

Chapter 21
Review of USOR Determinations
Appeals & Due Process
Procedures

21.1 Authority: 34 CFR 361.57, Utah Administrative Rule R993-100

21.2 Policy

- A. **General:** USOR policy requires that applicants and eligible individuals are informed of dispute resolution and due process procedures, including the availability of the Client Assistance Program (CAP), throughout the Vocational Rehabilitation (VR) process. Applicants and eligible individuals or, as appropriate, the individual's representative may request a timely review of any USOR staff determination that affects the provision of VR services. The purpose of this chapter is to specify how review and adjudicative proceedings are conducted under state and federal VR code and regulations administered by the Utah State Office of Rehabilitation. VR Counselors should utilize their professional counseling skills to resolve disputes and maintain positive VR Counselor-Client relationships to the fullest extent possible (see Chapter 11).
- B. **Levels:** A client has the option to appeal through:
- i. Counseling Supervisor Consultation
 - ii. District Director Review
 - iii. Informal Dispute Resolution (Field Service Director Review or Mediation)
 - iv. Fair Hearing

When an appeal is made at any level, a higher level review may be conducted at the discretion of USOR without further lower level resolution processes. Once a specific issue has been considered at a lower resolution level it may only be reviewed at a higher level of appeal.

- C. **Timeline:** A client has 30 days from the date of a specific VR decision that affects service provision to request an appeal.
- D. **Costs:** Regardless of the appeals process followed, administrative costs associated with the appeals process will be borne by the USOR. Costs incurred by an applicant or client retaining a personal attorney and/or travel costs are not considered administrative costs and are the responsibility of the applicant/client.

21.3 Definitions

- A. “**Administrative Law Judge (ALJ)**” means a Utah judge specializing in administrative law and familiar with VR services assigned by the Department of Workforce Services (DWS). The ALJ both presides over trials and adjudicates the claims or disputes involving services or denials of service from the Utah State Office of Rehabilitation.
- B. “**Applicant/client**” means any individual applying for or having been found eligible for Utah State Office of Rehabilitation/VR services.
- C. “**CAP**” means the Client Assistance Program.
- D. “**Days**” indicates calendar days unless otherwise specified as working days.
- E. “**District Director**” means a Director of a USOR district office who directly supervises Counseling Supervisors and VR Counselors.
- F. “**Division**” means the The Utah State Office of Rehabilitation.
- G. “**Division Director**” means the Director of the Utah State Office of Rehabilitation.
- H. “**Designated State Agency (DSA)**” means the Department of Workforce Services as governing oversight agency with oversight for the Utah State Office of Rehabilitation.
- I. “**Designated State Unit (DSU)**” means the Utah State office of Rehabilitation as the state unit which provides Vocational Rehabilitation services within Utah.
- J. “**Fair Hearing**” The final step in adjudicative proceedings under the Rehabilitation Act of 1973 as Amended (Pub.L. 113-128, enacted July 22, 2014).
- K. “**Field Service Director**” means the regional level Director within the Utah State Office of Rehabilitation supervising the VR districts and their District Directors under the Vocational Rehabilitation Program.
- L. “**Field Service Review**” means an “informal dispute resolution” process conducted by a Field Service Director in order to review and attempt a resolution of disputes before it escalates to a Fair Hearing. The alternative choice for a client at this stage is mediation.
- M. “**Informal Dispute Resolution (IDR)**” In accordance with 34CFR361.57(c), means a process of progressive review and procedures, as established by the USOR, for any applicant or client receiving VR services who is dissatisfied with a determination(s) made by a VR Counselor or supervisor concerning the furnishing or denial of service including the opportunity to have a timely review of those determinations.
- N. “**Mediation**” means a process whereby clients and the Designated State Unit engage a qualified mediator in order to attempt resolution of a disputed issue before it escalates to a Fair Hearing. Mediation is an available alternative to the IDR or Field Service Review.
- O. “**Representative**” means a party selected by an applicant/client and acting as an advocate on their behalf.
- P. “**Supervisor**” means any Utah State Office of Rehabilitation VR supervisory staff member.
- Q. “**Utah State Office of Rehabilitation (USOR)**” means the designated state unit for VR services in Utah.
- R. “**VR Counselor**” means any Utah State Office of Rehabilitation Vocational Rehabilitation Counselor.

