

Chapter 5 Informed Choice, Due Process and Personal Safety

- MVR Policy 5.1 Informed Consumer Choice**
- MVR Policy 5.2 Counselor Determinations (Due Process and Fair Hearings) (MVR Policy E)**
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MVR Policy 5.1 Informed Consumer Choice

Applied Effective Date: 12/27/02

Last Edition Date: 6/ 1/1999

Federal Authority: 34 CFR 361.52; **Opportunity to Make Informed Choice**

State Authority: ARM 37.30.102: Vocational Rehabilitation Policy:
Incorporation by Reference of Federal and State Authority

Policy Statement:

It is the policy of the MVR agency:

1. To inform each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of MVR, through appropriate modes of communication, about the availability of, and opportunities to exercise, informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, throughout the vocational rehabilitation process;
2. To assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;
3. To develop and implement flexible procurement policies and methods that facilitate the provision of services, and that afford eligible individuals meaningful choices among the methods used to procure services;
4. To provide or assist eligible individuals in acquiring information that enables those individuals to exercise informed choice in the selection of:
 - a. The employment outcome;
 - b. The specific vocational rehabilitation services needed to achieve the employment outcome;
 - c. The entity that will provide the services;
 - d. The employment setting and the settings in which the services will be provided; and
 - e. The methods available for procuring the services

MVR Policy 5.2 Counselor Determinations (Due Process and Fair Hearings) (MVR Policy E)

Applied Effective Date: 12/27/02

Last Edition Date: 6/ 1/1999

Federal Authority: 34 CFR 361.57; **Review of Counselor or Counselor Coordinator Determinations**

State Authority: ARM 37.5.125; Vocational Rehabilitation Program: Fair Hearings

Policy Statement:

1. Conciliation

When the consumer or counselor determines that they cannot agree on an issue, the counselor will inform the consumer of the availability of Client Assistance Program (CAP) services and the option of requesting an immediate formal counselor decision and a fair hearing. The counselor shall assure the consumer that "conciliation" is an option and cannot be used to delay a fair hearing. The counselor may also present the option of conciliation through another MVR Counselor Supervisor or Regional Administrator.

When the consumer requests conciliation, the counselor, consumer and consumer's representative (if desired) will meet with a facilitator agreeable to both parties. If agreement cannot be reached within 10 working days of the request for conciliation, the counselor will formally notify the consumer in writing of an adverse action, advise the consumer of the availability of a formal appeal, and provide whatever assistance the consumer may need in requesting that appeal.

Formal due process begins when a consumer or the consumer's representative submits a written request for an impartial hearing. This request shall be submitted to the Office of Fair Hearings, The Department of Public Health and Human Services, PO Box 202953 Helena, Montana 59620. The appeal will be considered timely if received by the Office of Fair Hearings within 45 days of the adverse action.

2. Notice of Counselor Determination

With respect to determinations made by the MVR agency, it is the agency's policy to inform consumers of:

- a. The right to obtain review of determinations;
- b. The right to pursue mediation with respect to the determinations; and
- c. The availability of assistance from the client assistance program.

With respect to timing the consumer will be provided notification of counselor determination in writing:

- a. At the time an individual applies for vocational rehabilitation services provided under this title;
- b. At the time the individualized plan for employment for the individual is developed; and
- c. At least 10 days prior to the reduction, suspension, or cessation of vocational rehabilitation services for the individual..

It is the policy of the MVR agency to provide for the applicant or an eligible individual, or, as appropriate, the applicant's representative or individual's representative an opportunity to submit at the mediation session or hearing evidence and information to support the position of the applicant or eligible individual; and include provisions to allow an applicant or an eligible individual to

be represented in the mediation session or hearing by a person selected by the applicant or eligible individual.

3. Mediation

The MVR agency will inform the individual of the availability of mediation and that mediation is voluntary on the part of the parties.

Mediation:

- a. Is not used to deny or delay the right of an individual to a hearing or to deny any other right; and
- b. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

MVR shall maintain a list of individuals who are qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services, from which the mediators shall be selected. MVR shall bear the cost of the mediation process. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties of the dispute. An agreement reached by the parties of the dispute in the mediation process shall be set forth in a written mediation agreement. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process. Nothing in this policy shall be construed to preclude the parties to such a dispute from informally resolving the dispute prior to proceedings if the informal process used is not used to deny or delay the right of the applicant or eligible individual to a hearing.

4. Administrative Review

From the date of request for a Fair Hearing the state has 60 days to complete the formal hearing unless the parties jointly agree to a delay. The impartial hearing officer may grant reasonable extensions of time for good cause shown at the request of the consumer (or the consumer's representative) or at the request of both parties.

The Office of Fair Hearings will order MVR to conduct an administrative review which shall be conducted except when the consumer chooses to go directly to fair hearing. The consumer may request that a CAP representative participate in the administrative review. MVR may also request participation by CAP, provided that the consumer consents to same.

