporated by reference.
- (5) "Individual with the most significant disability" means an individual with a significant disability whose impairment seriously limits two or more functional capacities in terms of an employment outcome.
- (6) "Functional capacity" means the ability to perform in the following areas:

- (a) mobility;
- (b) communication;
- (c) self-care;
- (d) self-direction;
- (e) interpersonal skills;
- (f) work skills; and
- (g) work tolerance.

The Section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the Section of the Public Law so incorporated may be obtained at no cost from the Division.

History Note: Authority G.S. 111-28; 150B-21.6; 34 C.F.R. 361.36; P.L. 105-220, Title IV, Section 7(21) and Section 101(a)(5)(A);
 Eff. February 1, 1976;
 Readopted Eff. November 16, 1977;
 Amended Eff. August 1, 2002; January 1, 1996;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0503 CASE RECORDS AND CONFIDENTIALITY OF INFORMATION

The Division shall carry out provisions relative to case records and confidentiality of information as indicated in 34 C.F.R. 361.38 and 361.47.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.39; 34 C.F.R. 361.49;
 Eff. February 1, 1976;
 Amended Eff. November 8, 1976;
 Readopted Eff. November 16, 1977;
 Amended Eff. August 1, 2002; February 1, 1986; February 1, 1981;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0504 IMPLEMENTATION OF ORDER OF SELECTION

- (a) The Director of the Division shall make a determination of the necessity for implementing the order of selection specified in Rule .0502 of this Section.
- (b) When the Division Director determines that the order of selection shall be implemented, it shall be implemented on a statewide basis; and the Director shall determine the priority categories which can be served within available resources.
- (c) The Division shall provide written notification to all cooperative programs with which it has written agreements and all vendors of services affected by the decision. This notification shall inform the programs and vendors of the decision to implement an order of selection.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, Section 101(a)(5)(A);
 Eff. January 1, 1996;
 Amended Eff. August 1, 2002;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0505 DETERMINATION OF ORDER OF SELECTION PRIORITY

- (a) The Division shall provide written notification to all applicants for services at the time of application of either:
 - (1) the existing order of selection as set out in this Section; or
 - (2) that an order of selection will be implemented if or when it is determined the Division has insufficient resources to serve all applicants who are determined eligible.
- (b) When an Order of Selection has been implemented, the Division shall determine each individual's priority category at the time the individual is determined eligible for service. The individual shall be placed in the highest category (beginning with Category One) for which he/she qualifies.

- (c) The Division shall notify in writing each eligible individual of his/her priority classification at the same time the eligibility notification is provided.
- (d) The Division shall change an individual's priority classification immediately if there are changes in the individual's circumstances that warrant a change. The Division shall notify the individual in writing of any change in priority classification.
- (e) The individual's case file shall contain documentation of the rationale for the priority category assignment.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV; P.L. 102-569, Section 101(a)(5)(A); Eff. January 1, 1996; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0506 PRIORITY CATEGORIES

- (a) The priority categories for the order of selection for services for eligible individuals are as follows:
 - (1) Category One - Individuals with the most significant disabilities;
 - (2) Category Two - Individuals with a significant disability; and
 - (3) Category Three - Individuals with a non-significant disability.
- (b) An individual's priority category is determined when eligibility is determined as outlined in Rule .0505 of this Section.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV, Section 101(a)(5)(A); Eff. January 1, 1996; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0507 PROCEDURES

- (a) Eligible individuals who are already receiving services under an Individualized Plan for Employment (IPE) at the time the order of selection is implemented shall not be subject to the order of selection process. Their rehabilitation programs shall continue until their records of service are closed.
- (b) The Division shall serve individuals in Priority Category One first and individuals in the other priority categories in descending order from Priority Category Two down through Priority Category Three according to the availability of resources.
- (c) Eligible individuals for whom rehabilitation services have not been planned under an Individualized Plan for Employment prior to the implementation of the order of selection and whose classification is below the categories approved for service shall be placed in a "waiting" status. They shall remain in the "waiting" status until their priority category is opened for services.
- (d) When the order of selection is implemented, all individuals whose classification will mean they will be placed in a "waiting" status shall be notified in writing of their status. When services are made available to any category in which individuals have been in a "waiting" status, the Division shall notify all persons in that priority category that their rehabilitation plan can be developed.
- (e) Individuals determined eligible after the order of selection for service is implemented shall receive services if they are classified in the categories being served or shall be placed in a "waiting" status if their classification places them in a category not currently being served.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV, Section 101(a)(5)(A); Eff. January 1, 1996; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0508 POST EMPLOYMENT SERVICES