21.4 Informing Applicants/Clients

All applicants/clients must be informed of opportunities for appeal as described in this chapter. This information must include the names and addresses of the individuals with whom an appeal is filed. [34CFR 361.57(b)(iii)] USOR applicants/clients shall be informed of their opportunity for review of a VR Counselor/supervisor determination at several times during the rehabilitation process. The following outlines how and when applicants/clients shall be informed of their opportunity for review:

- A. The VR Counselor shall, in a format that is accessible to the applicant/client, inform the individual of opportunities for review of VR Counselor/supervisory determinations at application, plan development, client record closure, and other times it is deemed appropriate or requested.
- B. The VR Counselor will inform the applicant/client in writing of the dispute resolution process at specific times during the life of the case. The following USOR forms and written communication include statements informing the applicant/client of opportunities for review of VR Counselor/supervisory determinations:
 - i. USOR-4, Application
 - ii. USOR Order of Selection notification
 - iii. USOR- 30 Day Closure Notification Letter
 - iv. USOR- Certificate of Ineligibility Letter
 - v. USOR - Dear Applicant CAP Letter
 - vi. USOR- Individualized Plan for Employment (IPE)
 - vii. USOR- Final Closure Statement

21.5 District options for resolution

In order to facilitate timely and efficient resolution of client concerns and appeals, USOR encourages all parties to seek to resolve disagreements at the lowest appropriate level. These efforts may include appeals through the supervisory chain within the USOR District unit prior to moving into higher levels of an Informal Dispute Resolution (IDR) process.

The choice to engage in lower level resolution efforts will not void a client's rights to, and cannot be used to delay, a request for Field Service Review, Mediation, and/or a Fair Hearing. A client may request a District level resolution through email, letter, or verbally. To facilitate resolution of client concerns and disagreements with their counselors, USOR outlines the following as initial interventions to be encouraged:

A. Counselor Level Resolution

The preferred and primary method for resolving disputes over service provision and denial of service should be direct client/Counselor discussion. The majority of disputed

issues can be quickly resolved through face- to- face communication between Counselor and client.

B. Supervisory Consultation

If a client feels unable to resolve a dispute over provision or denial of service directly with their counselor, a Supervisory Consultation may be requested. In such events the Counseling Supervisor will review the client record and speak with the counselor and client to see if a reasonable solution can be reached.

A Supervisory Consultation is advisory in nature and provides suggestions and guidance as to how to proceed. At the conclusion, the Counseling Supervisor will document involvement, findings and suggestions in a client narrative as well as directly notify both the client and Counselor of any findings. This communication will include informing the client of appeal rights (including CAP information) in the case of any denial of service.

C. District Director Review

At any time a client may choose to appeal a denial of service to the District Director in which their case is located. In this event, the District Director will then conduct a review of the appeal and issue a decision regarding the request. A District Director may also engage in a District Director Review of a case based on professional concerns that may arise through a case staffing.

When conducting a review, the District Director may communicate as needed, with the client, staff, and any involved service providers regarding the issue of concern. The District Director will make a good faith effort to obtain all information relevant to the specific concern or dispute. The District Director will narrate a summary of their review and decision in the client record. The client will be notified in writing as to any decision made through a District Director Review regarding a denial of service. Notification will include information about the client's further appeal rights (including CAP information).

21.6 Informal Dispute Resolution (IDR) Process

Under the authority of 34 CFR 361.57(c) USOR Review procedures provide options for an Informal Dispute Resolution (IDR) process and/or Mediation as a means of resolving issues prior to a Fair Hearing. In the event that either party engaged in the Informal Dispute Resolution Process determines that the process is not being followed in good faith or that the Field Service Review or mediation options of the IDR will not result in a successful outcome, either party may elect to terminate the current process and request a Fair Hearing. Once a specific issue has been addressed at a higher level it will not be reconsidered at a lower level.

