

**State of California
Office of Administrative Law**

In re:

Department of Rehabilitation

Regulatory Action:

Title 9, California Code of Regulations

Adopt sections:

Amend sections: 7141.5, 7143, 7227, 7350,
7351, 7353.6, 7354, 7355,
7356, 7357, 7358

Repeal sections:

NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE

Government Code Section 11349.1 and
11349.6(d)

OAL File No. 2013-0129-01 C

The Department of Rehabilitation (Department) submitted this timely certificate of compliance action to make permanent the amendments made to eleven title 9 regulations in OAL File Nos. 2012-0717-01EFP and 2013-0109-01EFP. The amended regulations pertain to requesting administrative reviews and fair hearings, filing appeals, and related requirements, procedures, and timelines for an applicant or client of the Department's Vocational Rehabilitation or Independent Living Services programs. The purpose of these amendments is to make the regulations consistent with recent amendments to the Welfare and Institutions Code made by SB 1041 (Stats. 2012, ch. 47) that, among other things, eliminated the Rehabilitation Appeals Board, which existed within the Department for purposes of hearing appeals on actions taken by the Department on applications for Department services.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: 3/5/2013



Richard L. Smith
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Anthony P. Sauer
Copy: Shelly Risbry

NOTICE PUBLICATION/REGULATIONS SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2012-1030-02	REGULATORY ACTION NUMBER 2013-0129-01C	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

ENDORSED FILED
IN THE OFFICE OF

2013 MAR -5 PM 1:44

Jane Bowen
REGISTRAR
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY Department of Rehabilitation	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2011-45-2	PUBLICATION DATE 11/9/2012

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Repeal of Rehabilitation Appeals Board	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2012-0717-01 EFP, 2013-0109-01EFP
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND 7141.5; 7143; 7227; 7350; 7351; 7353.6; 7354; 7355; 7356; 7357; and 7358
REPEAL 9

3. TYPE OF FILING
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
 Effective on filing with Secretary of State
 §100 Changes Without Regulatory Effect
 Effective other (Specify) *Pursuant to Gov. Code sec. 11343.4(b)(3)*

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)
 Fair Political Practices Commission
 State Fire Marshal
 Other (Specify) _____

per agency request. RS

7. CONTACT PERSON Shelly Risbry	TELEPHONE NUMBER 916-445-4466	FAX NUMBER (Optional) 916-558-5826	E-MAIL ADDRESS (Optional) srisbry@dor.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Anthony P. Sauer

DATE
1/28/13

TYPED NAME AND TITLE OF SIGNATORY
Anthony "Tony" P. Sauer, Director

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 05 2013

Office of Administrative Law

TEXT OF REGULATIONS

Title 9. Rehabilitative and Developmental Services

Division 3. Department of Rehabilitation

Chapter 2. Referral and Application Processes; Order of Selection; Eligibility; Record of Services; Individualized Plan for Employment (IPE)

Article 6. Confidentiality

§ 7141.5. Amending the Case Record.

(a) When a Counselor determines that information that he/she originated for the case record is inaccurate or incomplete, the Counselor shall correct that portion of the case record. Copies of the corrected information shall be provided to all individuals who obtained incorrect information.

(b) An applicant or client may submit a written request to add, delete, or amend information contained in the case record. The Department, within 30 days of the receipt of such request, shall make a decision whether to amend the record.

(c) If the client requests a change to information that was originated by a source outside the Department, the client shall be informed that departmental staff cannot change information in the case record not originated by departmental staff and that the request should be made to the source of the information.

(d) If the record is to be amended, the Department shall:

(1) Amend any portion of the record which is not accurate, relevant, timely, or complete.

(2) Destroy the original material.

(3) Provide the individual with a copy of the amended material.

(e) If the record is not to be amended, the Department shall inform the applicant or client in writing of the decision not to amend the record, the reason for such decision, and the procedures for requesting an administrative review and fair hearing of such decision.

(f) If the applicant or client disagrees with the decision of the Department not to amend the case record, the individual may appeal that decision through the administrative review and fair hearing process.

