

ARTICLE 2. DIVISION OF REHABILITATION SERVICES

Rule 1. Office of Services for the Blind and Visually Impaired–Vending Program for the Blind (Repealed)
(Repealed by Division of Disability and Rehabilitative Services; filed Aug 23, 2001, 2:30 p.m.: 25 IR 82)

Rule 2. Board of Interpreter Standards

460 IAC 2-2-1 Purpose (Expired)

Sec. 1. *(Expired under IC 4-22-2.5, effective January 1, 2004.)*

460 IAC 2-2-2 Definitions (Expired)

Sec. 2. *(Expired under IC 4-22-2.5, effective January 1, 2004.)*

460 IAC 2-2-3 Appointment of the board (Expired)

Sec. 3. *(Expired under IC 4-22-2.5, effective January 1, 2004.)*

Rule 2.1. Board of Interpreter Standards

460 IAC 2-2.1-1 Purpose

Authority: IC 12-9-2-3; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 1. The purpose of this rule is to protect the public and persons who are deaf or hard of hearing from misrepresentation, by establishing a board of interpreter standards and providing powers and duties to enable the board to determine the necessary competency and proficiency standards for sign language interpreters and oral interpreters. *(Division of Disability and Rehabilitative Services; 460 IAC 2-2.1-1; filed Mar 16, 2005, 11:30 a.m.: 28 IR 2368; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)*

460 IAC 2-2.1-2 Definitions

Authority: IC 12-9-2-3; IC 12-12-7-5

Affected: IC 12-9-1-1; IC 12-12-1-2; IC 12-12-7

Sec. 2. The following definitions apply throughout this rule:

- (1) "ASL" means American Sign Language.
- (2) "ASLTA" means American Sign Language Teacher Association.
- (3) "Board" means the board of interpreter standards under the administration of the unit.
- (4) "Deaf person" or "hard of hearing person" means a person who meets the following criteria:
 - (A) Has a hearing loss that prevents the person from receiving and understanding voice communication with or without amplification.
 - (B) Uses at least one (1) of the following as a primary means of communication:
 - (i) ASL.
 - (ii) English-based signed systems.
 - (iii) Tactile methods.
 - (iv) Writing.
 - (v) Reading.
 - (vi) Speech reading.
 - (vii) Finger spelling.
 - (viii) Beneficial assistive devices.
- (5) "Division" means the division of disability, aging, and rehabilitative services established under IC 12-9-1-1.
- (6) "Educational interpreter" means a person who performs the service of interpreting or transliterating in an educational

setting.

(7) "Interpreter" means a person who performs the service of interpreting or transliterating.

(8) "Interpreting" means any method of interfacing communication between a deaf or hard of hearing person and a person who is not deaf or hard of hearing and includes:

- (A) oral interpreting;
- (B) sign language interpreting; or
- (C) transliterating.

(9) "NAD" means the National Association of the Deaf.

(10) "Oral interpreting" means the process of interpreting or transliterating a spoken message from a hearing person to a deaf or hard of hearing person, or from a deaf or hard of hearing person to a hearing person, excluding sign language interpreting, as follows:

- (A) Using clear articulation or voiceless repetition.
- (B) Using natural facial expressions and natural gestures.
- (C) Placing an emphasis on speech reading.
- (D) Understanding and repeating the message and the intent of the message.
- (E) Understanding and repeating the speech and mouth movements of the deaf or hard of hearing person.

(11) "Registered interpreter" means a person who has met the criteria established by the board in accordance with 460 IAC 2-3 and is registered by the board.

(12) "RID" means the Registry of Interpreters for the Deaf.

(13) "Sign language interpreting" means the process of conveying a message:

- (A) produced in ASL into an equivalent message in spoken or written English; or
- (B) in spoken or written English into an equivalent message in ASL.

(14) "Transliterating" means the process of presenting:

- (A) written or spoken English into an English-based sign system; or
- (B) an English-based sign system in written or spoken English.

(15) "Unit" means the unit for the deaf and hard of hearing services established under IC 12-12-1-2.

(Division of Disability and Rehabilitative Services; 460 IAC 2-2.1-2; filed Mar 16, 2005, 11:30 a.m.: 28 IR 2368; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)

460 IAC 2-2.1-3 Appointment of the board

Authority: IC 12-9-2-3; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 3. (a) The unit shall make a public announcement to all prospective candidates in Indiana who wish to serve on the board. The prospective candidates shall submit a vita to the unit within thirty (30) days of the date of the public announcement.

(b) The board shall consist of seven (7) members. At least three (3) of the seven (7) members shall be persons who are deaf or hard of hearing.

(c) Board members shall meet at least one (1) of the following:

(1) Knowledge of the interpreting process, which includes having at least three (3) of the following:

- (A) RID, NAD, or ASLTA certification.
- (B) Membership in a deaf association.
- (C) Graduation from an interpreter education program.
- (D) One hundred (100) clock hours of attendance in a workshop regarding the interpreting process.
- (E) One hundred (100) clock hours of ASL studies.

(2) At least five (5) years of documented experience as a provider or consumer of interpreting services.

(3) Three (3) letters of recommendation attesting to the following:

- (A) Knowledge of interpreting.
- (B) Fluency in ASL and English.

(d) Original appointments to the board shall be made in the following manner:

(1) Four (4) members for a term of two (2) years.

(2) Three (3) members for a term of three (3) years.

DIVISION OF REHABILITATION SERVICES

All members subsequently appointed shall serve a term of three (3) years and may be appointed for one (1) additional term. If a member of the board resigns, dies, or is removed, the new appointee shall serve the remainder of the unexpired term. Board members shall not be eligible for reappointment for at least one (1) year after serving two (2) consecutive terms.

(e) The board shall meet as needed and upon request by the board chairperson and board members.

(f) The board members shall elect a chairperson who shall serve a term of two (2) years and shall be eligible for reelection for an additional two (2) years.

(g) The board may request from the unit the purchase of materials for the operation of the board.

(h) The board, in cooperation with the unit, shall annually hold a public meeting to receive recommendations from consumers on upgrading the qualifications, functions, and registration of interpreters, and on policies concerning registration of interpreters. However, the board may receive program recommendations at any time prior to or after the annual public hearing. (*Division of Disability and Rehabilitative Services; 460 IAC 2-2.1-3; filed Mar 16, 2005, 11:30 a.m.: 28 IR 2368; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

Rule 3. Interpreter Standards for the Deaf and Hard of Hearing

460 IAC 2-3-1 Purpose; exclusion

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 1. (a) The purpose of this rule is to establish standards pursuant to IC 12-12-7-5 that determine the necessary standards of behavior, competency, and proficiency in sign language and oral interpreting and ensure quality, professional interpreting services in order to protect the public and persons who are deaf or hard of hearing from misrepresentation.

(b) The provisions of this rule will not apply to interpreters while they are interpreting in a public or private primary or secondary school setting. Rules applying specifically to such interpreters are at 460 IAC 2-5. (*Division of Disability and Rehabilitative Services; 460 IAC 2-3-1; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3084; filed Nov 4, 2002, 12:11 p.m.: 26 IR 747; errata filed Jun 9, 2004, 2:50 p.m.: 27 IR 3078; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-2 Definitions and acronyms

Authority: IC 12-12-7-5

Affected: IC 12-12-7; IC 20-30-6-15

Sec. 2. (a) The definitions and acronyms in this section apply throughout this rule unless specifically noted.

(b) "ASL" means American Sign Language.

(c) "BIS" means board of interpreter standards.

(d) "CDI" means certified deaf interpreter.