21.7 Field Service Review IDR Option

A. Purpose

USOR encourages clients to resolve issues at the District level as most issues can be resolved quickly at this level. If a client feels that an issue cannot be successfully resolved within the district the client may request the option of Informal Dispute Resolution in the form of a Field Service Review. The intent of the USOR Field Service Review is to provide a timely resolution of disputed VR Counselor and District Level Resolution determinations. Although USOR encourages applicant/client participation in the Informal Dispute Resolution process, the applicant/client may at any time choose not to participate in the process and request a Fair Hearing. In the event that the Field Service Director or Division Director deems a specific review or mediation process to be unnecessary, unproductive, or likely to create unnecessary delays, the process may be escalated to a Fair Hearing in fulfillment of due process.

B. Filing a request for a Field Service Review

An applicant/client unable to resolve concerns surrounding a decision with his/her VR Counselor, or who is dissatisfied with the District Level Resolution may request a Field Service Review of the VR Counselor or supervisor's decision by filing a written request with the Field Service Director under whom the disputed determination was rendered. A request, prepared by the client or client's representative, must be submitted within 30 days of the specific decision to be reviewed and must:

- i. Include the name and address of the individual requesting the review;
- ii. Include the name of the VR Counselor or supervisor whose decision is to be reviewed;
- iii. Describe the decision or decisions to be reviewed in sufficient detail to inform the USOR of the nature and consequences of the decision;
- iv. Describe the action or resolution desired; and
- v. Be signed and dated by the individual or his/her representative.

This process will not delay a fair hearing or preclude the option of mediation. An applicant/client can choose to terminate a Field Service Review process by filing a request for Mediation or Fair Hearing at any time. If such a request is filed, the Field Service Director review will end; however, the Field Service Director may complete a review summary to be used at later stages of the appeal, if any.

C. Field Service Review Process

As part of the Informal Dispute Resolution process, the Field Service Director shall conduct an investigation of each decision under review. The investigation shall make all reasonable efforts to assure relevant information is identified and documented. At a minimum the investigation shall include communication with the applicant/client, VR Counselor and involved supervisory staff, and any other relevant staff or vendors. The investigation shall also include a review of the applicant/client record.

D. Issuance of Field Service Review Decision

The Field Service Director shall issue a written decision regarding the issues in question within 15 days of receipt of the request for a Field Service Review. The decision shall be sent to the party making the request and other appropriate persons. The written notification shall include:

- i. Notice to the party of the right to a Fair Hearing under this rule;
- ii. A summary of the decision(s) the applicant/client requested to be reviewed;
- iii. A review of the action or resolution desired by the applicant/client;
- iv. A summary of the investigation;
- v. Findings of the investigation;
- vi. Action to be taken and reasons for such action and;
- vii. Further advisory recommendations and guidance the Field Service Director deems may be appropriate for the disposition of the case.

E. Timelines and extensions

If the Field Service Director is unable to reach a decision within the 15 day period, he or she shall notify the client, in writing or other accessible format suitable to the individual, as to why the decision is being delayed and the reason an extension is needed. Both parties must agree to the extension of time. In the event that there is a failure to meet this deadline without an agreement, a written explanation of the cause of the delay will be provided to the client and the disputed issue will proceed to a Fair Hearing.

21.8 Mediation Option

A. Purpose

Federal Statute requires USOR to establish procedures for alternative dispute resolution through Mediation. Agreement to Mediation of any specific issue is voluntary for all parties and is intended for use only when there is a good faith belief that engaging in the process will produce resolution. In the event that Mediation is requested but denied by USOR, a Field Service Review and/or Fair Hearing will be offered as alternatives. Nothing in the Mediation process precludes the parties from informally resolving the dispute prior to Mediation proceedings or a Fair Hearing. Either party or the Mediator may elect to terminate the Mediation at any time. Notice of the termination will be sent to all parties. In the event Mediation is terminated, either party may pursue resolution through a Fair Hearing.

