

**ARTICLE 75-08  
VOCATIONAL REHABILITATION**

Chapter  
75-08-01 Vocational Rehabilitation

**CHAPTER 75-08-01  
VOCATIONAL REHABILITATION**

Section	
75-08-01-01	Definitions
75-08-01-02	General Requirements of the Vocational Rehabilitation Program
75-08-01-03	Variance
75-08-01-04	Establishment and Maintenance of Records
75-08-01-05	Expenditure Authorization
75-08-01-06	Referrals to Other Services
75-08-01-07	Notification of Appeals and Mediation Procedures
75-08-01-08	Confidentiality
75-08-01-09	Informed Written Consent
75-08-01-10	Release of Information Within the Department
75-08-01-11	Release of Information to the Individual and Others
75-08-01-12	Release of Information for Program Audit, Evaluation, or Research
75-08-01-13	Subpoenas
75-08-01-14	Administrative Review Procedures - Appeals
75-08-01-15	Application for Services
75-08-01-16	Period of Time to Determine Eligibility
75-08-01-17	Presumption of Eligibility and Significant Disability
75-08-01-18	Eligibility Criteria and Documentation
75-08-01-19	Eligibility Criteria for Supported Employment
75-08-01-20	Trial Work Experiences and Extended Evaluation
75-08-01-21	Ineligibility Determination
75-08-01-22	Assessment for Determining Eligibility and Vocational Rehabilitation Needs
75-08-01-23	Order of Selection
75-08-01-24	Individualized Plan for Employment
75-08-01-25	Comparable Services and Benefits
75-08-01-26	Determination of Financial Need
75-08-01-27	Services Exempt From Participation by an Individual in the Cost of Vocational Rehabilitation Services
75-08-01-28	Services Subject to Participation by an Individual in the Cost of Vocational Rehabilitation Services
75-08-01-29	Vocational Rehabilitation Services Necessary to Enable the Individual to Achieve an Employment Outcome
75-08-01-30	Postsecondary Training
75-08-01-31	On-the-Job Training
75-08-01-32	Closure Due to Ineligibility
75-08-01-33	Closure for Reasons Other Than Ineligibility
75-08-01-34	Closure for an Individual Determined to Be Rehabilitated
75-08-01-35	Closure for an Individual in Extended Employment

**75-08-01-01. Definitions.**

In this chapter:

1. "Assistive technology device", also referred to as "rehabilitation technology device", means any item, piece of equipment, or product system, whether acquired commercially off the shelf,

modified, or customized, used to increase, maintain, or improve the functional capabilities of an individual with disabilities.

2. "Assistive technology service", also referred to as "rehabilitation technology service", means a service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.
3. "Client assistance program" means the program that informs and advises an individual of all available benefits under the Rehabilitation Act, as amended, and, if requested, may assist and advocate for the individual in matters related to vocational rehabilitation decisions and services. Client assistance program services include assistance and advocacy in pursuing mediation, administrative, legal, or other appropriate remedies for the protection of the rights of an individual.
4. "Department" means the North Dakota department of human services.
5. "Employment outcome" means, in a manner consistent with this chapter:
  - a. Entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;
  - b. Supported employment; or
  - c. Satisfying any other type of employment in an integrated setting that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including self-employment, telecommuting, business ownership, and homemaker services.
6. "Existing data" means information from any source that currently exists that describes the current functioning of the individual and may be available to vocational rehabilitation for an eligibility determination. The school records of an individual are considered to be existing data; however, vocational rehabilitation may request additional information if there is an indication of changes in functioning or if there is conflicting information.
7. "Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.
8. "Extended evaluation" means services provided under limited circumstances to determine eligibility when the individual cannot take advantage of trial work or when trial work has been exhausted and eligibility cannot yet be determined.
9. "Extreme medical risk" means a risk of increasing functional impairment or risk of death if medical services are not provided expeditiously.
10. "Homemaker" means an individual who has the skills to maintain a home and actively functions in that capacity; and, either enables another family member to engage in competitive employment, or does tasks in the home for another individual or himself or herself that would otherwise need to be done by an outside individual or agency for a fee. Homemaker tasks include some or all of the following activities: kitchen management and food preparation, child care, household management, and clothing care.
11. "Individual with a disability" means any individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment and who can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to this chapter.

12. "Individual with a most significant disability" means an individual:
  - a. Who meets the criteria for a significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and
  - b. Who requires multiple core services over an extended period of time of six months or more.
13. "Individual with a significant disability" means:
  - a. An individual who is receiving social security disability insurance or supplemental security income; or
  - b. An individual:
    - (1) Who has severe physical or mental impairments that seriously limit the individual's functional capacity, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome;
    - (2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time of six months or more; and
    - (3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.
14. "Informed choice" means a choice based on disclosure of facts and alternatives to allow a person to make decisions based on relevant information, options, and consequences.
15. "Mediation" means using an independent third party to assist vocational rehabilitation clients in settling differences or disputes prior to formal action regarding vocational rehabilitation decisions or services.
16. "Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be necessary in order to achieve an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. Personal assistance services may include training in managing, supervising, and directing personal assistance services.
17. "Postsecondary training" means training offered by institutions that qualify for federal financial student aid and is provided only when necessary to achieve a vocational goal consistent with an individual's capabilities and abilities.
18. "Qualified rehabilitation professional" means a vocational rehabilitation counselor, consultant, or administrator who meets the standards established for qualified rehabilitation professionals.