(e) "CDIP" means certified deaf interpreter provisional.

(f) "CEU" means continuing education unit.

(g) "Consumer" means the persons for and between whom the interpreter is facilitating communication, and includes both hearing and deaf consumers.

(h) "DDARS" means the division of disability, aging, and rehabilitative services.

(i) "Deaf/blind interpreting" means using the special skills required to interpret for a person who uses ASL and is both deaf and blind.

(j) "DHHS" means deaf and hard of hearing services.

(k) "Identified interpreting agency" means an agency whose business is providing interpreting services, has been in business prior to July 1, 1999, and is found on a list of identified interpreting agencies with DHHS.

(l) "Interpreter" refers to both interpreters and transliterators.

(m) "ITP" means interpreter training program.

(n) "Minimal language skilled interpreting" means using the special skills required to interpret for a person who has no first language and minimal skills in any other language.

(o) "NAD" means National Association of the Deaf.

(p) "Payee" means a person who contracts with a freelance interpreter on behalf of a public or private agency, organization,

or business for a particular assignment involving one (1) or more deaf clients and one (1) or more hearing consumers.

(q) "Proof of employment" means a letter from approved agency, or copy of pay stub, or 1099 Form, or W-2.

(r) "RID" means Registry of Interpreters for the Deaf.

(s) "Setting" means the context within which an interpreting assignment takes place.

(t) "Team stage interpreting" means using the special skills required to interpret on stage or at a large event in tandem with a team of interpreters.

(u) "TECUnit" means Testing, Evaluation, and Certification Unit, Inc. (*Division of Disability and Rehabilitative Services; 460 IAC 2-3-2; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3085; filed Nov 4, 2002, 12:11 p.m.: 26 IR 747; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-3 Certification requirements

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 3. (a) In order to receive certification as an interpreter under this rule by the state, an individual must register with DHHS in the manner prescribed by DHHS and fulfill at least one (1) of the following criteria:

(1) Pass the RID written generalist test, hold NAD Level III, and obtain two (2) DHHS-approved CEUs per year for up to five (5) years.

(2) Pass the RID written generalist test, be a graduate of an accredited ITP, and obtain two (2) DHHS-approved CEUs per year for up to five (5) years.

(3) Hold NAD Level IV or above.

(4) Hold RID certification.

(5) Hold RID oral certification for situations requiring an oral interpreter only.

(6) Hold certification from TECUnit and have passed the RID written generalist test for situations requiring a cued speech transliterator.

(7) Hold RID, CDI, or CDIP.

(8) Be a deaf or hard of hearing person, produce one (1) letter of recommendation to be filed with DHHS from an identified interpreting agency which has previously hired the applicant for deaf/blind interpreting, minimal language skilled interpreting, or team stage interpreting, and obtain two (2) DHHS-approved CEUs per year for up to five (5) years.

(9) Provide documentation of proof of employment as an interpreter prior to July 1, 1999, to be placed on file with DHHS, produce one (1) letter of recommendation from an identified interpreting agency which hired the applicant prior to July 1, 1999, and obtain two (2) DHHS-approved CEUs per year. (This includes deaf, hard of hearing, and hearing interpreters.)

(b) Commencing July 1, 2010, in order to receive certification by the state, an individual must fulfill the requirements in subsection (a) and also hold a bachelor's degree from an accredited college or university. An interpreter who has met the requirements of subsection (a) prior to July 1, 2010, shall be exempt from the additional requirement of this subsection.

(c) Interpreters holding NAD or RID certifications must maintain these certifications in good standing in order to maintain their certification by the state, including fulfilling the continuing education requirements of NAD or RID.

(d) Fulfillment of the requirements of subsection (a)(1), or (a)(2), or (a)(8) shall allow an interpreter to be certified by the state for a maximum period of five (5) years from the date originally certified. At or before the conclusion of this period, an interpreter must fulfill the requirements of at least one (1) of subsection (a)(3) through (a)(7) to continue certification by the state.

(e) An interpreter certified by the state shall renew such certification at least every two (2) years in the manner prescribed by DHHS. (*Division of Disability and Rehabilitative Services; 460 IAC 2-3-3; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3085; filed Nov 4, 2002, 12:11 p.m.: 26 IR 748; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-4 Certificate; professional qualifications

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 4. (a) After being certified by the state, an interpreter shall be issued a certificate signed by the DHHS deputy director and DDARS director evidencing such certification. An interpreter shall also be issued an identification card signed by the DHHS deputy director and DDARS director, which the interpreter shall carry with him or her during interpreting assignments as proof of

certification.

(b) An interpreter shall accurately present his or her Indiana identification card, certificate, professional qualifications, and/or credentials upon request. (*Division of Disability and Rehabilitative Services; 460 IAC 2-3-4; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3085; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-5 Code of ethics; confidentiality

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 5. An interpreter shall maintain the confidentiality of all information covered during an interpreting assignment and all information about interpreting services being performed, including identity of those consumers present, regardless of perceived importance, except for the following:

(1) An interpreter may reveal information to his or her employer, members of the employer's staff, or a professional team designated by the employer for purposes of record keeping, program management, or supervision.

(2) An interpreter may share information with peer interpreters employed by the same employer, which is necessary to best serve consumers in an ongoing interpreting situation or assignment.

(3) Unless the consumer otherwise directs, an interpreter may disclose factual information or professional assessment of the language and communication process regarding the current interpreting assignment to the payee of the interpreter or the payee's designee. Disclosure of further information requires consent of the consumer.

(4) Information that is public or not otherwise confidential under this rule or any other rule or law may be disclosed.

(*Division of Disability and Rehabilitative Services; 460 IAC 2-3-5; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-6 Code of ethics; rendering of interpreting services; language used

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 6. (a) Interpreting services shall be rendered faithfully, conveying all communication messages with the exact spirit, intent, and affect of the communicator.

(b) An interpreter shall withdraw from an assignment if his or her personal feelings interfere with performing the duties in subsection (a).

(c) An interpreter shall use the language or mode of communication most readily understood or preferred by all consumers involved. (*Division of Disability and Rehabilitative Services; 460 IAC 2-3-6; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-7 Code of ethics; impartiality of interpreter

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 7. (a) The interpreted message shall be transmitted impartially without the interjection of personal advice, counsel, or opinions of the interpreter.

(b) An interpreter shall not omit or add to anything that is signed or vocalized by a party, even when asked to do so by other parties involved.

(c) An interpreter shall not attempt to take on any dual role but shall act only as interpreter to assist in communications between parties involved.

(d) An interpreter may communicate directly with a party involved in order to clarify to that party the interpreter's role of facilitating communication.

(e) An interpreter should refrain from providing interpreter services in situations where family members or close personal or professional relationships may affect impartiality. However, this is not to be construed as a ban on interpreting for family, friends,

or close associates in emergency situations or where the interpreter is otherwise compelled to interpret for such people. (*Division of Disability and Rehabilitative Services; 460 IAC 2-3-7; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-8 Code of ethics; appropriateness of assignment for interpreter

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 8. In determining whether to accept an interpreting assignment, an interpreter:

(1) must use discretion in considering:

(A) his or her skill level;

(B) the setting of the assignment;

(C) the expected content and subject matter of the assignment; and

(D) the consumers involved; and

(2) shall not accept an assignment when any of these factors make it inappropriate to do so in the best interests of the consumers involved.

(*Division of Disability and Rehabilitative Services; 460 IAC 2-3-8; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-9 Code of ethics; compensation requests

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 9. An interpreter shall request compensation for services using accepted business practices and in a professional and judicious manner, taking into account usual fees commensurate with their:

(1) level of skill;

(2) level of certification;

(3) amount of experience;

(4) nature of assignment; and

(5) geographic region.