B. Filing for Mediation

A request for Mediation, prepared by the client or client's representative, must be filed within 30 days of the determination. At any time during an appeal process under 21.5 or 21.7, the applicant/client may request Mediation by filing a written request with the Division Director. Agreement to Mediation is at the Division Director's discretion and the Division Director may recommend the case move directly to a Fair Hearing. In this case, the parties will be notified in writing of the denial with instructions on how to proceed to a

Fair Hearing. An individual does not waive the right to a Fair Hearing by requesting Mediation. A written request for mediation must:

- i. Include the name and address of the individual requesting the review;
- ii. Include the name of the VR Counselor or Supervisor whose decision is to be reviewed;
- iii. Describe the decision(s) the individual is requesting be reviewed in sufficient detail to inform USOR of the nature and consequences of the decision(s);
- iv. Describe the action or resolution desired; and
- v. Be signed and dated by the individual, or their representative, filing the request.

C. Mediation Process Requirements

The Mediation process must [34 CFR 361.57 (d)(2)]:

- i. Be voluntary on the part of the parties involved.
- ii. Not be used to deny or delay the right of the individual to a Hearing; and
- iii. Be conducted by a qualified and impartial Mediator in the Adjudication and Appeals Division of the Department of Workforce Services.

Any discussion that occurs during the mediation process is considered confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. If Mediation is agreed to by both the client/applicant and USOR, the cost for the mediation process will be paid for by USOR; however USOR is not responsible for costs related to the client/applicant's representation.

D. List and Selection of Mediators

USOR shall maintain a list of qualified mediators who are knowledgeable in laws (including regulations) relating to the provision of VR services under the Rehabilitation Act as Amended. Selection of a mediator from the list shall be made either on a random basis or by agreement between the Division Director of USOR and the individual, or the individual's representative.

E. Issuance of Mediation Outcome

Agreement reached by the parties shall be formalized in a written mediation agreement. The outcome of the Mediation Process will be sent to the client and the VR Counselor for inclusion in the case record.

F. Timelines and Scheduling

The request for mediation must be made within 30 days of the date of the specific decision being appealed. Mediation sessions will be scheduled in a timely manner and will be held by telephone unless the applicant/client requests and needs accommodation for an in-person hearing. In-person hearings will be held at the Adjudication and Appeals Division offices in Salt Lake City.

21.9. Fair Hearing (Utah Administrative Rule R993-100)

A. Purpose

A Fair Hearing is the final option of the Dispute Resolution process. Lower level efforts of resolution will be recommended prior to entering into a fair hearing process, however such efforts may not be used to deny services or delay a Fair Hearing if requested by the client.

The Fair Hearing process may be initiated by formal client request within the timeline described below when there is a dispute regarding a denial, a reduction in services, a determination of ineligibility, or case closure. It may also be initiated by decision of the Division Director or a client after the conclusion of a Field Service Review or Mediation.

B. Filing for a Fair Hearing

(i) A client has 30 days from a determination to request a Fair Hearing. Scheduling of a Fair Hearing is automatically initiated when a written request for any IDR process (Field Service Review or Mediation) is received by a Field Service Director or Division Director of USOR within the allowable timeframes specified under 21.7 & 21.8.

The Fair Hearing must be conducted within 60 days of receipt of an IDR request unless the specific issue is resolved prior to the date of the Fair Hearing. If a client determines they wish to request a Fair Hearing during or after a Field Service Review or Mediation, they must notify the Division Director within 30 days of receipt of the Field Service Review or Mediation decision or, in the event a Mediation was terminated, the date of the notice of the termination. When a request for a Fair Hearing is received by the Division Director, the Fair Hearing must be scheduled and take place within 60 days of the receipt of request unless the parties agree to a specific extension of time. The Fair Hearing must be scheduled by the Division Director or their designee as soon as possible after receipt of the request. The request for a fair hearing prepared by the client or client's representative shall:

- i. Include the name and address of the individual requesting the review;
- ii. Include the name of the VR Counselor/supervisor whose decision is to be reviewed;
- iii. Describe the decision(s) the individual is requesting be reviewed, in sufficient detail to inform USOR of the nature and consequences of the decision(s);
- iv. Describe the action or resolution desired; and
- v. Include the signature and date of the individual or their representative filing the request.