When a former recipient of services requires post-employment services and is otherwise eligible for such services, the services shall be provided without regard for the order of selection.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV;
Eff. January 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0509 CASE FINDING AND REFERRAL

Case finding efforts shall not be modified because of an order of selection. The Division shall make the public and referral sources aware of the services it has to offer eligible individuals with disabilities. Referral sources shall be informed of an existing order of selection or of the potential of an order of selection being implemented, but they shall be reassured that this should not discourage referrals or applications.

History Note: Authority G.S. 143-545.1; P.L. 105-220, Title IV;
Eff. January 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0510 THIRD-PARTY FUNDING ARRANGEMENTS

The Division shall ensure that its funding arrangements for providing services, including third-party arrangements and establishment grants, are consistent with the order of selection.

History Note: Authority G.S. 143-545.1; P.L. 102-220, Title IV;
Eff. January 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

SECTION .0600 – HEARING PROCEDURE

10A NCAC 63F .0601 APPLICABILITY OF RULES

- (a) The Rules in this Section apply to contested cases of applicants for and consumers receiving vocational rehabilitation services or independent living rehabilitation services from the Division of Services for the Blind.
- (b) "Consumer" means a person eligible for vocational rehabilitation services or independent living rehabilitation services.

History Note: Authority G.S. 111-28; 143-546.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R. 364.58;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. December 1, 1990; June 1, 1983; February 1, 1982;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0602 WRITTEN INFORMATION FOR APPLICANTS AND CONSUMERS

- (a) The Division shall inform all applicants for and consumers receiving vocational rehabilitation or independent living rehabilitation services of the opportunities for an administrative review, mediation, and impartial due process hearing available under 34 C.F.R. 361.57 and the Rules of this Section.
- (b) The Division shall provide written information to all applicants and consumers informing them:
 - (1) of their right to an impartial due process hearing when they are dissatisfied with any determinations made by the Division concerning the furnishing or denial of services;
 - (2) that they may seek resolution of the issue through an administrative review and mediation prior to an impartial due process hearing;
 - (3) that the rehabilitation counselor or other designated staff of the Division will inform them of the name and address of the area rehabilitation supervisor to whom the request shall be submitted and of the manner in which a mediator or impartial hearing officer is selected; and that they may receive assistance with the resolution of their problems through the Client Assistance Program.

(c) The Division shall inform all applicants and consumers in writing of the rights established in Paragraph (b) of this Rule at the time of application for vocational rehabilitation services, at the time of assignment to a category in the State's order or selection, if established, at the time of development of the Individualized Plan for Employment (IPE), and whenever vocational rehabilitation services are reduced, suspended, or terminated.

History Note: Authority G.S. 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R. 364.30; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. December 1, 1990; June 1, 1983; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0603 REQUEST FOR ADMINISTRATIVE REVIEW, MEDIATION, AND IMPARTIAL DUE PROCESS HEARING

(a) When any applicant for or consumer receiving vocational rehabilitation or independent living rehabilitation services wishes to request an administrative review, mediation, or an impartial due process hearing, the individual shall submit a written request to the area rehabilitation supervisor of the Division designated pursuant to Rule .0602 of this Section.

(b) The request shall indicate if the individual is requesting:

- (1) An administrative review, mediation, and an impartial due process hearing to be scheduled concurrently; or
- (2) An administrative review and an impartial due process hearing to be scheduled concurrently; or
- (3) Mediation and impartial due process hearing to be scheduled concurrently; or
- (4) only an impartial due process hearing.