Terms of compensation shall be arranged in advance of the interpreting assignment whenever possible. (*Division of Disability and Rehabilitative Services; 460 IAC 2-3-9; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-10 Code of ethics; professional development

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 10. An interpreter, in order to maintain his or her certification, shall pursue advanced knowledge, increased skills competency, and the maintenance of high professional standards through active participation in workshops, professional meetings, interaction with professional colleagues, and reading literature in the field. As part of this, an interpreter shall obtain continuing education as required in section 3 of this rule. (*Division of Disability and Rehabilitative Services; 460 IAC 2-3-10; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

460 IAC 2-3-11 Code of ethics; interpreter manner and behavior

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 11. (a) Interpreting services shall be provided completely, impartially, and professionally in a manner appropriate to the situation, including behavior suitable to the particular circumstances of the interpreting assignment.

(b) An interpreter shall attempt to become familiar with the anticipated discussion topic, type of activity, level of formality, expected behaviors, and any presentational materials prior to commencement of the interpreting assignment.

(c) An interpreter shall dress in a manner that will be as unobtrusive to communication facilitation as possible and that will assure the best possible background for signing, including proper skin to clothing color contrasts and avoiding clothing patterns that may tire the eyes of deaf consumers.

(d) An interpreter shall consider background, positioning, and lighting to assure all are adequately within comfortable, nondistracting range for all parties involved.

(e) An interpreter shall assure that all consumers are duly advised that the interpreter assumes a position of neutrality in the relationship between all consumers, despite the fact that a given consumer may have hired the interpreter for the current or previous interpreting assignment, and consumers must be given the option of acceptance or rejection of the interpreter. *(Division of Disability and Rehabilitative Services; 460 IAC 2-3-11; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)*

460 IAC 2-3-12 Code of ethics; appropriate use of interpreter

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 12. In situations where the consumer of interpreting services is not familiar with the use of an interpreter, the interpreter should share information on the appropriate use of an interpreter to help make the interpreting process successful. This should be done prior to commencing the interpreting assignment. *(Division of Disability and Rehabilitative Services; 460 IAC 2-3-12; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)*

460 IAC 2-3-13 Grievances; grievance committee; composition; term

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 13. (a) DHHS shall create a grievance committee, of which the DHHS deputy director shall be the chair, consisting of a minimum of five (5) other members, which must consist of at least the following:

(1) At least two (2) members who:

(A) are deaf or hard of hearing; and

(B) have experience using interpreters.

(2) Two (2) members must hold either NAD or RID certification.

(3) One (1) member may be a professional other than an interpreter but must be knowledgeable of the interpreter standards set forth in this rule.

(b) The term of grievance committee members shall be three (3) years. However, the initial committee will have three (3) members to be determined by the committee who shall serve two (2) years and the remaining members shall serve three (3) years. After the initial term of each appointment, all members shall be appointed for a term of three (3) years and may be appointed for one (1) additional term. If a member of the committee resigns, dies, or is removed, the new appointee shall serve the remainder of the unexpired term. Committee members shall not be eligible for reappointment for at least one (1) year after serving two (2) consecutive terms.

(c) DHHS shall seek training in negotiation and mediation for the committee members. *(Division of Disability and Rehabilitative Services; 460 IAC 2-3-13; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)*

460 IAC 2-3-14 Grievances; jurisdiction of grievance committee

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 14. The jurisdiction of the grievance committee referred to in this rule extends to interpreters certified and working in Indiana. *(Division of Disability and Rehabilitative Services; 460 IAC 2-3-14; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087; readopted*

filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)

460 IAC 2-3-15 Grievances; procedures; complaint and response

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 15. (a) A complaint may be filed by either of the following:

(1) Any person utilizing interpreting services.

(2) Any person clearly demonstrating a direct or personal interest in the occurrence specified in the complaint.

(b) The complaint must be in writing and filed with the grievance committee referred to in section 13 of this rule.

(c) The complaint must include the following:

(1) The name, address, and phone number of each person against whom charges are being filed.

(2) The date and location of the alleged violation.

(3) The specific action or actions in question making reference to a portion or portions of this rule alleged to have been violated.

(d) The complaint may be filed any time up to ninety (90) days after the date of the alleged violation or date of discovery by the complainant of the alleged violation.

(e) If a matter of extreme urgency should arise requiring immediate review by the grievance committee, the aggrieved party must attach to the complaint a request in writing for immediate review and the specific reasons for the urgency.

(f) Within thirty (30) days of receiving the complaint, each person against whom charges are made may file a response to the allegations against him or her.

(g) The response shall address, either by admitting, denying, or further explaining, each relevant aspect of each allegation stated in the complaint.

(h) The response must be sent to the grievance committee with a copy to the person who filed the complaint. *(Division of Disability and Rehabilitative Services; 460 IAC 2-3-15; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3088; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)*

460 IAC 2-3-16 Grievances; committee action

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 16. (a) After a complaint has been received and a response has been filed or the thirty (30) day period has elapsed for filing a response, the DHHS deputy director as grievance committee chairperson shall review the documents and make an initial decision on the merits of the pleadings.

(b) If the DHHS deputy director finds that no violation of this rule occurred and no cause of action exists, the complaint shall be dismissed and all parties notified in writing.

(c) Upon dismissal of the complaint, the complainant may request a hearing by the full grievance committee within thirty (30) days of dismissal.

(d) If the DHHS deputy director determines that an investigation is warranted, the formal charges and grounds upon which they are based shall be set forth in writing and sent to the grievance committee and all parties involved, and the grievance committee may hold a hearing pursuant to section 17 of this rule. *(Division of Disability and Rehabilitative Services; 460 IAC 2-3-16; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3088; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)*

460 IAC 2-3-17 Grievances; hearing procedure

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 17. (a) The complainant and respondent, whether or not participating in person, may be advised and represented at the party's own expense by counsel or, unless prohibited by law, by another representative. Representatives may participate in all

proceedings.

(b) Any party may present any affidavits, documents, or other written evidence as to any relevant aspect of a charge or defense asserted.

(c) Any party may present witnesses to give testimony as to any relevant aspect of the charge or defense asserted.

(d) The grievance hearing shall meet at a location most convenient to all parties involved.

(e) All parties involved shall be given at least two (2) weeks' notice of the scheduled hearing date, time, and location.

(f) The complainant and the respondent shall bear their own costs and expenses in connection with the grievance process.

(Division of Disability and Rehabilitative Services; 460 IAC 2-3-17; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3088; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)

460 IAC 2-3-18 Grievances; decision of grievance committee; recommendation

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 18. (a) The grievance committee shall carefully review all documents and evidence presented.

(b) Committee members other than the DHHS deputy director may vote on the grievance. The committee's decision shall require a majority vote. If there is no majority following the vote of the committee members, the DHHS deputy director shall cast a vote to determine the majority.

(c) The committee's decision on the charges shall become a written recommendation to the DHHS deputy director and shall identify in detail the charges, the evidence used in reaching a decision, and the relevant standard for ethical behavior citation.

(d) The DHHS deputy director shall review the committee's recommendation and either adopt it, modify it, or dissolve it. The DHHS deputy director may remand the matter, with or without instructions, to the grievance committee for further proceedings.

(e) The DHHS deputy director shall issue a final decision on the grievance. One (1) copy shall be kept for the committee's records, and a copy shall be given to each party. If copies are mailed, they must be sent via certified mail, return receipt requested.