(1) If, after administrative review, the decision of the Department not to amend the case record is upheld, the applicant or client may submit a written statement of reasonable length setting forth the reasons for the individual's disagreement with the disputed information. This statement shall be placed in the case record. The Department shall clearly identify any portion of the record which is disputed and make available a copy of such individual's statement and a copy of a concise statement of the reasons for

the decision not to amend to any person or agency to whom the disputed portion of the record is disclosed.

(2) If, after administrative review, the applicant or client remains dissatisfied with the decision of the Department, the applicant or client may request a fair hearing as provided in Section 7354 of these regulations. The applicant or client may also contact the Office of Information Practices for assistance in solving problems relating to information in the case record.

(g) All details of a request to amend a case record including pertinent dates shall be recorded in the case record.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code and Section 1798.30, Civil Code. Reference: Sections 1798.3-1798.37, Civil Code, and 34 CFR Section 361.4938.

§ 7143. Disclosures Without Written Consent.

(a) The applicant or client shall be informed at the initial interview of the following exceptions to the regulation that no disclosure shall be made without the written consent of the applicant or client. Any disclosure made under this part shall be strictly limited to the information necessary to carry out the purposes for which the information was released.

(1) Disclosure of information in the case record may be made between or among the staff members of the Department and its medical panel.

(2) Disclosure of information in the case record may be made in order to process payment to or from the client or to purchase goods and services for the client.

(3) Disclosure of information in the case record may be made to any federal or state auditor or reviewer who has authority under federal or state law to conduct an audit or review of the Department.

(4) Disclosure of information in the case record may be made to any official of the United States Department of Education, who has authority under law to review or inspect such case records.

(5) Disclosure of information in the case record may be made to the Social Security Administration, the Disability Evaluation Division of the California Department of Social Services (DSS), the Medi-Cal Division of the Department of Health Services (DHS), the Department of Mental Health (DMH), the Department of Developmental Services (DDS) and Regional Centers, the Department of Alcohol and Drug Programs (DADP), and the Employment Development Department (EDD). Information that can be released without client consent to these agencies is limited to the following:

(A) The status of the applicant/client including whether the client is in training.

(B) Information relating to the IWRP such as employment goal, training received, changes made to the plan, etc.

(C) The projected time in plan.

(D) Whether EDD, DHS, or DSS purchased services will be utilized in the implementation of the plan and the information, except medical information, necessary to obtain those services.

(E) The extent of client participation in the plan.

(F) The date of employment or on-the-job training.

(G) The date the case is closed or training is completed or ceases, and if it ceases prior to completion, the reasons therefore.

(6) Disclosure of information in the case record may be made to medical personnel, either private or governmental, when in the opinion of a member of the professional staff of the Department a medical emergency exists.

(7) Disclosure of information in the case record, except that which would disclose the results of any HIV test performed, may be made to protect the potential victim when, in the exercise of reasonable skill, knowledge and care, a member of the professional staff of the Department determines, based

on reliable information, that an applicant or client poses a danger of violence to another person.

(8) Disclosure of information in the case record may be made to an employee of the Department, or a designated representative of an employee, when such employee has punitive action taken against him/her by the Department and such action is based, or partly based, on information in a case record. Such disclosure shall be conditioned on a written agreement to protect the information from unauthorized disclosure.

(9) Disclosure of written materials and other information may be made to either of the following:

(A) An impartial hearing officer when such disclosure is necessary for the resolution of an appeal as provided in Section 7354 of these regulations.

(B) An Equal Employment Opportunity Counselor or Investigator, or the Chief, Office of Civil Rights and Affirmative Action when the disclosure is necessary to accomplish any of the following:

1. Review a complaint for prima facie evidence of discrimination.
2. Resolve a complaint of alleged discrimination.
3. Conduct an investigation of a complaint of alleged discrimination.

(10) Disclosure of information in the case record may be made to a prospective employer of a client of the Department without specific written

consent, except medical and psychological, provided that such client has signed the general consent statement on the Application for Services.

(11) Disclosure of personal and confidential information for research purposes shall be made only at the discretion of the Department's Chief, Statistics Section, if:

(A) the research is directly connected with the vocational rehabilitation of disabled individuals;

(B) the organization or individual gives satisfactory written assurance that the information will be used only for the purpose for which it is provided;

(C) the information provided will not be released to persons not directly connected with the study under consideration;

(D) the final product of the research will not reveal any information that would tend to identify any person without the written consent of such person and the Department;

(E) the plan of the organization or individual for maintaining confidentiality of the information provided is approved by the Department prior to the initiation of the research project.