19. "Substantial impediment to employment" means that a physical or mental impairment in light of attendant medical, psychological, vocational, educational, communication, and other related factors hinders an individual from preparing for, entering into, engaging in, or retaining employment, consistent with the individual's abilities and capabilities.
20. "Suitable" means consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual.
21. "Supported employment" means competitive work in an integrated work setting with ongoing support services for an individual with a most significant disability for whom competitive employment has not traditionally occurred; or, for whom competitive employment has been interrupted or intermittent because of a most significant disability; and, who, because of the nature and severity of the disability, needs intensive supported employment services and extended services to be gainfully employed. Supported employment also includes transitional employment for an individual with chronic mental illness. The following terms are defined concerning supported employment:
  - a. "Competitive work" means work that, at the time of transition to extended services, is performed weekly on a full-time or part-time basis, as determined in the individualized plan for employment, and for which an individual is compensated consistent with wage standards provided for in the Fair Labor Standards Act [29 U.S.C. 201, et seq.].
  - b. "Extended services" means ongoing support services provided by a state agency, private nonprofit organization, or any other appropriate resource, from funds other than titles I, III-D, or VI-B of the Rehabilitation Act [29 U.S.C. 701, et seq.]. Extended services include natural supports, are provided once the time-limited services are completed, and consist of the provision of specific services needed by the individual to maintain employment.
  - c. "Integrated work setting" means jobsites where there is regular contact with other employees or the general public who do not have a disability. Supported employment requires that no more than eight individuals with disabilities be part of a workgroup.
  - d. "Ongoing support services" means services needed to support and maintain an individual with a most significant disability in supported employment. The individual may be provided necessary and appropriate supports, including jobsite training, transportation, followup family contact, or any services necessary to achieve and maintain the supported employment placement, throughout the term of employment. Ongoing support must include two monthly contacts with the supported employee at the worksite to assess job stability, unless it is determined that offsite monitoring is more appropriate for a particular individual. Offsite monitoring consists of at least two meetings with the individual and one employer contact each month.
  - e. "Time-limited services" means support services provided by vocational rehabilitation for a period not to exceed eighteen months, unless a longer period to achieve job stabilization has been established in the individualized plan for employment, before the individual transitions to extended services.
  - f. "Transitional employment services for an individual with chronic mental illness" means a series of temporary job placements in competitive work in an integrated work setting with ongoing support services for an individual with chronic mental illness.
22. "Trial work experiences" means those experiences designed to explore an individual's abilities, capabilities, and capacity to perform in work situations, including situations in which appropriate support and training are provided.
23. "Vocational goal" means an employment outcome.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16

**Law Implemented:** NDCC 50-06.1

**75-08-01-02. General requirements of the vocational rehabilitation program.**

1. The vocational rehabilitation program assists an eligible individual with physical or mental disabilities to prepare for and achieve an employment outcome. The vocational rehabilitation process is based upon an individualized plan for employment oriented to the achievement of a suitable vocational goal. An individual with disabilities must require the service provided to minimize and accommodate the impediment to employment. Services must be reasonable and provided as cost effectively as possible.
2. Vocational rehabilitation presumes that an individual will benefit in terms of an employment outcome from vocational rehabilitation services, unless the counselor can document, on the basis of clear and convincing evidence and only after trial work experiences, that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.
3. Auxiliary aids and services will be provided at no cost to applicants or clients when they are necessary to access the vocational rehabilitation program. The purpose of auxiliary aids and services is to provide effective communications for participants in determining eligibility, assessments, and plan development.
4. Unless otherwise specified in this chapter, eligibility to participate in the vocational rehabilitation program is governed by federal vocational rehabilitation statutes and the federal procedures embodied in the rehabilitation services administration notices and policy memos. The program must conform to lawfully issued regulations and policies of the rehabilitation services administration. Terms used in this chapter have the same meaning as the terms used in the regulations and policies of the rehabilitation services administration, unless this chapter specifically provides otherwise.
5. The department must provide services without regard to sex, race, creed, age, color, national origin, political affiliation, or type of disability.
6. There is no residency requirement, durational or other, that may exclude an otherwise eligible individual present in the state from eligibility. For individuals who are not United States citizens, vocational rehabilitation must verify that the individual is not prohibited from working.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** 29 USC 720, et seq.

**75-08-01-03. Variance.**

Upon written application and good cause shown to the satisfaction of vocational rehabilitation, vocational rehabilitation may grant a variance from the provisions of this chapter upon terms prescribed by the department.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** 29 USC 720, et seq.

#### **75-08-01-04. Establishment and maintenance of records.**

Vocational rehabilitation shall establish and maintain a record of service for each individual applying for or receiving vocational rehabilitation services. The record must include data necessary to comply with state vocational rehabilitation and federal rehabilitation services administration requirements.

**History:** Effective October 1, 1995.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** 29 USC 720, et seq.

#### **75-08-01-05. Expenditure authorization.**

Case service expenditures require written authorization prior to the initiation of services. Oral authorizations are permitted in emergency situations, but must be confirmed promptly in writing.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** 29 USC 720, et seq.

#### **75-08-01-06. Referrals to other services.**

When appropriate, counselors shall provide the referral necessary to support an individual with disabilities in securing necessary services from other agencies and organizations.