(Division of Disability and Rehabilitative Services; 460 IAC 2-3-18; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3088; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)

460 IAC 2-3-19 Grievances; enforcement; disciplinary actions

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 19. (a) When the standards of ethical behavior set forth in this rule are found by the grievance committee to have been violated, the committee may recommend to the DHHS deputy director that disciplinary action be taken against an interpreter based upon the severity of the interpreter's misconduct.

(b) The available disciplinary actions that the DHHS deputy director may take include the following:

(1) Verbal warning, which is an oral reprimand given by the DHHS deputy director.

(2) Written reprimand, which is a written notification of unsatisfactory performance.

(3) Probation, which is a trial period of a length of time specified by the DHHS deputy director during which the interpreter is required to fulfill a set of conditions or to improve work performance or on-the-job behavior.

(4) Suspension or revocation, which is suspension or revocation of Indiana interpreter certification and referral to the grievance committee of the national organization, either RID or NAD, whose certification is held.

(Division of Disability and Rehabilitative Services; 460 IAC 2-3-19; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3089; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA)

460 IAC 2-3-20 Grievances; appeals

Authority: IC 12-12-7-5

Affected: IC 4-21.5; IC 12-12-7

Sec. 20. An interpreter who has received disciplinary action from the DHHS deputy director may request a reconsideration of the decision to the director of DDARS. The director of DDARS shall provide a response to the request within fifteen (15) days of the date the request is received, including a notice of the right to appeal the decision. An interpreter that is dissatisfied with the

decision on reconsideration may appeal the decision. The appeal shall be conducted in accordance with IC 4-21.5. (*Division of Disability and Rehabilitative Services; 460 IAC 2-3-20; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3089; readopted filed Nov 21, 2006, 10:59 a.m.: 20061213-IR-460060410RFA; readopted filed Sep 30, 2008, 3:24 p.m.: 20081015-IR-460080616RFA*)

Rule 4. Blind and Visually Impaired Services—Indiana Randolph-Sheppard Business Enterprise Program

460 IAC 2-4-1 Purpose

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 1. The Indiana Randolph-Sheppard Business Enterprise Program (BEP) is established to:

- (1) provide blind persons with remunerative employment; and
- (2) enlarge the economic opportunities for blind persons.

(*Division of Disability and Rehabilitative Services; 460 IAC 2-4-1; filed Aug 23, 2001, 2:30 p.m.: 25 IR 62; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254RFA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-2 Definitions

Authority: IC 12-9-2-3

Affected: IC 12-9-1-1; IC 12-12-1-2; IC 12-12-5; 20 U.S.C. 107; 34 CFR 395.1

Sec. 2. The following definitions apply throughout this rule:

- (1) "Abandoned" means that a BEP facility is unattended or unoperated after an operator has failed to:
 - (A) notify the state licensing agency of the operator's absence; and
 - (B) meet contractual obligations for the facility, including the requirement for continuous operation.
- (2) "Active participation" means an ongoing process of good faith negotiation between the state licensing agency and the Indiana elected committee of licensed managers to achieve joint planning of:
 - (A) rules;
 - (B) policies;
 - (C) standards; and
 - (D) practices;prior to implementation by the state licensing agency. Active participation shall not supersede the final authority of DDRS to adopt program policy and to administer the BEP.
- (3) "Agreement" means a written contract between the state licensing agency and an operator for the operation of a BEP facility.
- (4) "Applicant" means a person who has:
 - (A) applied; or
 - (B) been referred;to the BEP, but who has not been accepted as a manager trainee.
- (5) "BEP facility" means any business opportunity entered into by the state licensing agency for operation in the BEP.
- (6) "Blind and visually impaired services" or "BVIS" means the unit of services for the blind and visually impaired, established in IC 12-12-1-2(1) as a unit of the rehabilitation services bureau of DDRS, family and social services administration.
- (7) "Business days" means regular business days recognized by the state. The term does not include:
 - (A) Saturday;
 - (B) Sunday;
 - (C) legal holidays as defined by state statute; or
 - (D) a day when state offices are closed during regular business hours.
- (8) "Business enterprise program" or "BEP" means the Indiana Randolph-Sheppard Business Enterprise Program authorized by 20 U.S.C. 107 and IC 12-12-5.
- (9) "Custodial authority" means the person or entity authorized to contract for the services at a site or facility.
- (10) "Director" means the director of DDRS.
- (11) "Division of disability and rehabilitative services" or "DDRS" means the division of disability and rehabilitative services

established in IC 12-9-1-1.

(12) "Federal property" means any building, land, or other real property owned, leased, or occupied by any:

- (A) department;
- (B) agency; or
- (C) instrumentality;

of the United States.

(13) "Indiana elected committee of licensed managers" means the Indiana committee of licensed managers established pursuant to 20 U.S.C. 107b-1.

(14) "Legal blindness" or "legally blind" means either of the following:

- (A) Visual acuity of not more than 20/200 in the better eye with best corrective lenses.
- (B) A limitation to the field of vision in the better eye such that the widest diameter of visual field subtends an angle of not greater than twenty (20) degrees.

(15) "License" means a written instrument that:

- (A) is issued by DDRS to a blind person; and
- (B) authorizes that person to operate a BEP facility as a licensed manager under this rule.

(16) "Licensed manager" means an individual who has a license issued by DDRS to operate a BEP facility under this rule.

(17) "Management services" means:

- (A) supervision;
- (B) inspection;
- (C) quality control;
- (D) consultation;
- (E) accounting;
- (F) regulating;
- (G) in-service training; and
- (H) other related services;

provided by the state licensing agency on a systematic basis to support and improve the operations of BEP facilities. The term does not include those services or costs that pertain to the ongoing operation of an individual BEP facility after the initial establishment period.

(18) "Manager" means a licensed manager.

(19) "Manager trainee" means a blind individual who has:

- (A) applied for and been found eligible for vocational rehabilitation services; and
- (B) been accepted for training in the BEP;

but who has not received a license from the state licensing agency.

(20) "Net proceeds" means gross sales less the allowable expenses set out in section 34 of this rule that an operator has paid for the operation of the BEP facility, excluding any salary paid to the operator.

(21) "Operator" means a:

- (A) licensed manager;
- (B) manager trainee; or
- (C) temporary operator;

who has an agreement with the state licensing agency to operate a BEP facility.

(22) "Other property" has the meaning set forth in 34 CFR 395.1(n).

(23) "Permit" means the official approval given to the state licensing agency by a department, agency, or instrumentality in control of the:

- (A) maintenance;
- (B) operation; and
- (C) protection;

of federal property, or person in control of other property, whereby the state licensing agency is authorized to establish a BEP facility under 20 U.S.C. 107.

(24) "Placement list" means an index of:

- (A) licensed managers; and
- (B) manager trainees;

eligible to bid on an available BEP facility.

(25) "Primary facility" means a licensed manager's BEP facility location with the greatest amount of gross sales as determined annually on September 30 of the most recently complete federal fiscal year.

(26) "Probationary period" means the period of time from a manager trainee's placement at a permanent BEP facility until the manager trainee is licensed under this rule.

(27) "Seniority" means the following:

(A) For a licensed manager, seniority:

(i) is determined from the date of completion of the licensed manager's probationary period; and

(ii) continues to accrue as long as the licensed manager:

(AA) holds a valid agreement with the state licensing agency to operate a BEP facility; or

(BB) has been displaced through no fault of their own.

(B) For a manager trainee, seniority is determined from the date that BVIS received the manager trainee referral from vocational rehabilitation services.

(28) "Set-aside funds" means funds accruing to the state licensing agency from:

(A) a uniform assessment against the net proceeds of assigned BEP facilities; or

(B) vending machines on federal property under 34 CFR 395.8.