(b) The Department shall keep an accounting of those disclosures so designated by the Information Privacy Act of 1977.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code and Section 1798.30, Civil Code. Reference: Sections 1798.24 and 1798.25, Civil Code; Sections 19000, 19013, ~~19300~~ and 14113, Welfare and Institutions Code; and 34 CFR Sections 104.7, 104.51, 104.61, 361.19 and 361.4938.

Chapter 6. Business Enterprises Program for the Blind

Article 10. Administrative Review and Full Evidentiary Hearing Procedures

§ 7227. General Provisions.

(a) Any Business Enterprises Program for the Blind, hereafter BEP, licensee or vendor, who is dissatisfied with any action of the Department arising from licensing, selection as a vendor, termination or suspension of a license or vendor operating agreement, probation, or administration of the BEP shall have an opportunity for a prompt informal administrative review by the supervisory staff of BEP and/or a full evidentiary hearing before a hearing officer in accordance with the provisions of Sections 7227.1 and 7227.2 of these regulations.

(b) The licensee or vendor may file for an administrative review or may proceed directly to a full evidentiary hearing.

(c) When requested by a licensee or vendor, the California Vendors Policy Committee, hereafter CVPC, and CVPC delegate, who represents the district where the vendor's primary facility is located, shall:

(1) Assist in the preparation and submission of a written request for review and/or hearing.

(2) Provide assistance in the administrative review or full evidentiary hearing process.

(3) Intervene on behalf of the licensee or vendor to negotiate with Department staff to resolve a complaint.

(4) Endeavor to achieve a fair and equitable solution to the complaint.

(d) A licensee or vendor shall be responsible for the costs of his or her own expenses related to disputing or settling issues which may include, but not limited to, travel or private counsel.

(e) Upon request of the vendor or licensee, the BEP shall provide a reader or other communication services, to the extent possible, at the administrative review or full evidentiary hearing.

(f) The CVPC may contract for professional services for training vendors in the preparation and submission of requests for review and hearings for all of the processes specified in subsection (a) herein, using

vending machine income pursuant to Welfare and Institutions Code section 19630, subsections (d) and (g), and section 7225, subsection (b)(2) herein.

(g) Any client-trainee who is dissatisfied with an action arising from the administration of the BEP or the provision of vocational services, or a licensee or vendor who is dissatisfied with an action arising from the provision of vocational rehabilitation services shall have an opportunity for a prompt administrative review by the Vocational Rehabilitation supervisory staff and/or a fair hearing in accordance with Chapter 12 (commencing with Section 7350) and Section 7350 et seq. of these regulations.

NOTE: Authority cited: Sections 19006, 19016, 19627 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b(5), 107b(6), 107b-1(3); 34 CFR Sections 395.4 and 395.13; Sections 19629, 19635, 19638 and 19700 et seq., Welfare and Institutions Code.

Chapter 12. Administrative Review, Mediation, Fair Hearing and Discrimination Complaint Procedures

Article. 1. General Provisions and Administrative Reviews

§ 7350. Definitions and Terms.

(a) For the purposes of this Chapter the following definitions shall apply:

(1) "Appellant" means an applicant or client of the Vocational Rehabilitation or Independent Living Services programs who has filed an oral or written request for an administrative review or a written request for a fair hearing.

(2) "Administrative Review Officer" means a District Administrator who conducts the administrative review.

(3) "Authorized Representative" means the parent of an unemancipated minor or permanent guardian or any person or entity who has been designated by the appellant to act on his/her behalf.

(4) "Administrative Review" means an informal process through which either of the following occur:

(A) The appellant and/or the appellant's authorized representative seek remedy for dissatisfaction with Departmental action.

(B) The complainant and/or the complainant's authorized representative seek remedy for a complaint of discrimination against employees of the Department.

(5) "Complainant" means an applicant, client or former client who has filed an oral or written discrimination complaint for an administrative review or a formal written request for a discrimination investigation/resolution.

(6) "Equal Employment Opportunity Counselor" means an employee of the Department who has had specialized training in the counseling and resolution of discrimination complaints filed by departmental employees and applicants/clients.