**History:** Effective October 1, 1995.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** 29 USC 720, et seq.

#### **75-08-01-07. Notification of appeals and mediation procedures.**

1. Vocational rehabilitation shall inform each individual applying for or receiving vocational rehabilitation services of the availability of mediation services. An individual may request mediation through the counselor, vocational rehabilitation administrator, or client assistance. The results of mediation are not binding.
2. Vocational rehabilitation shall inform each individual applying for or receiving vocational rehabilitation services of the appeals procedure in chapter 75-01-03. An individual may appeal vocational rehabilitation's decision concerning the furnishing or denial of services by filing a written notice of appeal with the department's appeals supervisor within thirty days of the date of the notice of the decision.
3. Vocational rehabilitation shall provide the name and address of the appeals supervisor with whom appeals may be filed and shall inform each individual of the availability of the client assistance program.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06

#### **75-08-01-08. Confidentiality.**

All information acquired by vocational rehabilitation about an individual applying for or receiving services must remain the property of vocational rehabilitation and must only be used and released for purposes directly connected with the administration of the vocational rehabilitation program. Information obtained from another agency or organization may be released only by or under the conditions established by the other agency or organization. Vocational rehabilitation use and release of personal information must conform with applicable state and federal regulations.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-05

**75-08-01-09. Informed written consent.**

Informed written consent must:

1. Be in language that the individual or the individual's representative understands;
2. Be signed and dated by the individual or the individual's representative;
3. Include an expiration date;
4. Be specific in designating the department or person authorized to disclose information;
5. Be specific as to the nature of the information that may be released;
6. Be specific in designating the parties to whom the information may be released; and
7. Be specific as to the purpose or purposes for which the released information may be used.

**History:** Effective October 1, 1995.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-05

**75-08-01-10. Release of information within the department.**

Intradepartmental exchange of information may occur without informed written consent when the individual is served by other divisions if the information is directly related to the purpose of the vocational rehabilitation program.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-05

**75-08-01-11. Release of information to the individual and others.**

1. Upon informed written consent by the individual with disabilities or the individual's representative, all information in the record of service must be made available to the individual with disabilities or the individual's representative in a timely manner, except:
  - a. Medical, psychological, or other information vocational rehabilitation believes may be harmful to the individual and that may not be released directly to the individual, and must be provided through the individual's representative, physician, or licensed psychologist; and
  - b. Information obtained from outside vocational rehabilitation that may be released only under the conditions established by the outside agency, organization, or provider.
2. Upon informed written consent of the individual with disabilities or the individual's representative, vocational rehabilitation may release information that may be released under subsection 1 to the individual with disabilities to another agency or organization.
3. Vocation rehabilitation may release personal information, with or without consent of the individual:
  - a. If required by state or federal law;

- b. In response to investigations connected with law enforcement, fraud, or abuse (except where expressly prohibited by federal or state laws or regulations); or
  - c. In response to judicial order.
4. Vocational rehabilitation may release personal information, without informed written consent of the individual, in order to protect the individual or others when the information poses a threat to the individual's safety or the safety of others, except for human immunodeficiency virus test results that may not be released without informed written consent of the individual.
  5. Vocational rehabilitation and social security disability determination services may exchange information, without the informed written consent of the individual.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-05

#### **75-08-01-12. Release of information for program audit, evaluation, or research.**

At the discretion of the vocational rehabilitation director, personal information may be released to an organization, agency, or individual engaged in program audit, program evaluation, or program research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for an individual with disabilities, and only if the organization, agency, or individual assures that:

1. The information is used strictly for the purposes for which it is being provided;
2. The information is released only to an individual officially connected with the audit, evaluation, or research;
3. The information is not released to the individual involved;
4. The information is managed in a manner to safeguard confidentiality; and
5. The final product does not reveal any personal identifying information without the informed written consent of the individual involved or the individual's representative.

**History:** Effective October 1, 1995.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-05

#### **75-08-01-13. Subpoenas.**

An employee of vocational rehabilitation may testify in court or in an administrative hearing, but may not release information or records, without the consent of the individual with disabilities, unless ordered to do so by a judge or hearing officer.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-05

#### **75-08-01-14. Administrative review procedures - Appeals.**

1. An individual applying for or receiving vocational rehabilitation services, who is dissatisfied with any determination made by rehabilitation personnel concerning the furnishing or denial of services, may request a timely review of the determination. Vocational rehabilitation shall make reasonable accommodation of the individual's disability in the conduct of the appeals process.



2. Pending a final determination of an appeal hearing, vocational rehabilitation may not suspend, reduce, or terminate services that are being provided under an individualized plan for employment, unless:
  - a. The individual or individual's guardian so requests;
  - b. The services were obtained through misrepresentation, fraud, collusion, or criminal conduct;
  - c. The individual fails to substantially satisfy the terms of the individualized plan for employment. "Failure to substantially satisfy the terms of the individualized plan for employment" means the individual's failure to participate in a service that is instrumental to accomplish the vocational goal; or
  - d. The services are determined to be harmful to the individual.
3. Nothing in this chapter may be construed to forbid any informal, mutually consensual meetings or discussions between the individual and the department or the director. If the department or the director conducts an informal meeting under this section, the individual may still request a formal appeal pursuant to this chapter. An informal meeting will not suspend or extend the time for filing an appeal as set forth in this section. An individual may request a fair hearing through the department immediately without having to go through other appeal procedures.
4. A fair hearing must be conducted, and a recommended decision shall be issued in accord with North Dakota Century Code chapter 28-32 and chapter 75-01-03. Vocational rehabilitation shall consider the decision as final, unless the decision is based on error of law or is contrary to policy.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04

#### **75-08-01-15. Application for services.**

All individuals desiring vocational rehabilitation services must apply for services. An individual is considered to have applied for services when vocational rehabilitation receives a signed, written request for those services from the individual or the individual's representative.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04; 29 USC 722

#### **75-08-01-16. Period of time to determine eligibility.**

Vocational rehabilitation shall determine eligibility for services within a reasonable period of time not to exceed sixty days after the receipt of the application for services, unless:

1. The individual is notified that exceptional and unforeseen circumstances beyond the control of the counselor preclude the counselor from completing the determination within the prescribed timeframe, and the individual agrees to a specific extension of time;
2. Vocational rehabilitation conducts trial work experiences to explore the individual's abilities, capabilities, and capacity to work in various situations; or
3. An extended evaluation is necessary.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04

