

Rehabilitation Services Policy Manual

SECTION
PART Pre-Employment Transition Services (Pre-ETS)
Appeals

SECTION NO.
PUBLISHED 7-13
03/21

Section 7 Pre-Employment Transition Services (Pre-ETS)

Part 13 Appeals

Review of Pre-ETS Transition Specialist decisions

Students who are dissatisfied with any determination by the Pre-ETS Transition Specialist regarding the provision or denial of Pre-Employment Transition Services may request timely review of those determinations through a mediation process, informal resolution or formal hearing. A student's or applicant's representative may also make such a request.

Such requests must be made within 30 days of the agency decision in question.

Students are informed of their appeal rights in writing at key stages of the process. Key stages of the Pre-ETS process include, but are not limited to: request for services, determination, Pre-ETS Plan, Pre-ETS Plan amendments, any adverse action, and case closure.

Information provided to students and parents/guardians, if applicable, must include the name and address with whom to file requests for reviews. Information about the Client Assistance Program (CAP) must also be provided. This information will be made available in an accessible mode of communication.

Informal resolution: Students are encouraged to discuss any problems directly with their Pre-ETS Transition Specialist or Pre-ETS Transition Specialist's manager to see if the problem can be resolved. Or, an administrative review may be conducted by a RS Program Administrator who has not been involved in the case. Use of these informal methods is not required. If the student chooses not to pursue informal methods, or if the issues were not resolved informally, the next step is mediation or a formal hearing which must be requested within 30 days of the adverse action to the Kansas Office of Administrative Hearings.

Mediation: Applicants and eligible students may resolve disputes through mediation. Mediation services must be presented as an option whenever a student requests a fair hearing.

- Mediation is voluntary.
- Mediation may not be used to deny or delay the rights of an student to a fair hearing or to any other rights afforded that student under Title I of the Rehabilitation Act.
- Mediation must be conducted by qualified and impartial mediators.
- Services may not be suspended, reduced or terminated pending the mediation process. Exceptions to this requirement would include situations where the student requests the change in services, or situations where the student and/or his/her representative have obtained the services through misrepresentation, fraud or criminal conduct.
- If an agreement is reached, the mediator will put the agreement in writing.
- All information learned during mediation is confidential and cannot be used in subsequent appeal actions.

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Formal hearings (fair hearings): These hearings are conducted by Fair Hearing Officers from the Office of Administrative Hearings. These hearings must occur within 45 days of a student's request for review, unless resolution is achieved or the parties agree to a specific extension of time. While such a hearing is pending, services being provided under a Pre-ETS Plan may not be suspended, reduced or terminated unless requested by the student or unless there is evidence that the services have been obtained through misrepresentation or fraud. All requests for fair hearings must be forwarded to the Pre-ETS Statewide Pre-ETS Program Administrator, Deputy Directors, and RS Director.

During a fair hearing, the student or his/her representative and the agency have the opportunity to present evidence or witnesses and to question other witnesses and evidence. The student may be represented by an attorney or advocate if that is his/her choice. The hearings officer makes decisions based on the State Plan, the Rehabilitation Act, VR regulations and state policies. Decisions are provided to the student and RS Director within 30 days of the hearing.

In most situations, if the student is not represented by an attorney during fair hearings or other proceedings, RS will not be represented by an attorney. Exceptions will be made at the discretion of the RS Director. RS Program Administrators may seek consultation or technical assistance from the DCF Legal Department or local office Attorneys prior to the hearings or proceedings if appropriate.

Review of formal hearings (fair hearings) decisions: Kansas has established the following procedures for the review of decisions of the fair hearings officer.

- The student or the agency may request a review of the fair hearing decision. The authority for this review is vested in the Secretary of the Kansas Department for Children and Families (DCF), the director of the Designated State Agency. Per Kansas Statute 77-527, the Secretary delegates this authority to the State Appeals Committee. Such authority may not be delegated to RS, the Designated State Unit. Parties may submit additional evidence to the State Appeals Committee through legal briefs or presentation of oral arguments. Appeals committee decisions are presented to the Secretary for review, approval and signature.
- The student or the agency must file a petition for a review of the fair hearing decision within 15 days of the date of the decision, if the decision is delivered in person; or within 18 days of the date of the decision, if the decision is mailed.
- After the request for an impartial review, reasonable time extensions may be granted for good cause.
- The State Appeals Committee reviews the decision of the hearings officer to assure consistency with the State Plan, the Rehabilitation Act, VR regulations, and state policies consistent with federal requirements. Any decision of the fair hearings officer that supports the position of the Pre-ETS student can only be overturned or modified by the State Appeals Committee if there is clear and convincing evidence that the decision of the fair hearings officer was erroneous because it was contrary to the State Plan, the Rehabilitation Act, federal regulations, or state policies that are consistent with federal requirements.
- The decision of the State Appeals Committee/Secretary of DCF must be made within 30 days of receipt of legal briefs and oral arguments. A full written report of the decision and the rationale for the decision is provided to the applicant, eligible student or his/her representative, and to RS.

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District Court: The student may bring a civil action for review of decisions by hearings officers or the State Appeals Committee/Secretary of DCF. The civil action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

In such actions, the court:

- Shall receive the records related to the hearing and the records related to the state review;
- Shall hear additional evidence at the request of a party to the action; and
- Basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate.

[Appeal Rights](#)