

**ALABAMA DEPARTMENT OF REHABILITATION SERVICES
ADMINISTRATIVE CODE**

**CHAPTER 795-2-4
FORMAL HEARINGS**

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795-2-4-.01	<u>Request for Formal Hearing and Appointment of Hearing Officer.</u>

(1) If an individual is dissatisfied with the decision of an informal administrative review team, or if an applicant or client chooses to forego their right to request an informal administrative hearing, the individual may request a formal hearing by submitting a written request for a hearing addressed to the Commissioner.

(2) The request shall specify the reason(s) why the hearing is requested, shall state with reasonable particularity the relief sought, and shall not be based on generalized grievances not directly related to the provision of services to the individual with a disability.

(3) The request for a formal hearing must be received by the Commissioner within fourteen (14) calendar days of the date of receipt of the notice of proposed action or within fourteen (14) calendar days of receipt of an informal administrative review decision when one has been requested. Any individual who has requested an informal administrative review may withdraw such request at any time prior to the issuance of the informal administrative review decision. Failure of an individual or party to request a hearing within fourteen (14) days shall constitute a waiver of the right to demand a formal hearing and shall cause the Department action to become final without further review.

(4) If a hearing is requested within the above time period, the Commissioner shall, as may be otherwise provided by law, appoint an impartial hearing officer to conduct the hearing.

Author: Alabama Board of Rehabilitation Services

Statutory Authority: Code of Ala. 1975

History: New Rule: Filed December 20, 2021.

795-2-4-.02 Conduct of Hearing.

(1) In the conduct of a hearing, a hearing officer shall have the following authority:

(a) establish a date, time and place for the hearing;

(b) maintain order;

(c) make a record of the proceedings;

(d) establish reasonable time limits for the conduct of the proceedings;

(e) rule on the admissibility of evidence;

(f) hold a prehearing conference, if necessary, to clarify the matters in dispute; establish the order of presentation; allow and establish time limits for the exchange of exhibits and names of witnesses;

(g) issue subpoenas, discovery orders related to relevant matters, and protective orders in accordance with the Alabama Rules of Civil Procedure, subject to the reasonable costs of issuance of the subpoenas as may be set from time to time by the Commissioner; and enter any order on any other matter which will effectuate the conduct of the hearing.

(2) A party may be represented by counsel at his or her own expense.

(3) Unless a party otherwise requests, the hearing shall be open to the public.

Author: Alabama Board of Rehabilitation Services

Statutory Authority: Code of Ala. 1975, §§ 21-9-9; 41-22-12

History: New Rule: Filed December 20, 2021.

795-2-4-.03 Conflict and Bias.

(1) A party to any formal action or contested case who intends to assert bias or conflict on the part of any hearing officer appointed by the Commissioner must do so by filing an affidavit and suggestion of disqualification together with the underlying factual basis for the assertion. The affidavit and suggestion of

disqualification must be received by the Commissioner at least three (3) days before the scheduled hearing. In the absence of actual or constructive bias or prejudice, the failure to timely file an affidavit and suggestion of disqualification shall be deemed a waiver of such grounds as error in any appeal.

(2) The hearing officer shall consider the assertion of disqualification on the record as a preliminary matter at the hearing before any other question is decided.

Author: Alabama Board of Rehabilitation Services

Statutory Authority: Code of Ala. 1975, §§21-9-9; 41-22-18.

History: New Rule: Filed December 20, 2021.

795-2-4-.04 Settlement and Informal Disposition. Informal dispositions may be made of any matter set for hearing by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties. An informal disposition shall be reduced to writing, signed by the parties, and made a part of the applicant's or client's file.

Author: Alabama Board of Rehabilitation Services

Statutory Authority: Code of Ala. 1975, §§ 21-9-9; 41-22-12(g).

History: New Rule: Filed December 20, 2021.

795-2-4-.05 Record of Proceedings.

- (1) The record of a hearing shall include:
 - (a) the notice of proposed action;
 - (b) the request for a hearing;
 - (c) the administrative review decision, if any;
 - (d) all evidence received during the hearing;
 - (e) a statement of all matters officially noticed;
 - (f) a transcript of the proceedings;
 - (g) all questions and offers of proof, objections and rulings thereon;
 - (h) the written decision and recommendation of the hearing officer;
- and
- (i) the decision and final order of the Commissioner, if applicable.