**75-08-01-17. Presumption of eligibility and significant disability.**

1. An individual who has a disability or is blind as determined under title II or title XVI of the Social Security Act [42 U.S.C. 301, et seq.] and who receives social security disability insurance benefits or supplemental security income benefits is presumed to be eligible for vocational rehabilitation services if the individual intends to achieve an employment outcome.
2. An individual who receives supplemental security income benefits or social security disability insurance benefits is presumed to have a significant disability.
3. The presumption of eligibility described in this section shall be overcome if vocational rehabilitation can demonstrate by clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of the individual's disability. The demonstration that the individual cannot benefit from vocational rehabilitation services may be determined only after conducting trial work experiences as described in section 75-08-01-20.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04

**75-08-01-18. Eligibility criteria and documentation.**

1. Vocational rehabilitation must base eligibility determinations on existing data as the primary source of information to the maximum extent possible and appropriate. The individual requesting services, the family of the individual, or other sources may provide the information. An individual is eligible for vocational rehabilitation if:
  - a. The individual has a mental or physical impairment;
  - b. The impairment constitutes or results in a substantial impediment to employment as determined by a qualified rehabilitation professional;
  - c. The individual can benefit from vocational rehabilitation services in terms of an employment outcome. An individual is presumed to be able to benefit from vocational rehabilitation services in terms of an employment outcome unless vocational rehabilitation can demonstrate by clear and convincing evidence that the individual cannot benefit due to the severity of the disability. This demonstration that the individual cannot benefit can be determined only after conducting trial work experiences as described in section 75-08-01-20; and
  - d. The individual requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.
2. In all cases in which vocational rehabilitation determines an individual eligible for services, the record of service must include documentation of eligibility, dated and signed by a qualified rehabilitation professional, which demonstrates that the individual:
  - a. Has a physical or mental impairment that constitutes or results in a substantial impediment to employment; and
  - b. Requires vocational rehabilitation services to prepare for, enter, retain, or regain employment.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04

**75-08-01-19. Eligibility criteria for supported employment.**

An individual is eligible for supported employment services if:

1. The individual is eligible for vocational rehabilitation services;
2. The individual is determined to have a most significant disability; and
3. A comprehensive assessment of rehabilitation needs, including an evaluation of rehabilitation, career, and job needs identifies supported employment as the appropriate employment outcome for the individual.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04

**75-08-01-20. Trial work experiences and extended evaluation.**

1. Before an individual can be determined ineligible due to the severity of a disability, the individual must receive trial work experiences and there must be a written trial workplan. The trial work must:
  - a. Be sufficiently varied and over a sufficient period of time to determine eligibility or ineligibility;
  - b. Show by clear and convincing evidence that the individual cannot benefit due to the severity of the disability; and
  - c. Include support services such as assistive technology or personal assistance, which must be provided by vocational rehabilitation.
2. Trial work experiences shall explore the individual's abilities, capabilities, and capacity to perform in work situations, including experiences in which appropriate supports and training are provided.
3. Vocational rehabilitation must provide assessments periodically during the trial work experiences regarding the individual's abilities, capabilities, and capacity to perform the work.
4. Under limited circumstances, if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted and an eligibility determination cannot be made, vocational rehabilitation will provide extended evaluation services. Extended evaluation services must:
  - a. Be identified in a written extended evaluation plan;
  - b. Be provided in the most integrated setting possible consistent with the informed choice and rehabilitation needs of the individual; and
  - c. Provide only those services that are necessary to determine if there is sufficient evidence to conclude the individual can benefit from vocational rehabilitation services in terms of an employment outcome, or there is clear and convincing evidence the individual is incapable of benefiting from vocational rehabilitation services due to the severity of the disability.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04

**75-08-01-21. Ineligibility determination.**

1. Vocational rehabilitation may make a determination that an individual is ineligible for vocational rehabilitation services only after providing an opportunity for full consultation with the individual or the individual's representative, as appropriate.
2. When vocational rehabilitation determines that an individual is ineligible to receive vocational rehabilitation services, the individual or the individual's representative shall be informed of the ineligibility determination in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including:
  - a. The reasons for the determination; and
  - b. A written description of the means by which the individual may express and seek a remedy for any dissatisfaction with the determination. This includes the procedures for appeal as provided in chapter 75-01-03, mediation, and the client assistance program.
3. When an ineligibility determination is based on a finding that the individual is incapable of benefiting in terms of an employment outcome due to the severity of the disability, that determination shall be reviewed by vocational rehabilitation:
  - a. Within twelve months and twenty-four months of the date of the determination of ineligibility; and
  - b. After that date only if such a review is requested by the individual or the individual's representative, as appropriate.
4. Ineligibility decisions concerning the severity of a disability must be based on clear and convincing evidence and require trial work experiences as described in section 75-08-01-20 prior to closure.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04

**75-08-01-22. Assessment for determining eligibility and vocational rehabilitation needs.**

1. An assessment for determining eligibility and vocational rehabilitation needs means, as appropriate in each case, a review of existing data to determine:
  - a. Whether an individual is eligible for vocational rehabilitation services;
  - b. The priority for an order of selection as described in section 75-08-01-23;
  - c. The necessity of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;
  - d. Referral, for the provision of assistive technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and
  - e. An exploration of the individual's abilities, capabilities, and capacity to perform in realistic, integrated work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