(7) "Equal Employment Opportunity Investigator" means an employee of the Department who has had specialized training in conducting impartial, formal investigations of discrimination complaints filed by departmental employees and applicants/clients.

(8) "Good Cause" means any of the following:

(A) Death in the immediate family.

(B) Personal illness or injury to the appellant or authorized representative.

(C) Sudden and unexpected emergencies including but not limited to traffic accidents on the day of the hearing and illness or injury of a household or family member who requires immediate care.

(9) "Impartial hearing officer" means an individual who is qualified under 34 Code of Federal Regulations part 361.5(b)(25) to conduct a fair hearing.

(10) "Mediation Coordinator" means the independent organization the Department contracts with to schedule and conduct mediation of disputes

between individuals and the Department that affect the provision of vocational rehabilitation services.

(11) "Qualified Impartial Mediator" means an individual who:

(A) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) is not a member of the State Rehabilitation Council;

(C) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) is knowledgeable of the vocational rehabilitation program and the applicable federal and state laws, regulations and policies governing the provision of vocational rehabilitation services;

(E) has been trained in effective mediation techniques; and

(F) has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions

Code; Section 35, Chapter 937, Statutes of 1993. Reference: 29 USC

Section 722(c)(4); 28 CFR 35.107(b); 34 CFR 104.7(b), 104.51, 104.61,

361.5 and 361.48; and Sections 19700.1, 19703, 19704 and 19705, Welfare and Institutions Code.

§ 7351. General Provisions.

(a) Any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing. Any applicant or client of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(b) Any applicant, client, or former client who believes he/she has been discriminated against by a Department employee, a contractor or grantee of the Department, or an employee of a contractor or grantee based upon any of the protected statuses of race, color, religious creed, ancestry, national origin, sexual orientation, marital status, medical condition, physical or mental disability, sex, or age shall have an opportunity for a prompt administrative review by the supervisory staff or, as appropriate, by a contractor or grantee, and/or an informal Equal Employment Opportunity Counselor review followed, when necessary, by a formal investigation by the Department's Office of Civil Rights and Affirmative Action.

(c) The administrative review process is optional and shall not delay a fair hearing or, in the case of alleged discrimination, an informal Equal Employment Opportunity Counselor review followed, when necessary, by a formal investigation by the Department's Office of Civil Rights and Affirmative Action, unless the appellant or complainant and/or authorized representative and the Department agree to a delay. The mediation process is also optional and shall not delay a fair hearing, unless all parties agree to a continuation of the hearing.

(d) Notwithstanding (b), an applicant, client, or former client may file a formal complaint with the U.S. Department of Education, Office for Civil Rights at any time.

(e) Any service(s) currently being provided an individual under an IWRP shall not be suspended, reduced, or terminated pending a final determination pursuant to administrative review provided pursuant to Section 7353 or the final decision pursuant to Section 7358, unless:

- (1) The individual or his/her authorized representative so requests; or
- (2) The Department has determined that services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the appellant or the appellant's authorized representative, as specified in 29 USC §722(c)(7).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: 29 USC §722(c)(4) and (c)(7); 34 CFR 100.6, 104.7(b), 104.51, 104.61; Section 19572(w), Government Code; and Sections 19703 and 19704, Welfare and Institutions Code.

Article 1.5. Mediation

§ 7353.6. Mediation.

(a) All requests for mediation of a dispute between an individual and the Department relating to the application for or receipt of Vocational Rehabilitation services shall:

- (1) Be made within one year of the action(s) or decision(s) involved.
- (2) Be made in writing and directed to the Department of

Rehabilitation, Legal Affairs or sent by electronic mail to

appealsinfo@dor.ca.gov. ~~Mediation Coordinator. A mediation request form~~

~~with the address and phone number of the Mediation Coordinator can be~~

~~obtained from the local Department office. Mediation may also be requested~~

~~at the same time a request for fair hearing is filed, and the Department's~~

~~Legal Affairs Office shall forward such requests to the Mediation Coordinator.~~

By requesting a mediation, an individual consents to the release of the

information contained in the request to the ~~Mediation Coordinator~~ a Qualified

Impartial Mediator and to the sharing of information about the individual's case with the ~~Mediation Coordinator~~ Qualified Impartial Mediator.

