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RULE ADOPTIONS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF VOCATIONAL REHABILITATION SERVICES**

49 N.J.R. 1249(a)

Readoption: *N.J.A.C. 12:45*

Rules of the Division of Vocational Rehabilitation Services

Proposed: November 21, 2016, at *48 N.J.R. 2419(a)*.

Adopted: April 13, 2017, by Aaron R. Fichtner, Ph.D, Acting Commissioner, Department of Labor and Workforce Development

Filed: April 13, 2017, as R.2017 d.092, **without change**.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e)*, and *34:16-20* et sq.; and *34 CFR 361.1* et seq.

Effective Date: April 13, 2017.

Expiration Date: April 13, 2024.

Summary of Hearing Officer's Recommendation and Agency's Response:

A public hearing regarding the proposed readoption was held on December 8, 2016, at the Department of Labor and Workforce Development. David Fish, Executive Director, Legal and Regulatory Services, was available to preside at the public hearing and to receive testimony regarding the proposed readoption. No one testified at the public hearing. One written comment was submitted directly to the Office of Legal and Regulatory Services. After reviewing the written comment, the hearing officer recommended that the Department proceed with the readoption without change.

Summary of Public Comments and Agency Responses:

Written comments were submitted by Susan Saidel, Esq., Legal Director, Disability Rights New Jersey (DRNJ), Trenton, NJ.

COMMENT: The commenter takes issue with *N.J.A.C. 12:45-1.10*, asserting that because Federal regulations; specifically, *34 CFR 361.45(a)* and (e), "allow that the IPE (Individualized Plan for Employment) must be completed in a

timely manner and with 'prompt development,'" the New Jersey rule should contain an express "time frame...for the completion of the IPE."

RESPONSE: *34 CFR 361.45(e)*, contains an express time limit for the completion of an IPE by a "State unit," of which the New Jersey Division of Vocational Rehabilitation Services (DVRS) is one. That is, *34 CFR 361.45(e)* states the following:

The individualized plan for employment must be developed as soon as possible, but not later than 90 days after the date of determination of eligibility, unless the State unit and the eligible individual agree to the extension of that deadline to a specific date by which the individualized for employment must be completed.

Thus, the express time limit sought by the commenter already exists within a controlling Federal regulation. Consequently, it is unnecessary to make the change to *N.J.A.C. 12:45-1.10*, as suggested by the commenter.

COMMENT: The commenter takes issue with *N.J.A.C. 12:45-1.16(a)4*, which states that, "fair hearings [in the event that applicants/clients are dissatisfied with any determination with regard to the furnishing or denial of vocational rehabilitation services] shall be conducted pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, and Federal regulations." Specifically, the commenter takes issue with the absence from the New Jersey rule of a requirement that a fair hearing "be conducted within 60 days of the request for an appeal as required by federal regulations." That is, the commenter notes that *34 CFR 361.57(e)(1)* requires that fair hearings shall be conducted within 60 days of an applicant's or recipient's request for review of a determination made by personnel of the State unit that affects the provision of vocational rehabilitation services to the individual and suggests that *N.J.A.C. 12:45-1.16(a)4* should be changed to include the 60-day time limit.

RESPONSE: By the commenter's own account, a controlling Federal regulation; specifically, *34 CFR 361.57(e)(1)*, already expressly requires that a fair hearing be conducted within 60 days of the request by an applicant or recipient for review of a DVRS determination. Consequently, it is unnecessary to make the change to *N.J.A.C. 12:45-1.16*, as suggested by the commenter.

COMMENT: The commenter states the following:

DRNJ is also concerned that the New Jersey Administrative Code does not include any discussion of a fee schedule for the payment of services. Federal regulations provide that a state vocational rehabilitation services program may not "establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to an individual to achieve an employment outcome." *34 CFR 361.50(a)*. The regulations also provide that a state may not establish a fee schedule that is "so low as to effectively deny an individual a necessary service." *34 CFR 361.50(c)(2)(1)*. A state "may not place absolute dollar limits on specific categories or on the total services provided to an individual." *34 CFR 361.50(c)(3)*.

The New Jersey Administrative Code does not include any discussion of a fee schedule. Instead, the regulations provide that the following, among other things, shall be included in the completed Individualized Plan for Employment:

8. The terms and conditions under which the goods and services described in the IPE will be provided to the individual in the most integrated setting, consistent with the informed choice of the individual, and the identity of the entity or entities that will provide the vocational rehabilitation services and the process used to provide or procure such services;

9. The consideration given to the availability of comparable benefits (similar benefits) to the client or to members of the client's family under any program to meet, in whole or in part, the cost of any vocational rehabilitation services.

10. The responsibilities of the individual in implementing the individualized plan for employment and the extent of client participation in the cost of services, if any[.]

N.J.A.C. 12:45-1.11(a)

RESPONSE: *34 CFR 361.50(a)* prohibits DVRS from establishing any "arbitrary limits" on the nature and scope of vocational rehabilitation services to be provided to an individual to achieve an employment outcome. By the commenter's own account, "the New Jersey Administrative Code does not include any discussion of a fee schedule [affecting a limit on the nature and scope of vocational rehabilitation services to be provided to an individual to achieve an employment outcome]." Consequently, the Department fails to see any basis for the commenter's concern.

COMMENT: The commenter objects to a number of provisions within something called the New Jersey DVRS Case Services Policy Manual, which contains internal operational policies of DVRS and which is not part of *N.J.A.C. 12:45*. The commenter asserts that, "[t]he Policy Manual ... has not been properly promulgated in accordance with New Jersey law."

RESPONSE: As the DVRS Case Services Policy Manual contains only internal operational policies, the Manual is outside the scope of this rulemaking.

[page=1250] **Federal Standards Statement**

The readopted rules do not contain any standards or requirements which exceed those imposed by Federal law at 29 *U.S.C. §§ 701 et seq.*, or Federal regulations at 34 CFR Part 361. As a result, an explanation or analysis of the readopted rules, pursuant to Executive Order No. 27(1994), is not necessary.

Full text of the readopted rules can be found in the New Jersey Administrative Code at *N.J.A.C. 12:45*.