5. Protection of IPE Benefit

MVR shall not institute a suspension, reduction or termination of services being provided under an Individualized Plan for Employment (IPE) pending a final determination of the formal hearing or administrative review unless the individual

or, in an appropriate case, the individual's representative so requests, or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

If the matter is resolved through the administrative review, the Office of Fair Hearings shall confirm with the consumer or the consumer's representative that, since the matter has been resolved and further review is not warranted, the consumer's request for an impartial hearing will be canceled.

6. Fair Hearing

If the matter is not resolved at the administrative review, or the consumer waives the review, an impartial hearing officer shall be selected on a random basis to hear the case. The hearing officer may also be selected upon agreement between MVR and the individual or authorized representative of such individual. The impartial hearing officer shall be selected from among a pool of qualified persons identified jointly by MVR and the members of the MVR Advisory Council. This shall be done when it is determined that the consumer does not wish an administrative review, or upon the completion of the administrative review, if the matter is not resolved. The impartial hearing officer, upon receipt of the notice of appeal, shall set the date, time, and place for the impartial hearing and give notice of same in writing to all parties.

The individual or, if appropriate, the individual's representative shall be afforded an opportunity to:

- a. Present additional evidence, information, and witnesses to the impartial hearing officer.
- b. Be represented by counsel or other appropriate advocate; and
- c. Examine all witnesses and other relevant sources of information and evidence.

The impartial hearing officer shall make a decision based on the provisions of the approved State Plan, the Rehabilitation Act, and federal and state vocational rehabilitation regulations and policies. The hearing officer shall also provide to the individual or, if appropriate, the individual's representative, and the administrator of MVR, a full written report of the findings and grounds for such decision within 30 days of the completion of the hearing.

7. Judicial Review

A party who is aggrieved by the final decision of the hearings officer may seek judicial review of that decision by filing a petition in district court within 30 days after service of the final decision.

MVR Policy 5.3

PERSONAL SAFETY POLICY (MVR Policy C-1)

Applied effective date: 5/9/11

Last Edition Date: 8/1/2010

Federal Authority:

State Authority: ARM 37.30.102

Vocational Rehabilitation Policy: Incorporation by Reference of Federal and State authority.

Policy Statement:

The mission of the Montana Vocational Rehabilitation Services (hereinafter MVR) of the Department of Public Health and Human Services (DPHHS) is “promoting work and independence for Montanans with disabilities.” DPHHS is mandated by law to provide and maintain a safe workplace for its employees and to protect the life and safety of its employees. MVR is committed to providing a safe environment not only for its employees, but also for its consumers and all who may be on MVR premises.

The purpose of this policy is to help ensure that MVR consumers are able to receive services and MVR employees are able to perform their duties within the safest environment possible. MVR is committed to eliminating violence, the threat of violence, physical and otherwise, and any other disruptive behavior in and around MVR workplaces. MVR does not tolerate violence, the threat of violence, physical or otherwise, or any other disruptive behavior in its workplaces.

MVR will immediately report to local law enforcement any incident of violent or other disruptive behavior that poses an imminent risk of physical harm to anyone. MVR will pursue appropriate legal action against persons who engage in violent, threatening, or disruptive behavior. A person who engages in disruptive behavior will be asked to leave the premises immediately; if s/he fails to comply, MVR may call local law enforcement for assistance.

The MVR office supervisor, in consultation with the MVR Regional Manager, will determine the need for subsequent action. For *consumers*, depending on the severity of the violation, this may include a reassignment of counselor, suspension of services, or the termination or denial of services; consumers who disagree with the action taken by MVR have the right to administrative review and fair hearing. For *employees*, this may include disciplinary action, up to and including termination of employment.

Incidents of violence, threats of violence, or disruptive behavior directed toward MVR employees shall be documented in writing and reported to the MVR Regional Manager and Field Services Chief. If warranted, the MVR state office shall initiate criminal charges. Such incidents must also be reported on the DPHHS Incident

Report Form for Violent or Threatening Behavior (a copy of which may be downloaded from the DPHHS website).

If a consumer or her/his representative (including family members) has engaged in violent, threatening, or other disruptive behavior, MVR employees are released from normal service responsibilities until the assurance of safety has been restored. The Regional Manager shall inform the consumer in writing of the interruption, suspension, or termination of vocational rehabilitation services as a result of the violent, threatening, or other disruptive behavior. The Regional Manager shall also determine if the assurance of safety has been restored before resuming or initiating vocational rehabilitation services.