(c) The request shall contain the following information:

- (1) the name, address, and telephone number of the applicant or consumer and the individual's representative, if one has been designated; and
- (2) a concise statement of the determination made by the rehabilitation staff for which an administrative review, mediation, or impartial due process hearing is being requested and the manner in which the person's rights, duties or privileges have been affected by the determination(s).

(d) The Division shall not suspend, reduce, or terminate vocational rehabilitation or independent living rehabilitation services being provided an applicant or consumer for evaluation and assessment, for development of an Individualized Plan for Employment (IPE) or Independent Living Plan (ILP), and as provided for under an IPE or ILP pending final resolution of the issue through either an administrative review, mediation, or impartial due process hearing unless the individual or the individual's representative so requests, or the Division has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

(e) Participation in the mediation is voluntary on the part of all parties.

History Note: Authority G.S. 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 102-569, Section 102(d); Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0604 DIVISION ACTIONS IN RESPONSE TO REQUEST

(a) Upon receipt of a request for an impartial due process hearing, the area rehabilitation supervisor shall immediately forward the original request to the Division Director for appointment of a hearing officer to conduct the impartial due process hearing. If the individual requests mediation in addition to an impartial due process hearing, the Division Director shall arrange for the appointment of an impartial mediator to conduct the mediation session.

(b) If the individual has requested an administrative review in addition to an impartial due process hearing, the area rehabilitation supervisor shall:

- (1) make a decision to conduct the administrative review or with the concurrence of the Division Director appoint a designee to conduct the administrative review who:
 - (A) has had no previous involvement in the issues currently in the controversy;
 - (B) can conduct the administrative review in an unbiased way; and
 - (C) has a broad working knowledge of the Division's rules and the State Plan for Vocational Rehabilitation Services State Plan for Independent Living Services, hereinafter referred to as the "State Plans;" and
- (2) proceed with, or direct the designee to proceed with, an administrative review according to the provision of Rules .0605, .0608 and .0609 of this Section.

(c) The area rehabilitation supervisor shall send the applicant or consumer written acknowledgement of receipt of the request and inform the individual that additional information will be sent regarding the administrative review, mediation, or impartial due process hearing.

(d) The area rehabilitation supervisor shall provide the Client Assistance Program with a copy of the request and the response to the request.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R. 364.20; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0605 SCHEDULING AND NOTICE OF ADMINISTRATIVE REVIEW AND MEDIATION

(a) Administrative Review

- (1) If an administrative review is to be conducted, the area rehabilitation supervisor or his designee shall:
 - (A) set a date, time and place for the administrative review;
 - (B) send written notification by certified mail to the applicant or consumer and the individual's parent or guardian if the individual is a minor, or his or her representative if one has been designated, with a statement of the date, time and place for the administrative review;
 - (C) advise the applicant or consumer in a written notice that the hearing officer will be appointed by the Director to conduct a hearing if the matter is not resolved in the administrative review (or mediation, if requested) and that the applicant or consumer will also receive a written notice from the hearing officer regarding the impartial due process hearing which will be held after the administrative review; and
 - (D) notify the Director of the Client Assistance Program (CAP) and the parties to be involved in the administrative review of the request and the date, time and place for the administrative review. This notification may be by phone or in writing.
- (2) Prior to the administrative review, the area rehabilitation supervisor or his designee shall review all previous decisions and casework related to the applicant or consumer and seek whatever consultation, explanation, documentation, or other information that is deemed necessary, utilizing the CAP Director if deemed necessary.

(b) Mediation

- (1) Upon receipt of the applicant's or the consumer's request for mediation from the area rehabilitation supervisor, the Director shall arrange for the appointment of a qualified and impartial mediator who is mutually agreed upon by the Director and the individual or individual's representative. The appointment shall come from an Agency-maintained pool of qualified mediators who are:
 - (A) certified by the North Carolina Resolution Dispute Commission or approved by the Mediation Network of North Carolina, and
 - (B) knowledgeable of Federal and State law and policies governing vocational rehabilitation and independent living rehabilitation programs.