2. To the extent additional data is necessary for vocational rehabilitation to make a determination of employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment, a comprehensive assessment may be done by vocational rehabilitation. The purpose is to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, including the need for supported employment. A comprehensive assessment includes, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, the following:
  - a. Information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;
  - b. Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in section 75-08-01-23;
  - c. Any information as can be provided by the individual and, when appropriate, by the family of the individual;
  - d. As necessary, an assessment of the personality, interests, interpersonal skills, intelligence, and related functional capacities, educational achievements, work experiences, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual; and
  - e. As necessary, an appraisal of the individual's patterns of work behavior and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04

#### **75-08-01-23. Order of selection.**

1. Vocational rehabilitation must provide to an individual applying for services, including an individual receiving trial work experiences, all services necessary to determine eligibility for vocational rehabilitation services and an order of selection priority classification. Vocational rehabilitation must provide these services on a timely basis in accordance with federal law.
2. When vocational rehabilitation notifies an individual of eligibility, vocational rehabilitation must also notify the individual of the individual's priority category and right to appeal the assigned category.
3. If vocational rehabilitation cannot provide services to all eligible individuals who apply due to a lack of resources, an order of selection procedure must be implemented.
  - a. An individual receiving services under an individualized plan for employment must continue to receive all required services. An individual requiring or receiving postemployment services must be considered to be under an individualized plan for employment. An individual described in paragraphs 1 through 3 must be assigned a priority in the order in which the paragraphs are listed.
    - (1) Category 1: An individual determined to have a most significant disability.

- (2) Category 2: An individual with significant disabilities.
- (3) Category 3: Other individuals with disabilities.
- b. An eligible individual who is not in a priority category that is being served will have access to services provided through information and referral.

**History:** Effective October 1, 1995; amended effective March 1, 1997; November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-04

**75-08-01-24. Individualized plan for employment.**

An individualized plan for employment is developed for all individuals who are determined eligible for vocational rehabilitation.

1. Prior to developing the individualized plan for employment, vocational rehabilitation must give the individual a written copy of the options for developing the plan.
2. The individualized plan for employment may be developed by the individual alone or by the individual with assistance from vocational rehabilitation or other parties.
3. The individualized plan must be agreed to and signed by the individual or the individual's legal representative and approved and signed by a qualified rehabilitation professional employed by vocational rehabilitation.
4. The individualized plan for eligible students transitioning from secondary education must be developed and approved by the time the student leaves the school system.
5. The individualized plan for employment is designed to assist the individual's achievement of the vocational goal, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. The record of service must support the selection of the vocational goal.
6. Counselors shall provide a copy of the individualized plan for employment, and any amendments, to the individual.
7. With the exception of assessment services, vocational rehabilitation may provide goods and services only in accord with the individualized plan for employment.
8. The individualized plan for employment is not a legal contract.
9. Vocational rehabilitation must review the individualized plan for employment at least annually in the same manner as it was originally developed and described in subsection 3.
10. Vocational rehabilitation must include in the individualized plan for employment:
  - a. A specific employment outcome in an integrated setting, which must be consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual; and
  - b. The specific services to be provided and the projected dates for initiation and anticipated duration of each service, including:
    - (1) If appropriate, a statement of the specific assistive technology services;

- (2) If appropriate, a statement of the specific on-the-job and related personal assistance services, and, the individual's appropriate and desired training in managing, supervising, and directing personal assistance services;
  - (3) An assessment of the need for postemployment services and, if appropriate, extended services;
  - (4) The terms and conditions under which goods and services are to be provided in the most integrated settings;
  - (5) The terms and conditions for the provision of services, including the individual's:
    - (a) Responsibilities and vocational rehabilitation's responsibilities;
    - (b) Participation in the cost of services; and
    - (c) Access to comparable services and benefits under any other program;
  - (6) An assurance that the individual with disabilities was informed of:
    - (a) The availability of services through the client assistance program;
    - (b) The individual's rights, means of expression, and remedies for any dissatisfaction, including the individual's right to request mediation; and
    - (c) The opportunity for an administrative review of the rehabilitation determination, as set forth in section 75-08-01-14 and chapter 75-01-03;
  - (7) Information identifying services and benefits from other programs to enhance the capacity of the individual to achieve the individual's vocational goal;
  - (8) A reassessment of the need for postemployment services, or extended services prior to the point of successful closure; and
  - (9) If appropriate, any plans for the provision of postemployment services and the basis on which the plans are developed.
11. For an individual with a most significant disability for whom supported employment services are appropriate, in addition to the requirements in subsection 10, the following must be addressed:
- a. A description of time-limited services that vocational rehabilitation provides, not to exceed eighteen months in duration, unless the individualized plan for employment documents a longer period to achieve job stabilization; and
  - b. A description of the extended services necessary and identification of the state, federal, or private programs, which may include natural supports, that provide the extended support, or, to the extent that is not possible at the time the individualized plan for employment is written, a statement describing the basis for concluding that there is a reasonable expectation that those sources will become available.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02

**75-08-01-25. Comparable services and benefits.**

1. Before providing any vocational rehabilitation service, except those listed in subsection 5, to an eligible individual or to members of the individual's family, vocational rehabilitation must determine whether comparable services and benefits exist under any other program and whether the services and benefits are available to the individual.
2. If comparable services and benefits do exist and are available to the individual at the time needed to achieve the provisions of the individualized plan for employment, they must be used to meet, in whole or in part, the cost of vocational rehabilitation services.
3. If comparable services and benefits do exist but are not available to the individual at the time they are needed, vocational rehabilitation shall provide the services until comparable services and benefits become available.
4. The use of comparable services and benefits does not apply if such a determination would interrupt or delay:
  - a. The progress of an individual toward achieving the employment outcome identified in the individualized plan for employment;
  - b. An immediate job placement; or
  - c. The provision of vocational rehabilitation services to an individual with disabilities who is at extreme medical risk.
5. The following categories of service do not require that comparable services and benefits be used:
  - a. Assessment for determining eligibility and rehabilitation needs;
  - b. Counseling and guidance, including information and support services to assist in exercising informed choice;
  - c. Information and referral;
  - d. Job-related services, including job search, job placement, job retention services, followup, and follow-along services;
  - e. Rehabilitation technology, including telecommunications, sensory, and other rehabilitative technological aids and devices; and
  - f. Postemployment services that would be included under subdivisions a through e.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02