(29) "State licensing agency" means DDRS.

(30) "Temporary operator" means:

(A) a licensed manager;

(B) a manager trainee; or

(C) any sighted or blind person;

who enters into an agreement with the state licensing agency to operate a BEP facility on a temporary basis when a licensed manager or manager trainee is not available.

(31) "Ultimate authority" means the director of DDRS.

(32) "Valid agreement" means a contract entered into by:

(A) a licensed manager; and

(B) the state licensing agency;

to operate a permanent BEP facility.

(33) "Vocational rehabilitation services" means the unit of vocational rehabilitation established in IC 12-12-1-2(2) as a unit of the rehabilitation services bureau in DDRS.

Any language not defined in this section shall be defined by the state licensing agency and the Indiana elected committee of licensed managers. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-2; filed Aug 23, 2001, 2:30 p.m.: 25 IR 62; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-3 State licensing agency functions

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 3. The state licensing agency shall do the following:

(1) Have the ultimate responsibility for the administration of the BEP under 20 U.S.C. 107 and IC 12-12-5.

(2) Carry out the duties of planning programs and setting policies, standards, and procedures with the active participation of the Indiana elected committee of licensed managers.

(3) Select and develop suitable locations for BEP facilities in properties owned, leased in whole or in part, or operated by any of the following:

(A) The United States government.

(B) The state.

(C) A county.

(D) A township.

(E) A city.

(F) A town.

(G) A private entity.

- (4) Determine the criteria for suitable locations for a BEP facility, with the criteria to include the income potential of potential locations.
- (5) Designate a specific location or locations as a BEP facility.
- (6) Take reasonable steps to improve the profitability of each BEP facility, including determining whether other locations or sites should be added or removed as part of the facility.
- (7) Select and supervise licensed managers for BEP facilities, giving preference to blind persons who are in need of employment.
- (8) Require that all aspects of a licensed manager's operations, including fiscal matters, are in compliance with BEP rules and procedures.
- (9) Make:
 - (A) suitable BEP equipment; and
 - (B) adequate initial stock;available to operators.
- (10) Coordinate the state's BEP with the state's vocational rehabilitation program to provide the following:
 - (A) Initial training in aspects of BEP facility operation.
 - (B) Upward mobility training, including:
 - (i) further education;
 - (ii) additional training; or
 - (iii) retraining;for improved work opportunities.
 - (C) Services after licensing to assure that the maximum vocational potential of each licensed manager is achieved.
- (11) Provide access in electronic/accessible format to all financial data of the state licensing agency relevant to the operation of the BEP, including quarterly and annual financial reports, provided that disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information.
- (12) Develop forms and written procedures necessary to implement and carry out the provisions of this rule.
- (13) Conduct a biennial election of the Indiana elected committee of licensed managers, with no direct involvement of staff of the state licensing agency in the outcome of the election process.
- (14) Meet regularly with the Indiana elected committee of licensed managers to ensure the committee's active participation regarding major administrative decisions, policy, and program development decisions.
- (15) Notify the Indiana elected committee of licensed managers in writing of:
 - (A) decisions made or actions taken that are different from the recommendations of the committee; and
 - (B) the reason for the difference or differences.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-3; filed Aug 23, 2001, 2:30 p.m.: 25 IR 64; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-4 Program participants; nondiscrimination

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107; 34 CFR 395.1

Sec. 4. No licensed manager or manager trainee in, or applicant for, the BEP shall be discriminated against on the basis of:

- (1) sex;
- (2) age;
- (3) disability;
- (4) race;
- (5) creed;
- (6) color;
- (7) national origin;
- (8) organizational affiliation; or
- (9) political affiliation.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-4; filed Aug 23, 2001, 2:30 p.m.: 25 IR 64; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-5 Qualifications of applicant

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 5. In order to be accepted for training in the BEP, an applicant must:

(1) be:

- (A) legally blind;
- (B) at least eighteen (18) years of age;
- (C) a United States citizen; and
- (D) hold a high school diploma or equivalent;

(2) be:

- (A) a client of vocational rehabilitation services; and
- (B) referred for the BEP by vocational rehabilitation services;

(3) have:

- (A) adequate orientation and mobility skills to travel independently;
- (B) skills sufficient to communicate with the public in a courteous manner; and
- (C) the ability to develop and maintain working relationships with others;

(4) be able to maintain required records and reports;

(5) have:

- (A) mathematical skills sufficient to operate a small business; and
- (B) independent daily living skills sufficient to allow the applicant to meet personal care and facility maintenance needs.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-5; filed Aug 23, 2001, 2:30 p.m.: 25 IR 64; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-6 Effect of nonqualification for the business enterprise program

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 6. (a) If the state licensing agency:

- (1) determines that an applicant does not meet the qualifications set out in section 5 of this rule; and
- (2) does not accept the applicant as a manager trainee;

the provisions in this section apply.

(b) The state licensing agency shall do the following:

- (1) Refer the applicant to the office of vocational rehabilitation services for other services.
- (2) Notify an applicant in writing of the specific grounds for the agency's determination that the applicant:
 - (A) does not meet the qualifications set out in section 5 of this rule; and
 - (B) is not accepted as a manager trainee in the BEP.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-6; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65; errata filed Jan 10, 2002, 11:37 a.m.: 25 IR 1645; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-7 Manager trainees; training requirements

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 7. (a) Except as provided in section 8 of this rule, a manager trainee must successfully complete training for the BEP before being licensed as a manager.

(b) Training for the BEP includes the following:

- (1) Classroom training in the skills necessary for the general operation of any type of BEP facility.
- (2) Training on specific types of BEP facilities.
- (3) On-the-job training:

- (A) with a licensed manager; or
 - (B) at a facility approved by the state licensing agency.
- (4) Training on the following:

- (A) BEP rules, requirements, policies, and procedures.
- (B) The application of federal, state, and local laws relating to operating a facility.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-7; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-8 Waiver or modification of training requirements

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 8. (a) A manager trainee may submit a written request to the state licensing agency for a:

- (1) waiver, in whole or in part; or
- (2) modification;

of the training requirements described in this rule. A manager trainee must also submit supporting documentation required by the state licensing agency.

(b) With the active participation of the Indiana elected committee of licensed managers, the state licensing agency may waive, in whole or in part, or modify the training requirements for a manager trainee on the basis of the manager trainee's:

- (1) previous work experience;
- (2) knowledge;
- (3) skills; or
- (4) training.

(c) The probationary period for a manager trainee required under section 9 of this rule shall not be waived.

(d) If a manager trainee has received a waiver or modification of training requirements under this section, the manager trainee's ranking on the placement list shall be determined by the date when BVIS received the manager trainee referral from vocational rehabilitation services. *(Division of Disability and Rehabilitative Services; 460 IAC 2-4-8; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 2-4-9 Manager trainee; probationary period

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 9. (a) A manager trainee must successfully complete a probationary period before being licensed as a manager in the BEP.

(b) The purpose of the probationary period is to improve the performance of the manager trainee by the following:

(1) Assisting the manager trainee to achieve the most effective adjustment to the:

- (A) BEP; and
- (B) assigned facility.

(2) Assuring that the manager trainee is aware of and complies with the following:

- (A) The rules and requirements of the BEP.
- (B) The terms of the permit for, or the agreement between the:
 - (i) state licensing agency; and
 - (ii) custodial authority of;the BEP facility to which the manager trainee is assigned.

(3) Evaluating the manager trainee's performance:

- (A) in the work setting; or
- (B) at an assigned BEP facility.