- (2) The mediator shall arrange a mediation session at a date, time and location that is convenient for the applicant or consumer and the individual's representative, if one has been designated, and the agency representative, and to the impartial due process hearing. The mediation process shall not be used to deny or delay a due process hearing.
- (3) The mediator shall provide the applicant or consumer and the individual's representative, the Division, and the Client Assistance Program written notice of the mediation session. The written notice shall:
 - (A) Identify the agreed date, time and place for the mediation session.
 - (B) Advise the applicant or consumer that the hearing officer will be appointed by the Director to conduct an impartial due process hearing if the matter is not resolved in mediation (or in an administrative review, if conducted) and that the applicant or consumer will receive a written notice from the hearing officer regarding the impartial due process hearing, which will be after the mediation session (and administrative review, if applicable).

History Note: Authority G.S. 143B-157; 150B-(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0606 APPOINTMENT OF HEARING OFFICER AND MEDIATOR

Upon receipt of the applicant's or consumer's request for an impartial due process hearing from the area rehabilitation supervisor, the Director shall arrange for the appointment of an impartial hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative, if one has been designated.

History Note: Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.5; 34 C.F.R. 361.57; P.L. 102-569; Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0607 SCHEDULING AND NOTICE OF IMPARTIAL DUE PROCESS HEARING

- (a) The hearing officer shall schedule the impartial due process hearing to be held within 60 days of the original request by the applicant or consumer as described in Rule .0603 of this Section.
- (b) The hearing officer shall provide the parties written notice of the date, time and place of the hearing and the issue to be considered at least 10 days prior to the hearing. A copy of the notice shall be sent to the Client Assistance Program.
- (c) The notice shall inform the parties of the following:
 - (1) the procedures to be followed in the hearing;
 - (2) the particular sections of the statutes, federal regulations, state rules, and state plan involved;
 - (3) the rights of the applicant or consumer as specified in 34 C.F.R. 361.57;
 - (4) that the hearing officer shall extend the time for the hearing for up to 30 days if the parties jointly agree to a delay and submit a written statement to that effect to the hearing officer; and
 - (5) that the hearing shall be cancelled if the matter is resolved in an administrative review or in mediation.
- (d) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

History Note: Authority G.S.; 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990;

*Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63F .0608 ADMINISTRATIVE REVIEW AND MEDIATION

(a) Administrative Review

- (1) Within 15 days of the original request for an administrative review by the applicant or consumer, the area rehabilitation supervisor or his designee shall hold the administrative review with the applicant or consumer, the individual's parent or guardian if the individual is a minor, or representative if one has been designated, the CAP Director, if participating, and other individuals deemed necessary by the area rehabilitation supervisor or his designee.
- (2) Within five working days of the administrative review, the area rehabilitation supervisor or his designee shall make a decision and notify the applicant or consumer and others using the following procedures:
 - (A) compile a written report of the administrative review outlining the purposes of the administrative review, the participants, the decision that was reached, and the rationale for the decision;
 - (B) send the written report containing the decision to the applicant or consumer by certified mail with return receipt requested, with a copy being placed in the individual's official case record, and copies being forwarded to the Division Director and the CAP Director; and
 - (C) provide instructions to the applicant or consumer of steps that may be taken in response to the decision and the deadline for the responses. A form indicating agreement with the decision and requesting that the hearing be cancelled shall be included for the applicant's or consumer's signature if the individual agrees with the decision.

(b) Mediation

- (1) The qualified and impartial mediator shall conduct the mediation session with the parties and their representatives. All mediation discussions are confidential and the content may not be used as evidence in subsequent impartial due process hearings or civil proceedings.
- (2) The Division shall bear the costs of mediation.
- (3) At any point in the mediation process, either party or the mediator may elect to terminate the mediation process. Should this occur, resolution through an impartial due process hearing shall continue unless cancelled by the applicant or consumer.
- (4) If an agreement is reached during the mediation session, a written mediation agreement must be developed by the parties with the assistance of the mediator. Both parties must sign it. It must include a clear statement from the consumer that he or she is satisfied with the agreement and that they request cancellation of the impartial due process hearing.

