# proposed text of regulations

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

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## Article 1. General Provisions and Administrative Reviews

All proposed changes to Division 3 of Title 9 of the California Code of Regulations are reflected below in underline for added text and strikeout for deleted text.

### § 7352. Appellant's Mode of Communication.

(a) The Department shall inform the appellant in appellant’s ~~his/her~~ primary language and preferred mode of communication that, upon the appellant's specific request, all future notices and decisions shall be transmitted in the same manner. If no such request is received, future notices and decisions shall be transmitted electronically ~~by mail~~ in written English. If no such request is received and Appellant has not provided an email address to the Department, future notices and decisions shall be transmitted by mail.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: Section 19013.5, Welfare and Institutions Code.

### § 7353. Administrative Review---Appellants.

(a) All requests for administrative review of an action of the Department relating to the application for or receipt of services shall:

(1) Be made within one year of the action(s) or decision(s) with which the appellant is dissatisfied except as set forth in Sections 7227 and 7344.

(2) Be made orally or in writing to the District Administrator or Orientation Center for the Blind Administrator responsible for overseeing the local office in which the action or decision with which the appellant is dissatisfied was initiated.

(3) Include the following information:

(A) The reason for the appeal and why the appellant thinks the decision should be changed.

(B) The action the appellant wishes to have taken.

(b) The review shall be conducted:

(1) By the Administrative Review Officer, except as provided in (e).

(2) In the presence of the appellant, or authorized representative unless either party has waived the right to attend and present additional information. Such waiver shall be in the form of a written authorization allowing the Department to conduct the review solely upon the information specified in (a)(3) and the information contained in the case record.

(3) During Departmental working hours at a local office convenient to the residence of the appellant or authorized representative.

(c) Interpreter and reader services shall be provided for the administrative review upon request for clients who are non-English-speaking, deaf, hearing impaired, speech impaired, blind, or visually impaired.

(d) Transportation and attendant services may be provided for the administrative review upon request for those who require such help and are unable to secure assistance through other sources.

(e) The Administrative Review Officer may delegate the review to a Rehabilitation Supervisor, but shall not delegate the review to the same supervisor who participated in the decision with which the appellant is dissatisfied.

(f) The Administrative Review Officer, or the Rehabilitation Supervisor who was delegated to conduct the review, shall prepare the written decision which shall be sent to the appellant, in their preferred mode of communication, ~~by certified mail~~ with an additional copy to ~~be mailed to~~ the authorized representative, if any, within 15 days of the date of the request. The written decision shall inform the appellant/authorized representative that, if he or she is dissatisfied with the decision rendered as a result of the optional administrative review, a written request for a fair hearing must be filed with the Department within 30 days of the receipt of the decision. The written decision shall also inform the appellant/authorized representative of the right to request a mediation.

(g) The written decision shall be filed in the case record.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 722(c)(4)(A); 34 CFR 361.48(b); and Sections 19703 and 19704, Welfare and Institutions Code.

## Article 2. Fair Hearings

### § 7354. Fair Hearing Requests.

(a) All requests for a fair hearing shall:

(1) Be made within one year of receipt of a written denial or action relating to an application for or receipt of services, except as set forth in

 Sections 7227, 7344, 7345, and 7353(f) of these regulations.

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

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

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

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

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

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

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

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

(d) The appellant shall be notified in their preferred mode of communication ~~by certified mail~~ of:

(1) The time and place for the hearing.

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

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

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

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

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

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

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

### § 7358. Final Decision.

(a) The impartial hearing officer shall render a ~~its~~ final decision within 30 days of the completion of the hearing and shall ~~mail~~ send copies to appellant in their preferred mode of communication. ~~by certified mail~~ ~~to all parties~~. The decision shall set forth:

(1) The issues.

(2) The findings of fact.

(3) The reasons for the decision referencing applicable laws, regulations, and policy.

(4) The final decision.

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

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

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

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

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