(3) Include the following information:

(A) The reason for the mediation and why the party requesting mediation thinks the decision should be changed.

(B) The action the party requesting mediation wishes to have taken.

(b) The ~~Mediation Coordinator~~ Department of Rehabilitation, Legal Affairs will contact the parties involved in the dispute to verify that all parties agree to mediation and to schedule the mediation. The District Administrator or his/her designee with authority to resolve the dispute shall attend the mediation on the Department's behalf. The mediation shall be held within 25 calendar days of the ~~Mediation Coordinator's~~ Department of Rehabilitation, Legal Affairs' receipt of the request for mediation, unless the parties agree to a later date. Requesting mediation shall not delay the scheduling of a Fair Hearing, unless all parties agree to the continuation of the Fair Hearing.

(c) Mediations shall be scheduled at a time and place convenient for all parties. The individual has a right to be represented at the mediation. Interpreter and reader services shall be provided for the mediation upon request for clients who are non-English-speaking, deaf, hearing impaired, speech impaired, blind, or visually impaired. The Department may authorize

transportation and attendant services for the mediation upon request for those who require such help and are unable to secure assistance through other sources.

(d) Discussions that occur during the mediation process are confidential and may not be disclosed to anyone outside the mediation process or used as evidence in any subsequent due process hearings or civil proceedings. The mediator may require the parties to the mediation process to sign a confidentiality pledge prior to the commencement of the process. The parties have a right to submit evidence and information to support their positions at the mediation. Evidence that is otherwise available outside of mediation is not inadmissible in a subsequent proceeding or protected from disclosure solely by reason of its introduction or use in mediation.

(e) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is issued by the impartial and qualified mediator and signed by all parties. Copies of the agreement must be given to all parties and placed in the case record.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 722(c)(4).

Article. 2. Fair Hearings

§ 7354. Fair Hearing Requests.

(a) All requests for a fair hearing shall:

(1) Be made within one year of receipt of a written denial or action relating to an application for or receipt of services, except as set forth in Sections 7227, 7344, 7345, and 7353(f) of these regulations.

(2) Be made in writing and directed to the Department's of Rehabilitation, Legal Affairs Office or sent by electronic mail to appealsinfo@dor.ca.gov.

(3) Include the information specified in Section 7353(a)(3).

(b) A hearing before an impartial hearing officer shall be held within 60 calendar days from receipt of the written request.

(c) The request shall be deemed to be "received" in one of the following ways:

(1) The date the request is postmarked plus five working days.

(2) If the postmark is illegible, five working days from the date the request is date stamped by the Department's of Rehabilitation, Legal Affairs Office.

(3) If hand carried, the date the request is date stamped by the Department's of Rehabilitation, Legal Affairs Office.

(4) If by electronic mail to the Department's of Rehabilitation, Legal Affairs-Office, the date the electronic mail is received plus five working days.

(d) The appellant shall be notified by certified mail of:

(1) The time and place for the hearing.

(2) The procedures used by the impartial hearing officer.

(3) The availability of sign language interpreters, oral interpreters, deaf-blind interpreters, or assistive listening systems for the deaf or hearing impaired, if requested by the appellant.

(4) The availability of readers or documents in Braille or large print for visually impaired appellants who request it.

(5) The opportunity to be represented at the hearing by an authorized representative of the appellant's choosing.

(6) The opportunity to bring witnesses to the hearing to testify on the appellant's behalf.

(e) The appellant's record of services shall, upon request, be made available to the appellant and/or appellant's authorized representative.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: 34 CFR 361.57; Sections 19704, 19705, and 19708, Welfare and Institutions Code; and Section 1798.34, Civil Code.

§ 7355. Fair Hearing Procedures.

(a) The appellant may appear alone, with the authorized representative, or be represented by the authorized representative.

(b) The Department shall be represented at the hearing by the employee who made the original decision and/or the Administrative Review Officer, or the Rehabilitation Supervisor to whom the review was delegated.

(c) The appellant and/or the authorized representative and the Department representatives shall have an opportunity to:

(1) Present evidence, information, and witnesses to the impartial hearing officer.

(A) If written evidence is presented at the hearing, three (3) copies shall be presented to the impartial hearing officer by the introducing party.

(2) Be represented by counsel or other appropriate advocate.