*History Note: Authority G.S. 143B-157; 150B-1(e)(5) 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

10A NCAC 63F .0609 RESPONSE TO ADMINISTRATIVE REVIEW DECISION AND MEDIATION

(a) Administrative Review

- (1) If the applicant or consumer is satisfied with the decision resulting from the administrative review, the individual shall sign the form described in Rule .0608(a)(2)(C) of this Section and submit it to the area rehabilitation supervisor within five days of receipt of the decision. The area rehabilitation supervisor shall inform the Director of the request to cancel the hearing immediately and forward the form to the Director who shall submit it to the hearing officer.
- (2) If, after the administrative review, the hearing officer does not receive a written request from the applicant or consumer that the hearing be cancelled, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.

- (3) If the hearing is cancelled due to a decision resulting from the administrative review, the hearing officer shall send the applicant or consumer and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0607(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

(b) Mediation

- (1) If a mediation agreement is signed as described in Rule .0608(b)(4) of this Section containing a statement regarding the applicant's or consumer's satisfaction with the agreement and his or her desire to cancel the impartial due process hearing, the mediator shall provide a copy of the signed mediation agreement to the applicant or consumer and to the Division representative, then forward a copy of the signed agreement to the Director.
- (2) The Director shall submit it to the hearing officer. The Director shall also forward a copy of the request to cancel the impartial due process hearing to the Client Assistance Program.
- (3) If, after mediation, the hearing officer does not receive a written request from the applicant or consumer to cancel the hearing, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.
- (4) If the hearing is cancelled due to an agreement reached in mediation, the hearing officer shall send the applicant or consumer and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0607(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57.
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0610 ADMINISTRATIVE REVIEW BY DIRECTOR

In situations where the issue currently in controversy involves action taken by the central office of the Division, the Director or a designee of the Director shall perform the duties prescribed for the area rehabilitation supervisor in these Rules.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0611 PROCEDURES GOVERNING HEARING

The impartial due process hearing shall be conducted according to the provisions of 34 C.F.R. 361.57(e)(1) and 34 C.F.R. 361.57(e)(2) and according to Rules .0612 through .0621 and Rule .0624 of this Section.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0612 VENUE

- (a) Absent a change of venue pursuant to the procedure described in this Rule, the impartial due process hearing shall be held in the county of residence in this state of the applicant or consumer.
- (b) Any party desiring a change of venue shall file a written motion for a change of venue with the hearing officer and serve copies of that motion on all other parties at least seven days prior to the date for which the hearing is set.
- (c) The motion shall include the following information:

- (1) The name, address, and telephone number of the movant;
 - (2) identification by the case name and docket number of the proceeding for which the change is sought;
 - (3) the time, date, and place for which the hearing is scheduled;
 - (4) the county in which the party requests that the hearing be held;
 - (5) a statement of the requested change, including the names and addresses of any witnesses whose convenience represents the basis for this request; and
 - (6) any other factors that should be included in ruling on the request.
- (d) Any party may object to a motion for a change of venue by filing a written notice of objection with the hearing officer within three days after receipt of the motion and service copies of the notice of objection on all other parties. The notice of objection shall state clearly the grounds for the objection.
- (e) The hearing officer shall determine whether a change of venue promotes the ends of justice or serves the convenience of witnesses and shall issue an order granting or denying the motion. The order shall state the reasons for the decision. Copies of the order shall be served on all parties.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0613 DISCOVERY

- (a) Parties in impartial due process hearings shall exchange information, seek access to public documents as provided by law, and exhaust other informal means of obtaining discoverable material.
- (b) Any dispute regarding discovery shall be referred to the hearing officer for resolution. The hearing officer shall base the resolution on the interests of justice. The hearing officer shall issue an order resolving the dispute and containing the reasons for the ruling. Copies of the order shall be served on all parties.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0614 PRE-HEARING CONFERENCE

- (a) Upon notice to all parties, the hearing officer may instruct the parties to participate in a pre-hearing conference.
- (b) The conference shall be informal in nature.
- (c) The purpose of the conference shall be to discuss:
 - (1) The possibility of simplification of issues,
 - (2) stipulation of facts or findings,
 - (3) identification of areas where evidence will be needed,
 - (4) indication of discovery or subpoenas needed, and
 - (5) any other matters which will reduce costs or save time or otherwise aid expeditious disposition of the case.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0615 SIMPLIFICATION OF ISSUES

The parties to the hearing may agree in advance to simplification of issues by:

- (1) eliminating issues to be contested at the hearing,
- (2) accepting the validity of certain proposed evidence,
- (3) accepting the findings in some other case with relevance to the case at hand, or
- (4) agreeing to such other matters as may expedite the hearing.