Confirmation of receipt of request will be sent to the client including date of receipt, issues under dispute, and the timeframes for the Fair Hearing process.

Cancellation: A Fair Hearing may be cancelled by the individual who requested the review by submitting, in writing, a request addressed to the Division Director or Field Service Director from the individual or their designated representative.

C. Scheduling of Fair Hearing

The Division of Adjudication's office will be notified of the request in order to facilitate scheduling of the Fair Hearing. The selection of the Administrative Law Judge will commence either by random method or agreement between the client and Division Director or designee. Once the Administrative Law Judge is determined, a pre-hearing scheduling meeting between parties at the discretion of the Administrative Law Judge will determine if there are any required extensions or the date on which the Fair Hearing will occur.

D. How Hearings Are Conducted

Hearings are held at the state level and not at the local level. Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act. Hearings are conducted by an Administrative Law Judge (ALJ) in the Division of Adjudication.

Hearings are scheduled as telephone hearings. Every party wishing to participate in the telephone hearing must call the Division of Adjudication before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the client fails to call in advance, as required by the notice of hearing, the appeal will be dismissed.

If a client requires an in-person hearing, the client must contact the ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to also appear in person. Requests will only be granted if the client can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and impartial hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the offices of the Adjudication and Appeals Division unless the ALJ determines that another location is more appropriate.

The Department is not responsible for any travel costs incurred by the client or any of his or her witnesses in attending an in-person hearing. The Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

E. Use of Interpreters

When a Client needs an interpreter at the hearing the client or the client's representative must notify the Department of Workforce Services of the need at the time the request for the hearing is made. If notified at the time the request for hearing is made, the Department of Workforce Services will arrange for an interpreter at no cost to the client.

When utilizing an interpreter the ALJ will be assured that the interpreter understands the English language and the language of the client or witness for whom the interpreter will interpret. The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given. In fulfilling this, the interpreter will translate word for word all proceedings.

If an interpreter is needed specifically to assist a deaf or hearing impaired party, the interpreter must be certified in ASL as provided in Rule R993-300 et seq. In these cases, the ALJ will instruct the interpreter to interpret as accurately as possible given the communication modality and translate to the client the explanation of the hearing procedures as provided by the ALJ.

F. Notice of Hearing

All interested parties will be notified in writing at least 10 days prior to the hearing. Advance written notice of the hearing can be waived if the client and Department of Workforce Services agree. If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

The notice shall contain:

- i. the time, date, and place, or conditions of the hearing. If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;
- ii. the legal issues or reason for the hearing;
- iii. the consequences of not appearing;
- iv. the procedures and limitations for requesting rescheduling; and
- v. notification that the client can examine the case file prior to the hearing.

The client is responsible to notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation. When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department of Workforce Services and the client agree, after a full verbal explanation of the issues and potential results.

G. Hearing Procedure

Hearings are not open to the public; however the client may invite friends or relatives to attend as space permits. Representatives for the client (if applicable) and representatives from the Department of Workforce Services or other state agencies may also be present. All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded. All issues relevant to the appeal will be considered and decided upon by the ALJ whose decision will be based solely on the testimony and evidence presented at the hearing.

All parties may testify, present evidence or comment on the issues. All testimony of the parties and witnesses will be given under oath or affirmation. Any party to an impartial hearing will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

The ALJ will direct the order of testimony and rule on the admissibility of evidence. Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight. Official records of the Department of Workforce Services, including reports submitted in connection with any program administered by the Department of Workforce Services or other State agency may be included in the record. The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues. The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

H. Issuance of ALJ's Decision

Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing. A decision of the ALJ which results in a reversal of the Department of Workforce Services' decision shall be complied without unnecessary delay and according to standard of provision of services procedures.