(3) Examine all witnesses and other relevant sources of information and evidence.

(d) All persons testifying shall be placed under oath or affirmation.

(e) The impartial hearing officer shall send a notice by certified mail, to inform any appellant or authorized representative who has failed to appear at a hearing, that he or she has 14 days from the date the notice was mailed to submit a written request for another appearance before the impartial

hearing officer. The hearing shall be rescheduled only if the appellant or authorized representative shows good cause for his or her failure to appear.

(f) The impartial hearing officer shall dismiss an appeal if any condition specified below exists. The appellant or authorized representative has failed to:

(1) Respond within the time period specified in (e) to request a rescheduled hearing.

(2) Show good cause for the failure to appear at the hearing.

(3) File a timely request for fair hearing as specified in Sections 7353(f) and 7354(a).

(4) Raise an issue within the jurisdiction of the impartial hearing officer.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: 34 CFR Section 361.57; and Sections 19704, 19705, and 19708, Welfare and Institutions Code.

§ 7356. Appellant Responsibilities for Appearing.

(a) The appellant or authorized representative may waive the right to appear and have the matter decided on the written record by providing written notification to the impartial hearing officer. If such written notification is

received less than seven days prior to the scheduled hearing, the hearing shall be canceled and the appellant shall be sent a notice as specified in Section 7355(e).

(b) The appellant or authorized representative shall notify the impartial hearing officer in writing if he or she is unable to attend a scheduled hearing.

(c) The appellant and/or authorized representative, if any, shall arrive within 30 minutes after the scheduled time of the hearing.

(1) If both the appellant and ~~authorized representative~~ representative fail to appear within the specified time, the hearing shall be canceled and the impartial hearing officer shall send a notice, pursuant to Section 7355(e).

(2) If only one of the above appear, he or she shall have the option of rescheduling the hearing or proceeding with the hearing without the presence of the other.

(A) In the event the hearing is not held and the individual who does not appear at the hearing wishes to request a rescheduled hearing, he/she shall provide documentation sufficient to establish good cause for his/her failure to appear pursuant to Section 7355(e).

(d) An appellant or authorized representative may submit a written request to withdraw the request for the hearing at any time.

(e) The appellant shall have the burden of introducing evidence at the hearing sufficient to demonstrate his or her case by a preponderance of the evidence.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.57; and Section 19705, Welfare and Institutions Code.

§ 7357. Postponement and Continuation.

(a) The impartial hearing officer may postpone the scheduled hearing up to 90 days if good cause exists, if both parties agree to the postponement, or for the convenience of the appellant. A request for postponement must be filed no later than five (5) working days prior to the scheduled hearing. The impartial hearing officer shall not postpone the hearing for more than one year from the original hearing date.

(b) The impartial hearing officer may continue the hearing to a later date upon the determination that additional evidence not available at the hearing is necessary to reach a decision. The impartial hearing officer may order further investigation or direct either party to produce additional evidence.

(c) The impartial hearing officer may close the hearing but hold the record open for up to thirty (30) days to permit the submission of additional

written evidence. Such evidence shall be made available to the Department and the appellant, and if applicable the appellant's authorized representative, and each party shall have the opportunity to submit a written response.

(d) The impartial hearing officer may conduct further hearings if the additional information or response indicates a need for such hearings.

NOTE: Authority cited: Sections 19006, ~~and 19016~~, and 19705 Welfare and Institutions Code. Reference: 34 CFR 361.48(d).

§ 7358. Final Decision.

(a) The impartial hearing officer shall render its final decision within 30 days of the completion of the hearing and shall mail copies by certified mail to all parties. The decision shall set forth:

- (1) The issues.
- (2) The findings of fact.
- (3) The reasons for the decision referencing applicable laws, regulations, and policy.
- (4) The final decision.

(b) At the same time the appellant receives the impartial hearing officer's decision he/she shall also receive a statement of both of the following:

(1) The right to a review by the Superior Court as specified in Section 19709 of the Welfare and Institutions Code if he/she is dissatisfied with the decision.

(2) The availability of the Client Assistance Program to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance.

(c) A copy of the decision shall be filed in the appellant's record of services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: 34 CFR 361.57; and Sections 19705 and 19709, Welfare and Institutions Code.