History Note: Authority G.S. 143B-157; 150B-1(d)13; 150B-2; 150B-23; 34 C.F.R. 361.48; 34 C.F.R. 361.57(e); Eff. December 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0616 EVIDENCE

- (a) G.S. 150B-29, G.S. 150B-30, and G.S. 150B-31 are hereby incorporated by reference, including subsequent amendments and editions.
- (b) A copy can be obtained from the Division at no cost.

History Note: Authority G.S. 143B-157; 150B-1(e)5; 150B-2; 150B-14(c); 150B-23; 150B-29; 150B-30; 150B-31; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0617 DISQUALIFICATION OF HEARING OFFICER

- (a) If at any time the hearing officer believes he or she cannot conduct the hearing in a fair and impartial manner, the hearing officer shall submit to the Director a written statement indicating why he or she should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The Director shall inform all parties of the disqualification and the reasons therefore.
- (b) If a party to the case believes that the hearing officer of record cannot conduct a hearing in a fair and impartial manner, the party shall submit an affidavit to the hearing officer for consideration. The hearing officer shall determine the matter as part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.
- (c) When a hearing officer is disqualified or it is impractical for the hearing officer to proceed with the hearing, the Director shall arrange for the appointment of another hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative to proceed with the case. However, if it is shown to the Director or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:
 - (1) the case shall be dismissed without prejudice; or
 - (2) all or part of the case shall be repeated as necessary to substantially prevent or substantially remove the prejudice. The Director shall promptly inform all parties of the decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated. Such notification shall include a statement of the reasons for the decision.

History Note: Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361-57; P.L. 102-569; Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0618 EX PARTE COMMUNICATIONS

- (a) Ex parte communications in the impartial due process hearing shall be governed by G.S. 150B-35, which is hereby incorporated by reference, including subsequent amendments and editions.
- (b) A copy may be obtained from the Division at no cost.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-14(c); 150B-23; 150B-35; 34 C.F.R. 361-57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0619 OATH

No person may testify or present views or data orally at the hearing before being put under oath or affirmation.

History Note: Authority G.S. 143B-157; 150B-1(d)13; 150B-2; 150B-23; 34 C.F.R. 361.57;
34 C.F.R.. 361.57(b)(3);
Eff. December 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0620 CONDUCT OF HEARING

(a) The hearing officer shall have complete control over the hearing including:

- (1) the responsibility of having a record made of the hearing;
- (2) the administration of oaths and affirmations;
- (3) recognition of speakers;
- (4) prevention of repetitious presentations; and
- (5) general management of the hearing.

(b) The hearing officer shall conduct the hearing in a manner that will provide the applicant or consumer the rights required by 34 C.F.R. 361.57(e)(2).

(c) The hearing shall not be open to the public.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0621 FAILURE TO APPEAR

(a) If the applicant or consumer fails to appear at the hearing and does not have a representative present, the hearing officer shall cancel the hearing.

(b) The applicant or consumer may submit a written request for rescheduling of the hearing to the Director. The request shall provide an explanation of the individual's failure to appear at the hearing or to have a representative present. The Director may instruct the hearing officer to reschedule the hearing upon a showing of good cause by the applicant or consumer. Good cause includes Acts of God, illness, death in the family, or other reasons not in the control of the applicant or consumer.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0622 HEARING OFFICER'S DECISION

Following the hearing, the hearing officer shall make and issue a decision as specified in 34 C.F.R. 361.57(e)(3). The decision shall be given to the applicant or consumer personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57;
Eff. December 1, 1990;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0623 SECRETARY'S REVIEW AND FINAL DECISION