**75-08-01-26. Determination of financial need.**

1. In all cases, vocational rehabilitation shall encourage an individual with disabilities and the individual's family to financially contribute as much as possible to the cost of vocational rehabilitation goods and services provided as part of an individualized plan for employment. When available, comparable services and benefits must be used, as described in section 75-08-01-25, and vocational rehabilitation must apply a financial needs test to specified vocational rehabilitation services. The individual's refusal to provide financial information will constitute the individual's not meeting the financial need criteria. In that event, the individual may be unable to access the services based on financial need.



- a. If an individual is single, under the age of eighteen years, and unemancipated, the individual's income, and the income of the individual's parents, must be considered.
  - b. If an individual is single, under the age of eighteen years, and living with a guardian, vocational rehabilitation shall determine financial need based on the individual's income.
  - c. If an individual is single, eighteen years of age or over, but is living with a parent, vocational rehabilitation shall determine financial need based on the individual's income only.
  - d. If an individual is married, regardless of age, vocational rehabilitation shall determine financial need based on the income of the individual and the individual's spouse.
2. The fee scale established and administered by vocational rehabilitation must be used to determine client liability. Copies of the fee schedule, which may be updated from time to time, are available from vocational rehabilitation upon request. When determining client liability, vocational rehabilitation must take into consideration disability-related expenses incurred by or for the individual.
  3. Vocational rehabilitation must reevaluate financial need annually or whenever financial or other circumstances regarding the individual significantly change, whichever occurs first. Significant change includes marriage or divorce, other changes in dependent status, radical change in income, or to the individualized plan for employment.
  4. Regional vocational rehabilitation administrators may adjust or waive client financial participation. Documentation must be maintained indicating the conditions under which a waiver or adjustment is made and a copy placed in the client's file.
  5. Vocational rehabilitation may not apply a financial needs test, or require the financial participation of any individual who receives social security disability insurance benefits or supplemental security income benefits as determined under title II or title XVI of the Social Security Act [42 U.S.C. 301, et seq.].
  6. If the individual or the individual's representative disagrees with the outcome of the determination of financial need, the individual has the right to have the determination reviewed in accordance with chapter 75-03-01.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02

**75-08-01-27. Services exempt from participation by an individual in the cost of vocational rehabilitation services.**

Vocational rehabilitation shall provide the following services without regard to the financial resources available to the individual:

1. Information and referral;
2. Assessments to determine eligibility and priority for services except for nonassessment services provided during trial work experiences;
3. Assessments to determine vocational rehabilitation needs;
4. Counseling and guidance;
5. Interpreter services;

6. Vocational training, except at institutions of higher education. For example, on-the-job training, personal adjustment training, and supported employment training;
7. Orientation and mobility services;
8. Reader and notetaker services;
9. Placement services;
10. Assistive technology services, excluding assistive technology devices; and
11. Personal assistance services.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02

**75-08-01-28. Services subject to participation by an individual in the cost of vocational rehabilitation services.**

Vocational rehabilitation shall apply a financial needs test as a consideration for eligibility for the following vocational rehabilitation services:

1. Physical and mental restoration;
2. Maintenance, unless required for assessment purposes;
3. Transportation, unless required for assessment purposes;
4. Assistive technology aids and devices;
5. Occupational licenses;
6. Tools, equipment, and initial stock, including livestock, supplies, and necessary shelters;
7. Services to members of an individual's family, which are necessary for the rehabilitation of the individual with a disability;
8. Telecommunications, sensory, and other technological aids and devices for purposes other than evaluation;
9. Postemployment services necessary to assist individuals in maintaining suitable employment, excluding services normally provided without regard to financial needs;
10. Home modifications, including adaptive devices and minor structural changes necessary for the individual to function independently in order to achieve a vocational goal;
11. Other goods and services for which the individual may reasonably expect to receive benefits in terms of the individual's employability; and
12. Higher education as described in section 75-08-01-30.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06

**75-08-01-29. Vocational rehabilitation services necessary to enable the individual to achieve an employment outcome.**

Consistent with the individualized plan for employment, vocational rehabilitation may provide, as appropriate to the vocational rehabilitation needs of each eligible individual, goods or services necessary to enable the individual to achieve an employment outcome. Services include:

1. An assessment for determining eligibility and vocational rehabilitation needs;
2. Counseling, guidance, and work-related placement services for an individual with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and followup;
3. Physical and mental restoration services necessary to correct or modify the physical or mental condition of an individual who is stable or slowly progressive. In the purchase of medical goods or services, vocational rehabilitation shall comply with the prevailing medical assistance fee schedule, except for certain diagnostic services that medicaid excludes;
4. Home modifications that may include those adaptive devices and minor structural changes necessary for the individual with disabilities to function independently in order to achieve a vocational goal. Funds for home modifications may not be applied to the purchase or construction of a new residence;
5. Vocational and other training services, including:
  - a. Personal and vocational adjustment training;
  - b. Correspondence courses; and
  - c. Services to the individual's family that are necessary to the personal and vocational adjustment or rehabilitation of the individual;
6. Except in institutions of higher education, where comparable benefits, including services for students with disabilities must be used, vocational rehabilitation may provide:
  - a. Interpreter services and note-taking services for an individual who is deaf, including tactile interpreting for an individual who is deaf and blind;
  - b. Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services; and
  - c. Telecommunications, sensory, and other technological aids and devices;
7. Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment;
8. Occupational licenses, tools, equipment, initial stocks, and supplies necessary in order to enter an occupation, except that vocational rehabilitation shall not purchase land or buildings for an individual with disabilities;
9. Time-limited, ongoing support services for an individual receiving supported employment services, including:
  - a. Diagnostic services necessary to determine the individual's rehabilitation needs for supported employment that are supplemental to the assessment for eligibility used to determine vocational rehabilitation eligibility, and are provided only after vocational

rehabilitation eligibility has been determined. The purpose of supplemental evaluations is to help develop, finalize, or reassess a supported employment plan of services;

- b. Job development and placement services; and
  - c. Other time-limited services necessary to support the individual in employment. The maximum time period for time-limited services is eighteen months, unless the individualized plan for employment indicates that more than eighteen months of services are necessary in order for the individual to achieve job stability prior to transition to extended services. Time-limited services include:
    - (1) Intensive on-the-job skills training and other training and support services necessary to achieve and maintain job stability;
    - (2) Followup services with employers, supported employees, parents and guardians, and others for the purpose of supporting and stabilizing the job placement;
    - (3) Discrete postemployment services, following transition to extended services, which are not available from the extended service provider and which are needed to maintain job placement; and
    - (4) Other needed services listed in this subsection;
10. Postemployment services for an individual with disabilities who was determined rehabilitated, if the services are necessary to assist the individual to maintain, regain, or advance in suitable employment. The services must relate to the original vocational impediments and the availability of the individual's record of service. An individual requiring multiple services over an extended period of time and a comprehensive or complex rehabilitation plan is not eligible for postemployment services, but may be encouraged to reapply. Postemployment services may:
- a. Include counseling and guidance services to assist an individual to advance in employment; and
  - b. Require an amendment to the individualized plan for employment;
11. Assistive technology services to meet the needs and address the barriers confronted by an individual with disabilities in the areas of education, rehabilitation, employment, and transportation. Vocational rehabilitation shall provide assistive technology services at any time in the rehabilitation process, including the assessment for determining eligibility and vocational rehabilitation needs, trial work experiences, services provided under an individualized plan for employment, annual reviews of ineligibility decisions, annual reviews of extended employment in rehabilitation facilities, and postemployment services;
12. Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and objectives;
13. Other supportive services, including:
- a. Maintenance for additional costs incurred while participating in rehabilitation;
  - b. Transportation, including travel and related expenses in connection with transporting an individual and an individual's attendants for the purpose of supporting and deriving the full benefit of other vocational rehabilitation services, with the following restrictions:
    - (1) Reimbursement cannot exceed the state rate level;

- (2) Transportation may include relocation, moving expenses, and vehicle modifications only when the individual is otherwise precluded from achieving a vocational goal;
  - (3) Reimbursement must be provided at the prevailing rate for the service; and
  - (4) Vocational rehabilitation shall not contribute to the purchase of a vehicle; and
- c. On-the-job or other related personal assistance services provided while an individual with disabilities is receiving vocational rehabilitation services; and
14. Other vocational rehabilitation goods and services that an individual with disabilities is reasonably expected to benefit from in terms of an employment outcome.

**History:** Effective October 1, 1995; amended effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06

**75-08-01-30. Postsecondary training.**

If an individual receives postsecondary training, the following conditions apply:

- 1. Vocational rehabilitation may not provide postsecondary training unless maximum efforts have been made to secure grant assistance in whole, or in part, from other sources;
- 2. Vocational rehabilitation's participation shall not be calculated until the institution's financial aid office needs analysis has been received. The financial needs analysis award letter must identify all available aid;
- 3. An individual must accept all offered grant assistance;
- 4. Vocational rehabilitation may request an individual to participate in the cost of attendance through the use of college work study and student loans;
- 5. Vocational rehabilitation may not participate in payment for postsecondary training if the individual is in default status, or is ineligible for financial aid due to a drug conviction or drug convictions as determined by free application for federal student aid (FAFSA) regulations;
- 6. Comparable benefits must be used for the following services:
  - a. Interpreter services and note-taking services for an individual who is deaf, including tactile interpreting for an individual who is deaf and blind;
  - b. Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services; and
  - c. Telecommunications, sensory, and other technological aids and devices;
- 7. If the individual attends an in-state public institution, vocational rehabilitation funding for tuition, room and board, books, supplies, transportation, and incidentals for a full-time student will be based on the following:
  - a. The estimated financial need as stated on the award letter from the financial aid office;
  - b. The unmet need as calculated by vocational rehabilitation;
  - c. The results of the budget assessment conducted by vocational rehabilitation; and
  - d. Total aid from all sources may not exceed the school's budget as determined by the financial aid office;

8. If the individual chooses to attend a private in-state or an out-of-state institution when the coursework is available in state, vocational rehabilitation will not fund more than it would at an in-state public institution;
9. If, because of the individual's vocational impediment or vocational goal, the only available postsecondary training is at an in-state private or out-of-state institution, vocational rehabilitation may waive the expenditure limit defined in subsection 7;
10. Funding for tuition and books for a part-time student may not exceed the financial aid office estimated financial need. For an individual not taking sufficient credit hours to apply for financial aid, the limit is the North Dakota university system rate per credit hour;
11. An individual shall maintain a grade point average that meets the school's requirement for graduation and shall otherwise demonstrate progress toward meeting the goal of the individualized plan for employment. If the individual is placed on academic probation, continued funding is dependent on the approval of the regional vocational rehabilitation administrator;
12. Participation in the cost of graduate study is determined on a case-by-case basis if a suitable vocational goal is otherwise unachievable; and
13. Expenditure policies in subsections 1 through 9 do not apply to vocational technical training programs not participating in a federal financial aid program. If comparable training is available through a program that does participate in a federal financial aid program, vocational rehabilitation costs shall not exceed the costs for attendance in that program.