The assurance of safety is established through the following procedure:

1. If the person who has engaged in violent, threatening, or other disruptive behavior is a consumer or potential consumer, s/he must demonstrate to MVR that s/he has taken appropriate measures to modify her/his violent, threatening, or other disruptive behavior. Such measures include, by way of example, successful completion of an anger management course (evidenced by a certificate or other comparable document) or counseling with a licensed therapist who attests in writing that the person has successfully participated in relevant therapy.
2. MVR will review the documentation from the consumer or potential consumer who has engaged in violent, threatening, or other disruptive behavior and determine its sufficiency. If the documentation is sufficient to lead a reasonable person to believe that the consumer or potential consumer is likely to refrain from violent, threatening, or other disruptive behavior when dealing with MVR personnel in the future, then MVR will arrange a face-to-face meeting between the consumer or potential consumer and the MVR employee/s and any others to whom the violent, threatening, or other disruptive behavior was directed.
3. At that meeting, the consumer or potential consumer must express to the affected parties why her/his behavior was not acceptable and not appropriate.
4. The consumer or potential consumer and MVR will then negotiate the terms and conditions of a resumed or initiated service relationship. The terms and conditions of that relationship will be put in writing with all parties signing the document.
5. If the consumer or potential consumer violates the terms and conditions of the agreement and again engages in violent, threatening, or disruptive behavior, then MVR employees will again be released from normal

service responsibilities until the assurance of safety has again been restored.

If an advocate for a consumer or potential consumer engages in violence, s/he will be barred from MVR premises.

If an advocate for a consumer or potential consumer threatens violence or engages in other disruptive behavior, the advocate may be barred from MVR premises. If so barred, the advocate, in order to be allowed back on MVR premises, must apologize in writing with specific reference to the event/s and declare that s/he will not again engage in any threatening or other disruptive behavior. If the advocate again engages in threatening or other disruptive behavior, s/he will be barred from MVR premises and MVR may report that individual to DPHHS Adult Protective Services.

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Violence is defined as any action, including speech, that injures, damages, or abuses a person or property and includes, but is not limited to, the use of physical force or other disruptive behavior.

The following lists representative examples of behaviors that are considered to be violent:

- Physical abuse, such as hitting, punching, kicking, biting, shaking, spitting, choking, or poking
- Verbal abuse, including name calling, bullying, threatening, swearing, or lewd or obscene comments that humiliate or intimidate
- Sexual abuse or harassment or any lewd, indecent, or obscene conduct
- Stalking, which is knowing or purposeful behavior that causes another person substantial emotional distress or reasonable apprehension of bodily injury or death either by repeatedly following the stalked person or harassing, threatening, or intimidating the stalked person, in person or by mail, electronic communication, or any other action, device, or method
- Regardless of permits or registration, the possession or use of firearms, explosives, dangerous chemicals, or a weapon of any sort at any and all MVR work sites. A *weapon* is an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.
- Any behavior that threatens the health or safety of MVR consumers, MVR employees, or anyone else on MVR premises or damage to their personal property
- Any behavior that threatens the health or safety of the family of any MVR consumer or employee or damage to their personal property

Threat means a menace, however communicated, to:

- (a) inflict physical harm on the person threatened or any other person or on property;
- (b) subject any person to physical confinement or restraint;
- (c) commit a criminal offense;
- (d) accuse a person of a criminal offense;
- (e) expose a person to hatred, contempt, or ridicule;
- (f) harm the credit or business repute of a person; or
- (g) reveal information sought to be concealed by the person threatened.

A threat may be direct (e.g., “I am going to harm you.”); conditional (e.g., “*If* [statement of a condition precedent], *then* I will harm you.”); or veiled (e.g., a threat that is made with body language, gestures, or words that suggest harmful action, such as “I’m going to make you sorry you ever crossed me.”).

Disruptive behavior includes any action that more than incidentally hampers MVR’s ability to conduct business. The following lists representative examples of behaviors that are considered to be disruptive:

- Harassment, including harassing phone calls. *Harassment* is repeated unwelcome or uninvited physical or verbal activity that bothers, pesters, disturbs, annoys, persecutes, or torments a person and results in worry or distress to that person or creates an unpleasant or hostile situation.
- Use, possession, sale, or distribution of alcohol or illegal drugs while on MVR premises
- While on MVR premises, the use, possession, sale, or distribution of legal drugs to which the user, possessor, seller or distributor does not have a legal right
- Being under the influence of alcohol or illegal drugs while on MVR premises
- While on MVR premises, being under the influence of legal drugs, if the user, possessor, seller or distributor does not have a legal right to such drugs
- Unwelcome sexual contact
- Theft of or damage to property
- Refusal to leave MVR premises when asked to do so
- Interference with the transaction of MVR business, whether by coercion, force, intimidation, or any other means
- Repeated use of foul, vulgar, or profane language

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Recognizing that some MVR clients may be disposed toward violence, the threat of violence, physical or otherwise, and other disruptive behavior, MVR is committed to training its employees to recognize and reduce any actions or attitudes on their part that may inadvertently antagonize or provoke the consumer to become violent or disruptive. MVR is also committed to providing its

employees with the skills to identify and defuse, if at all possible, a potentially volatile situation before it escalates to violence.

Acknowledging these commitments, however, shall not be taken to lessen in any measure MVR's commitment to providing a safe environment for its employees, its consumers, and all who may be on MVR premises. Neither shall such acknowledgment be taken to lessen its commitment to helping consumers comport themselves in a manner that is consistent with ensuring success in employment. Because employers will not tolerate violence, the threat of violence, and other disruptive behavior in the workplace, the expectation that MVR consumers not engage in such behaviors as MVR consumers is consistent with the goal of making them employable and ready for workplace success.