(4) Referring a manager trainee in need of other or additional services to the office of vocational rehabilitation services.

(c) The probationary period begins when a manager trainee is placed in a permanent BEP facility.

(d) The probationary period continues for at least ninety (90) calendar days after a manager trainee is placed in a BEP facility.

In addition, the state licensing agency may extend the probationary period for a maximum of sixty (60) calendar days in order to:

- (1) provide the manager trainee with additional or remedial training; or
- (2) achieve any purpose described in subsection (b).

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-9; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-10 Manager trainees; disciplinary procedures

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 10. (a) This section applies to a manager trainee who is:

- (1) receiving initial training, including classroom or on-the-job training; or
- (2) in the probationary period.
- (b) A manager trainee receiving initial training may be subject to disciplinary action as set out in this section for:
 - (1) a violation of; or
 - (2) failure to comply with;

a written rule or regulation of the training institution.

(c) A manager trainee in the probationary period may be subject to disciplinary action as set out in this section for a violation of, or failure to comply with any of the following:

- (1) The provisions of this rule applicable to a licensed manager.
- (2) The terms of an agreement between the:
 - (A) state licensing agency; and
 - (B) manager trainee;

for operation of a BEP facility.

- (3) The terms of the permit for, or the agreement between the:

- (A) state licensing agency; and
- (B) custodial authority of;

the BEP facility to which the manager trainee is assigned.

- (d) Documentation of disciplinary action shall be kept in the individual's personnel file.

(e) Disciplinary actions shall include the following:

- (1) Formal counseling.
- (2) A written action plan.
- (3) Suspension from training.
- (4) Termination of training and participation in the BEP.
- (f) Disciplinary action will progress through the steps listed in subsection (e) for any of the following:
 - (1) The first violation or noncompliance under subsection (b) or (c).
 - (2) A failure to correct a violation or noncompliance under subsection (b) or (c).
 - (3) A repeated violation or noncompliance under subsection (b) or (c).

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-10; filed Aug 23, 2001, 2:30 p.m.: 25 IR 66; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-11 Termination of manager trainee's participation in the business enterprise program

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 11. (a) The state licensing agency may terminate a manager trainee's participation in the BEP for cause in accordance with section 10 of this rule.

(b) The state licensing agency may terminate a manager trainee's participation in the BEP at any of the following times:

- (1) During:
 - (A) training; or
 - (B) the probationary period.

(2) At the end of the probationary period and before licensing.

(c) If the state licensing agency determines that the participation of a manager trainee should be terminated, the state licensing agency shall do the following:

(1) Refer the manager trainee to the office of vocational rehabilitation services for other services or an appeal process, or both.

(2) Notify the manager trainee, in writing, of the specific grounds for the agency's determination that the manager trainee's participation in the BEP should be terminated.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-11; filed Aug 23, 2001, 2:30 p.m.: 25 IR 66; errata filed Jan 10, 2002, 11:37 a.m.: 25 IR 1645; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-12 Issuance of license

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 12. (a) The state licensing agency shall issue a license to a manager trainee in the BEP who has successfully completed training and a probationary period at a permanent BEP facility.

(b) Upon licensing, a manager trainee:

(1) becomes a licensed manager in the BEP; and

(2) will receive written notification of the successful completion of their probationary period.

Seniority will begin to accrue as of the last day of probation.

(c) A license is issued for an indefinite period of time but is subject to suspension or termination after affording the licensed manager an opportunity for a full evidentiary hearing, except as provided in section 24 of this rule. *(Division of Disability and Rehabilitative Services; 460 IAC 2-4-12; filed Aug 23, 2001, 2:30 p.m.: 25 IR 67; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 2-4-13 Determination of visual status

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 13. (a) The state licensing agency has the right to request and to obtain from a licensed manager periodic visual evaluations in order to determine continuing compliance with visual requirements.

(b) Agency requests for current evidence of visual status include the following:

(1) Upon the written request of the state licensing agency, a licensed manager must provide the state licensing agency with current ophthalmologic or optometric evidence documenting the manager's visual status within sixty (60) days of the agency's request. As used in this subdivision, "current" means evidence of an examination not more than six (6) months old from the date of submitting the evidence to the state licensing agency.

(2) A licensed manager who does not provide the requested ophthalmologic or optometric evidence is presumed not to be legally blind. Action must be taken under section 20(a)(4) of this rule to terminate the manager's license.

(3) If a licensed manager is determined to be not legally blind on the basis of the submitted evidence, action must be taken under section 20(a)(4) of this rule to terminate the manager's license.

(4) The state licensing agency shall pay the cost of obtaining ophthalmologic or optometric evidence required by this subsection.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-13; filed Aug 23, 2001, 2:30 p.m.: 25 IR 67; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-14 Selection of business enterprise program facility locations

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 14. (a) Determination of BEP facility locations include the following:

(1) The state licensing agency may establish a BEP facility at a particular location only if establishment of a facility at that

location is likely to do the following:

- (A) Contribute to the development of significant economic opportunities for blind persons.
- (B) Provide for the productive use of program assets.
- (2) The state licensing agency's determination under subsection (a) shall be made on the basis of an evaluation of relevant factors in a survey of the location. Factors to be evaluated include the following:
 - (A) Population.
 - (B) Traffic.
 - (C) Competition.
 - (D) Continued availability of the location.
 - (E) Type of premises.
 - (F) Potential return on investment.

(b) If the sales productivity of a BEP facility is adversely affected by factors beyond the control of the state licensing agency or of the operator, the state licensing agency must review and determine whether the location remains suitable for a BEP facility or for the current type of operation. The state licensing agency shall evaluate all relevant factors, including those set out in subsection (a)(2) in a review of the location. On the basis of this review, the state licensing agency may:

- (1) close a BEP facility; or
- (2) convert the existing facility to another type of operation.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-14; filed Aug 23, 2001, 2:30 p.m.: 25 IR 67; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-15 Assignment of a business enterprise program facility

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 15. (a) The assignment of a BEP facility shall be made by the state licensing agency with the active participation of the Indiana elected committee of licensed managers. A bidding process is used to:

- (1) promote upward mobility; and
- (2) assign available BEP facilities.

(b) When a BEP facility becomes available, the state licensing agency will solicit bids for the facility from eligible persons on the placement list.

(c) The manager's disciplinary status as of the date of the bid will determine the scoring of the bid for a facility.

(d) Except as provided in subsection (e), the following persons will be placed on the placement list for the assignment of an available BEP facility and are eligible to bid for an available BEP facility:

- (1) A licensed manager who has been operating the manager's current BEP facility for a minimum of one (1) year as of the date the bid on an available facility is due.
- (2) A manager trainee who has successfully completed the training specified at section 7 of this rule, subject to the provisions of section 8 of this rule.
- (3) A licensed manager who submits a letter requesting placement to the state licensing agency during an approved leave of absence.

(e) The following persons will not be placed on the placement list for the assignment of an available BEP facility and are not eligible to bid for an available BEP facility:

- (1) A licensed manager who has been operating the manager's current BEP facility for less than one (1) year as of the date the bid on an available facility is due.
- (2) A licensed manager or manager trainee who:

- (A) accepts the award or assignment of a BEP facility; and
 - (B) subsequently refuses placement at, or withdraws acceptance of the award or assignment of, that BEP facility;

is not eligible to bid for another BEP facility for a period of one (1) year from the date of acceptance; provided, however, that a licensed manager or manager trainee who has been awarded and has accepted a BEP facility, but who has not been placed in that facility through no fault of his or her own, will be placed on the placement list and is eligible to bid on an available BEP facility.