(2) Oral proceedings shall be recorded either by mechanized means or by qualified shorthand reporter. Oral proceedings shall be transcribed at the request of any party with the expense of the transcript charged to the requesting party. The

record of oral proceedings shall be maintained by the Department for five (5) years from the date of entry of the final order.

Author: Alabama Board of Rehabilitation Services
Statutory Authority: Code of Ala. 1975, §§ 21-9-9; 41-22-12
History: New Rule: Filed December 20, 2021.

795-2-4-.06 **Rules of Evidence.** The rules of evidence as provided in the Code of Ala. 1975, § 41-22-13 shall apply to all hearings conducted under these rules.

Author: Alabama Board of Rehabilitation Services
Statutory Authority: Code of Ala. 1975
History: Filed December 20, 2021.

795-2-4-.07 **Hearing Officer’s Decision and Recommendation.**

(1) Upon completion of a hearing, the hearing officer shall prepare a written decision and recommendation. The decision shall contain a statement of facts found by the hearing officer, a recitation of the application of the facts found to the applicable statutes, rules, regulations, policies, and procedures, and a proposed recommendation as to the merits of the matters presented for review.

(2) The hearing officer’s decision and recommendation along with the record shall be submitted to the Commissioner within thirty (30) calendar days after the hearing is concluded. The hearing officer’s decision and recommendation shall be communicated by the Department in person or by certified mail.

(3) The hearing officer’s decision and recommendation shall be final unless any party brings a civil action for review of such decision in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction.

Author: Alabama Board of Rehabilitation Services
Statutory Authority: Code of Ala. 1975, § 21-9-9
History: New Rule: Filed December 20, 2021.

795-2-4-.08 **Reserved.**

Author:
Statutory Authority:
History:

795-2-4-.09 **Reserved.**

Author:
Statutory Authority:
History:

795-2-4-.10 Dismissal of Administrative Review or Hearing.

(1) If a party fails without good cause to appear at either an administrative review or a formal hearing after proper service of notice, the review team or hearing officer may in its discretion proceed with the review or hearing and make a decision in the absence of the party.

(2) A request for administrative review or hearing may be denied or dismissed for the following reasons:

(a) the individual withdraws the request in writing;

(b) the individual makes a request that is contrary to the regulations of the program;

(c) the individual abandons the request for administrative review or a hearing when, without good cause, the applicant or client fails to appear.

(3) Good cause is defined as:

(a) death in the family;

(b) personal injury or illness which reasonably prohibits an applicant or client from attending the review or hearing; or

(c) sudden and unexpected emergency.

Author: Alabama Board of Rehabilitation Services

Statutory Authority: Code of Ala. 1975, §§ 21-9-9; 41-22-12

History: New Rule: Filed December 20, 2021.

795-2-4-.11 Computation of Time. If the last day of a time period falls on a Saturday, Sunday, or holiday authorized by Code of Ala. 1975, § 1-3-8, then the last day of the time period shall be the next working day.

Author: Alabama Board of Rehabilitation Services

Statutory Authority: Code of Ala. 1975

History: New Rule: Filed December 20, 2021.

795-2-4-.12 Continuity of Services Pending Administrative or Judicial Review.

(1) Subsequent to a request, and during the pendency of any administrative review, formal hearing, or other judicial proceeding, unless the Department or designated service provider and the client, parent or legal guardian in the case of a minor child agree otherwise, the Department shall not institute a suspension, reduction, or termination of services being provided unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with a disability.

Author: Alabama Board of Rehabilitation Services
Statutory Authority: Code of Ala. 1975
History: New Rule: Filed December 20, 2021.

795-2-4-.13 **Judicial Review**. A party who has exhausted all administrative remedies available and who is aggrieved by a final order may seek judicial review pursuant to the provisions of the Code of Ala. 1975, §§ 41-22-20 and 41-22-21.

Author: Alabama Board of Rehabilitation Services
Statutory Authority: Code of Ala. 1975, §§ 21-9-9; 41-22-21
History: New Rule: Filed December 20, 2021.