- (a) Either party may request a review of the hearing officer's decision by the Secretary of the Department of Health and Human Services within 20 days of the receipt of the decision.
- (b) The Secretary may delegate the responsibility for reviewing the hearing officer's decision and making the final decision to another employee of the Department but shall not delegate the responsibility to any officer or employee of the Division.
- (c) In conducting the review, the reviewing official shall send the written notification to both parties and allow the submission of additional evidence as required by Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The written notification shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.
- (d) The reviewing official's review shall be based on the following standards of review:
- (1) The hearing officer's decision shall not be arbitrary, capricious, abuse of discretion, or otherwise unreasonable.
 - (2) The hearing officer's decision shall be supported by substantial evidence, i.e. consistent with facts and applicable federal and state policy.
 - (3) In reaching the decision, the hearing officer shall consider such factors as:
 - (A) the federal statute and regulations as they apply to a specific issue in question;
 - (B) the State Plans as they apply to a specific issue in question;
 - (C) Commission rules as they apply to a specific issue in question;
 - (D) key portions of conflicting testimony;
 - (E) Division options in the delivery of services where such options are permissible under federal statute; and
 - (F) restrictions in the federal statute with regard to supportive services as maintenance and transportation.
- (e) The reviewing official shall make the final decision and provide such decision in writing to both parties within 30 days from receipt of the request to review the hearing officer's decision. The decision shall include a full report of the findings and the grounds for the decision. The reviewing official shall not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual except as allowed under Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The final decision shall be given to both parties personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.
- (f) If the applicant or consumer does not request the Secretary's review, the hearing officer's decision shall be the final decision under the conditions specified in Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220).
- (g) The Division Director shall forward a copy of the final decision, whether issued under Paragraph (e) or (f) of this Rule, to the CAP Director, the area rehabilitation supervisor, and the applicant's or consumer's representative, if one is designated. A copy shall also be included in the individual's official case record.

History Note: Authority G.S. 143B-157; 143-545.1; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 105-220;
Eff. December 1, 1990;
Amended Eff. January 1, 1996;
Temporary Amendment Eff. March 15, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. August 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0624 EXTENSIONS OF TIME

(a) Time extensions may be granted for the procedures in these Rules for good cause at the request of a party or at the request of both parties except for:

- (1) the time for continuation of services during an administrative review or mediation as specified in Rule .0603(d) of this Section;
- (2) the time for conducting the impartial due process hearing as specified in Rule .0607(a) of this Section which may be extended only as specified in Rule .0607(c)(4) of this Section; and
- (3) the time for issuance of the written notice of the impartial due process hearing as specified in Rule .0607(b) of this Section.

(b) When an extension of time is being granted by the person conducting the administrative review, the mediator, or by the hearing officer, consideration shall be given to the effect of the extension of deadlines for other steps in the administrative review, mediation, and impartial due process hearing procedures.

(c) Good cause includes Acts of God, illness, death in the family, or other reasons not in the control of the parties.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0625 RECORD

(a) The official records of impartial due process hearings shall be maintained in the central office of the Division.

(b) Any person wishing to examine a hearing record shall submit a written request to the Director in sufficient time to allow the record to be prepared for inspection, including the removal of any confidential material.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0626 TRANSCRIPTS

Any person desiring a transcript of all or part of an impartial due process hearing shall contact the office of the Director. A fee to cover the cost of preparing the transcript shall be charged, and the party may be required to pay the fee in advance of receipt of the transcript. The transcript may be edited to remove confidential material.

History Note: Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; Eff. December 1, 1990; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

10A NCAC 63F .0627 CIVIL ACTION

Judicial review of decisions issued pursuant to Rules .0602 through .0624 of this Section shall be as specified in Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220).

History Note: Authority G.S. 143-545.1; 143-546.1; 143B-157; 150B-1(d)13; 150B-2; 150B-23; P.L. 105-220; 34 C.F.R. 361.57(i)(j); Eff. December 1, 1990; Temporary Amendment Eff. March 15, 1999; Amended Eff. August 1, 2000;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.