(f) In order for a bid to be considered, a manager must meet the following criteria:

- (1) Provide proof of the following:
 - (A) Financial ability to move to a new location.
 - (B) That all commissions are paid in full.
- (2) Be current with all taxes through the following:
 - (A) The Internal Revenue Service.
 - (B) The Indiana department of state revenue.
 - (C) The Indiana department of workforce development.
- (g) Eligible bidders shall be evaluated by the state licensing agency, with the active participation of the Indiana elected committee of licensed managers, using the following scoring system:

(1) Award:

- (A) forty percent (40%) of a bidder's seniority if the bidder has had no formal disciplinary action taken against them in the previous ten (10) months;
- (B) twenty percent (20%) of a bidder's seniority if the bidder has had a formal letter of counseling in the previous ten (10) months; or
- (C) zero percent (0%) of a bidder's seniority if the bidder has been on an action plan in the previous ten (10) months.

(2) Award twenty percent (20%) of a bidder's seniority if the bidder has successfully completed a preapproved continuing education course in the previous twelve (12) months.

(3) Award twenty percent (20%) of a bidder's seniority if the bidder attended the last conference sponsored by the state licensing agency.

(4) Award twenty percent (20%) of a bidder's seniority if the bidder has submitted a complete business profile as outlined in the bid package.

(h) A bidder who scores sixty percent (60%) or less of their seniority will not be considered. The state licensing agency or BVIS shall do the following:

(1) Offer the assignment of the facility to the eligible bidder with the highest numeric score.

(2) Notify the successful bidder in writing of the offer of an available facility position to that bidder.

By 3 p.m. on the tenth business day after receipt of the agency's letter, the successful bidder must notify the state licensing agency or BVIS, in writing, that the offer is accepted or refused. Refusal of an offer is final and irrevocable. A failure to respond within the required time period is deemed a refusal of an offer.

(i) If the bidder with the highest numeric score does not accept the assignment of the facility, the state licensing agency or BVIS shall continue to offer the assignment of the facility to eligible bidders in declining numeric order from the highest numeric score until:

(1) an eligible bidder accepts the assignment; or

(2) all eligible bidders have been offered the assignment.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-15; filed Aug 23, 2001, 2:30 p.m.: 25 IR 68; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-16 Temporary operators; assignment of temporary location

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 16. (a) The state licensing agency, with the active participation of the Indiana elected committee of licensed managers, may place a temporary operator in a BEP facility under any of the following circumstances:

(1) No eligible person:

(A) bids on a BEP facility; or

(B) accepts the assignment of a BEP facility.

(2) An operator for a BEP facility is not otherwise available.

(b) If a BEP facility is temporarily not assigned to a licensed manager or if a temporary operator is needed for a BEP facility, the following priorities will be used in assigning a temporary operator to the facility:

(1) A licensed manager displaced from the manager's facility through no fault of the manager, for example, due to the permanent or temporary closing of a BEP facility, is given first priority on any unassigned temporary location. If more than one (1) displaced licensed manager is eligible, selection will be based on seniority.

(2) If a displaced manager in good standing:

(A) is not available for placement; or

(B) does not accept the placement;

the location will be offered next to the licensed manager whose legal residence is closest in physical proximity to the unassigned temporary location. If more than one (1) licensed manager meets the proximity requirement, the licensed manager with the most seniority will be selected.

(3) In selecting a temporary operator, the state licensing agency shall give priority to qualified blind persons. A qualified sighted person may be placed as a temporary operator only after the state licensing agency determines that a qualified blind person is not available.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-16; filed Aug 23, 2001, 2:30 p.m.: 25 IR 69; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-17 Operator agreement

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 17. An operator must enter into a written agreement with the state licensing agency for the operation of an assigned BEP facility. *(Division of Disability and Rehabilitative Services; 460 IAC 2-4-17; filed Aug 23, 2001, 2:30 p.m.: 25 IR 69; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)*

460 IAC 2-4-18 Leave of absence

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 18. (a) A licensed manager may request and take an approved leave of absence for a period up to twenty-four (24) months for the following purposes:

(1) Medical leave for a licensed manager's own serious health condition that prevents the licensed manager from performing any of the essential functions at the manager's assigned BEP facility.

(2) Medical leave to care for the licensed manager's spouse, parent, child, or other legal dependent, who:

(A) has a serious health condition; and

(B) is dependent on the manager for care.

(3) Leave in conjunction with the birth or placement of a child for adoption or foster care, as long as the leave concludes within twelve (12) months following the birth or placement.

(4) Vision rehabilitation.

(b) At least fifteen (15) business days in advance, the licensed manager shall submit a written notice to the state licensing agency of the following:

(1) The manager's intent to take a leave of absence.

(2) The purpose of the leave.

(3) The dates and expected duration of the leave.

If fifteen (15) business days' notice is not possible, the manager shall give notice as soon as practicable. The state licensing agency shall send a written response to the manager and shall indicate whether the leave is approved as requested. Upon request from the state licensing agency, the licensed manager shall provide medical documentation of the need for the leave and concerning the duration of the leave.

(c) If a leave of absence is for six (6) months or less, a licensed manager has the right to retain the assigned BEP facility throughout the period of the leave. A licensed manager must select an individual, approved in advance by the state licensing agency, to operate the facility in the manager's absence. During the leave, the licensed manager shall remain responsible for:

(1) the submission of monthly reports; and

(2) all related duties of the licensed manager.

If the licensed manager requests an extension of a leave beyond six (6) months from the beginning of the approved leave, the provisions of subsection (d) shall apply.

(d) Leave of absence for a period greater than six (6) months and up to two (2) years. If the leave of absence is for a period

greater than six (6) months, a licensed manager shall not have the right to retain the manager's assigned BEP facility, and the following requirements apply:

(1) The state licensing agency shall assign a temporary operator to the BEP facility until the bidding and assignment process set out in section 15 of this rule is completed.

(2) At any time before the end of an approved leave period, the licensed manager may submit to the state licensing agency a written request for reinstatement in the BEP and for assignment to a BEP facility. At the manager's written request, the state licensing agency shall place the licensed manager's name on the placement list for assignment to an available BEP facility.

(3) The licensed manager must notify the state licensing agency, in writing, at least thirty (30) days before the end of the approved leave period of the following:

(A) That the manager requests to be placed on the placement list for assignment to a BEP facility.

(B) That the manager:

(i) does not wish to participate in the BEP; and

(ii) agrees to the termination of the manager's license.

(e) The manager's license may be suspended for thirty (30) days according to disciplinary procedures under any of the following circumstances:

(1) The manager fails to comply with subsection (d)(3).

(2) The manager fails to obtain prior approval from the state licensing agency for a leave extension allowable under this section.

(f) The state licensing agency may require specific training of a licensed manager upon returning from a leave of absence of one (1) year or more.

(g) After a leave of absence, a licensed manager requesting assignment to a BEP facility may request additional training, subject to the provisions of section 19 of this rule concerning continuing education. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-18; filed Aug 23, 2001, 2:30 p.m.: 25 IR 69; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-19 Continuing education

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 19. (a) In-service training activities will be conducted for licensed managers to do the following:

(1) Develop business management and marketing skills.

(2) Enhance their ability to run a profitable facility.

(b) Training requests may be approved by the state licensing agency based on the following:

(1) The availability of training resources.

(2) A licensed manager's need to receive requested training.

(c) If training is provided to a licensed manager at the manager's request, the licensed manager has the right to retain the assigned BEP facility upon the completion of training.