I. Rescheduling or Continuance of Hearing

The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department of Workforce Services. If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time. This request must be received prior to the hearing and made orally or in writing to the ALJ who is scheduled to hear the case. As part of the request for continuance or rescheduling, the party making the request must show cause for the request. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request. Normally, a party will not be granted more than one request for a continuance. The rescheduled hearing must be held within 30 days of the original hearing date.

J. Default Order or Dismissal for Failure to Participate

If a hearing has been scheduled at the request of a client and the client fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, dismiss the request for an

impartial hearing. A default order will be based on the record and best evidence available at the time of the order.

K. Setting Aside a Default or Dismissal and/or Reopening the Hearing After the Hearing Has Been Concluded

Any party who fails to participate personally or by authorized representative as defined may request that the default order or dismissal be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened. The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order or dismissal within ten days of the issuance of the default or dismissal. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order or dismissal be set aside or a reopening satisfied the requirements of R993-100-111 or may grant or deny the request on the basis of the record in the case. If a presiding officer issued the order of default or dismissal, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default or dismissal be set aside or that the hearing be reopened has satisfied the requirements of R993-100-111. The ALJ may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. An ALJ may also, on his or her own motion, set aside a default or dismissal on the same grounds.

If a request to set aside the default or dismissal or a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default or dismissal by following the procedure in R993-100-114. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default or dismissal is set aside on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits of an additional hearing if necessary.

L. What Constitutes Grounds to Set Aside a Default or Dismissal.

A request to reopen or set aside for failure to participate:

- i. will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;
- ii. may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what

sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

1. the danger that the party not requesting reopening will be harmed by reopening,
2. the length of the delay caused by the party's failure to participate including the length of time to request reopening,
3. the reason for the request including whether it was within the reasonable control of the party requesting reopening,
4. whether the party requesting reopening acted in good faith, and
5. whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department of Workforce Services rules, attorneys and professional representatives are held to a higher standard, and
6. whether based on the evidence of record and the parties' arguments or statements, setting aside the default and taking additional evidence might affect the outcome of the case.

Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

M. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wishes to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department of Workforce Services decision. The client will have ten days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

N. Dispute of the ALJ Decision

The decision of the ALJ will be final 30 days after issuance unless further appeal is filed. Either party has the option of appealing the decision of the ALJ to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ. If a request for a hearing is not timely filed under R993-100-104, there are no further appeal rights.

21.10 Review by the District Court of Utah

Either party who disagrees with the findings and decision of the ALJ presiding over the Fair hearing has a right to bring a civil action in the District Court of Utah with respect to the matter in dispute. Pursuit of actions through civil action will be at the expense of the claimant.

21.11 Impact on Service Provision:

A. Non-disputed services:

During an appeals process, USOR may not suspend, reduce, or terminate non-disputed VR services which are currently included in the IPE, pending resolution through mediation, IDR resolution, or a decision by the ALJ or the Director of USOR (unless requested to do so by the individual or their representative) except in circumstances when there is evidence that services were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative. The finding that a particular service request reaches the level of fraud may be determined by an Administrative Law Judge as a part of the Fair Hearing process, or by the Director of USOR at any time.

B. Services based on active case status/case closure disputes:

34 CFR 361.48 requires USOR operate within its scope by only providing services required for preparing for, securing, retaining, or regaining an employment outcome. Therefore when the decision being appealed is the decision to close the case, all services are considered disputed services.

In disputes regarding case closure (see Chapter 17), services which would normally cease due to case closure will not be provided pending a final decision regarding case closure. In the event that a case remains open as a result of the appeal, then agreed upon services will resume in accordance with the agreements in the open case.

21.12 Relationship to Other Laws

This procedure does not prohibit or limit the use of remedies under any other Utah State or federal law that provides equal or greater protection.