**History:** Effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06

**75-08-01-31. On-the-job training.**

When vocational rehabilitation provides on-the-job training, there must be a written agreement among the individual, counselor, and employer. The agreement must state the areas of training, the hourly wage which must comply with state and federal wage and hour laws, responsibility for workers' compensation coverage, expected results of the training, and any other conditions of employment.

**History:** Effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06

**75-08-01-32. Closure due to ineligibility.**

1. Vocational rehabilitation shall close the individual's case as ineligible if the individual has no disability, no substantial impediment to employment, or does not require services to achieve an employment outcome. Closure for ineligibility under these circumstances requires:
  - a. The opportunity for the individual or the individual's representative to participate in the closure decision;
  - b. Written notification of the closure decision and reasons for the decision;
  - c. Written notification of mediation, appeal rights, and due process procedures, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program;
  - d. An individualized plan for employment amendment if appropriate;

- e. Documentation of ineligibility in the record of service that identifies the reasons for closure, dated and signed by a qualified rehabilitation professional employed by vocational rehabilitation; and
  - f. Referral to other agencies and community rehabilitation programs as appropriate.
2. Vocational rehabilitation shall close the individual's case, if there is clear and convincing evidence, after trial work experiences or after a period of service provision under an individualized plan of employment that the individual with disabilities is incapable of benefiting from vocational rehabilitation services in terms of achieving an employment outcome. Vocational rehabilitation shall provide the following when it closes a case due to ineligibility under these circumstances:
- a. The opportunity for the individual or the individual's representative to participate in the closure decision;
  - b. Written notification of the closure decision and reasons for the decision;
  - c. Written notification of mediation, and appeal rights, including the address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of, and how to contact, the client assistance program;
  - d. An individualized plan for employment amendment if appropriate;
  - e. Review of the ineligibility determination within twelve months. A review is not required in situations in which the individual refuses it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal;
  - f. Documentation of ineligibility in the record of service that identifies the reasons for closure, dated and signed by a qualified rehabilitation professional employed by vocational rehabilitation; and
  - g. Referral to other agencies and community rehabilitation programs as appropriate.

**History:** Effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06

#### **75-08-01-33. Closure for reasons other than ineligibility.**

Vocational rehabilitation shall close a case when an individual is unavailable during an extended period of time for an assessment to determine eligibility and vocational rehabilitation needs or when an individual is unavailable to participate in planned vocational rehabilitation services. Vocational rehabilitation shall make good-faith efforts to contact the individual and to encourage the individual's participation. Closure under these circumstances requires:

1. Documentation of the rationale for closure in the record of service;
2. Written notification of the closure decision;
3. Written notification of mediation, appeal rights, and due process procedures, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program; and
4. An individualized plan for employment amendment if appropriate.

**History:** Effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06

**75-08-01-34. Closure for an individual determined to be rehabilitated.**

1. An individual is determined to be rehabilitated if the individual has maintained suitable employment for at least ninety calendar days. The individual's record of service must contain documentation that vocational rehabilitation has:
  - a. Determined that the individual is eligible;
  - b. Provided an assessment for eligibility and determination of vocational rehabilitation needs;
  - c. Provided counseling and guidance;
  - d. Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized plan for employment;
  - e. Determined that the individual has maintained suitable employment for at least ninety calendar days and that the individual and counselor view the employment and the individual's performance in that employment as satisfactory;
  - f. Determined that the employment is in an integrated setting;
  - g. Provided an opportunity for the individual's involvement in the closure decision;
  - h. Reassessed the need for and informed the individual of the purpose and availability of postemployment services, when necessary; and
  - i. Provided written notification of mediation, appeal rights, and due process procedures, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program.
2. An individual in supported employment is determined rehabilitated when:
  - a. The individual has substantially met the goals and objectives of the individual's individualized plan for employment;
  - b. Extended services are immediately available to preclude any interruption in the provision of the ongoing support needed to maintain employment;
  - c. The individual is stabilized for a minimum of sixty days, as determined by vocational rehabilitation, before transition to extended services;
  - d. The individual has maintained employment for at least sixty days after the transition to extended services; and
  - e. The employment is in an integrated setting.
3. If the individual is earning less than minimum wage and in accordance with the Fair Labor Standards Act, the individual will receive an annual review for two years after the individual's case is closed and thereafter if requested by the individual.
4. For an individual's case to be closed while working in a temporary transitional employment placement, the extended support services must include continuous job placements until job permanency is achieved.



**History:** Effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06

**75-08-01-35. Closure for an individual in extended employment.**

1. An individual whose case is closed in extended employment shall receive an annual review for two years after the case is closed and thereafter if requested by the individual. The review shall reevaluate the status of the individual to determine the interests, priorities, and needs of the individual, for employment or training for competitive employment in an integrated setting in the labor market.
2. Upon closure of the case of an individual in extended employment, the individual will receive written notification of mediation, appeal rights, and due process procedures, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program.
3. An individual whose case is closed in extended employment is not considered to be successfully rehabilitated.

**History:** Effective November 1, 2002.

**General Authority:** NDCC 50-06-16, 50-06.1

**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06