(d) Specific training may be required of the licensed manager in any of the following situations:

(1) The assigned BEP facility changes or expands to include management responsibilities in which the licensed manager:

(A) is not qualified; or

(B) has not had experience or training within the past one (1) year period.

(2) Equipment is placed in the location with which the licensed manager has had no training or experience within the past one (1) year period.

(3) A licensed manager is transferred to a new location that includes management responsibilities in which the licensed manager has not had experience within the past one (1) year period.

(4) A licensed manager returns from a leave of absence of one (1) year or more.

(5) Training is required by the state licensing agency under a written action plan.

(6) The state licensing agency:

(A) requires upper mobility education; and

(B) will reimburse licensed managers for preapproved training.

(*Division of Disability and Rehabilitative Services; 460 IAC 2-4-19; filed Aug 23, 2001, 2:30 p.m.: 25 IR 70; filed Nov 26, 2007,*

10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-20 Termination of manager's license

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 20. (a) A manager's license terminates automatically, without further notice, if any of the following occur:

(1) The death of a licensed manager.

(2) A licensed manager's:

(A) resignation;

(B) withdrawal; or

(C) retirement;

from the BEP.

(3) The manager's vision improves to the extent that the manager is no longer legally blind.

(4) An extended illness or incapacity of the manager prevents the manager's personal operation of the facility, when there is no reasonable expectation, based on medical evidence, that the manager will be able to return to work.

(b) A manager's license may be terminated for cause as set out in section 27 of this rule. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-20; filed Aug 23, 2001, 2:30 p.m.: 25 IR 70; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-21 Disciplinary procedures for licensed managers

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 21. (a) Disciplinary actions shall include the following:

(1) Formal written counseling.

(2) A written action plan.

(3) Immediate suspension without notice.

(4) Disciplinary suspension.

(5) Loss of assigned BEP facility.

(6) Termination of license.

(b) At any time discipline is imposed, a licensed manager shall be informed of the right to file a grievance under section 28 of this rule.

(c) Except as provided in section 24 of this rule (immediate suspension), a licensed manager shall be advised of the opportunity for a full evidentiary hearing before:

(1) disciplinary suspension;

(2) loss of the manager's facility; or

(3) termination of the manager's license.

(*Division of Disability and Rehabilitative Services; 460 IAC 2-4-21; filed Aug 23, 2001, 2:30 p.m.: 25 IR 71; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-22 Disciplinary procedures; formal counseling

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 22. (a) Formal counseling is a discussion, in person or by telephone, between a licensed manager and a business counselor or other staff of the state licensing agency. The discussion must be documented, in writing, in the state licensing agency's file for the manager.

(b) In formal counseling, a licensed manager will be advised of the following:

(1) That the discussion is a formal counseling session under the state licensing agency disciplinary procedures.

(2) The specific nature of the action or violation complained of.

- (3) The corrective action required.
- (4) The date when corrective action must be completed.
- (5) The consequences of the following:
 - (A) Failure to comply with corrective action.
 - (B) Repeated violation.

(c) Formal counseling shall be used for the first violation of a rule, policy, or the terms of an agreement or permit for a BEP facility, except when the state licensing agency reasonably determines that:

- (1) public health, safety, or welfare is in danger;
- (2) the permit for a BEP facility is in jeopardy; or
- (3) a BEP facility contract between the:
 - (A) custodial authority of the facility; and
 - (B) state licensing agency;

is in jeopardy;

due to the manager's operations, for which a higher level of discipline may result.

(d) The state licensing agency staff member conducting a formal counseling session shall send a written report of the session to the licensed manager. The report shall be in an accessible format designated by the licensed manager. The report shall include the information required in subsection (b). A copy of the report will be kept in the manager's file in the state licensing agency.

(e) A licensed manager shall have the right to submit written comments regarding the report to the state licensing agency. If the manager does so, the written comments will be kept in the manager's file in the state licensing agency.

(f) An action or violation that results in formal counseling may be the basis for a written action plan if the action or violation:

- (1) is not corrected as requested in the formal counseling report; or
- (2) that is the basis for formal counseling is repeated.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-22; filed Aug 23, 2001, 2:30 p.m.: 25 IR 71; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-23 Disciplinary procedures; written action plan

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 23. (a) A written action plan must notify a licensed manager of the following:

- (1) The specific nature of the action or violation complained of.
- (2) The corrective action required.
- (3) The date for completing corrective action.
- (4) The consequence of the following:
 - (A) Failure to correct the problem.
 - (B) A repeated violation.

(b) A written action plan shall be presented to a licensed manager in a meeting between the licensed manager and a business counselor or the BEP director of the state licensing agency. The licensed manager may be represented at this meeting at the manager's expense.

(c) The licensed manager will be required to correct the action or violation within a specific, reasonable time period.

(d) The licensed manager must remain free of the action or violation complained of in the written action plan for a period of one hundred eighty (180) days from the date in the action plan when corrective action must be completed.

(e) A licensed manager who receives three (3) written action plans within a twelve (12) month period may be subject to disciplinary suspension.

(f) An action or violation that results in an action plan may be the basis for disciplinary suspension if the action or violation is:

- (1) not corrected in accordance with the action plan; or
- (2) repeated or occurs again.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-23; filed Aug 23, 2001, 2:30 p.m.: 25 IR 71; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-24 Disciplinary procedures; immediate suspension

Authority: IC 12-9-2-3

Affected: IC 4-21.5-4; IC 12-12-5; 20 U.S.C. 107

Sec. 24. (a) The state licensing agency may seek from the director of the division the authority, under IC 4-21.5-4, to immediately suspend an operator agreement between the state licensing agency and a licensed manager, without a hearing prior to suspension, if the state licensing agency reasonably determines that:

(1) the:

(A) public health, safety, or welfare is in danger;

(B) permit for the BEP facility is in jeopardy; or

(C) BEP facility contract between the:

(i) custodial authority of the facility; and

(ii) state licensing agency;

is in jeopardy;

due to the manager's operations; or

(2) a licensed manager has abandoned the manager's assigned BEP facility.

(b) Pursuant to such authorization, the licensed manager's operation of the facility shall be suspended immediately. The manager shall cease operation of the facility during the period of suspension. The operation of the facility shall continue under the authority of the state licensing agency.

(c) The state licensing agency shall promptly notify the licensed manager of the immediate suspension of the operator agreement by certified mail or personal service. The notice of suspension shall inform the licensed manager of the following:

(1) The effective date of the suspension.

(2) The duration of the suspension.

(3) The violation or action that is the basis for the suspension.

(4) The consequence of the following:

(A) Failure to correct the violation or action after the suspension.

(B) A repeated violation after the suspension.

(5) The manager's right to:

(A) file a grievance or to appeal the state licensing agency's action; and

(B) a full evidentiary hearing.

(d) An immediate inventory of all stock, equipment, and documents shall be taken and recorded. The state licensing agency shall provide a copy of the inventory to the manager whose operator agreement has been suspended.

(e) The state licensing agency, with the active participation of the Indiana elected committee of licensed managers, shall select and place a temporary operator in the facility. The costs of a temporary operator will be:

(1) charged to; and

(2) paid from;

the facility's gross sales.

(f) The net proceeds from the facility shall be paid on a monthly basis to the manager whose operator agreement has been suspended.

(g) After an immediate suspension of an operator agreement under this section, the manager shall have the right to a full evidentiary hearing under section 30 of this rule. To exercise that right, the manager must file a written request with the director of the division for a full evidentiary hearing. The written request must be filed within fifteen (15) business days after service of the written notice of immediate suspension of the operator agreement.

(h) If an immediate suspension under this section is found to be contrary to law after a:

(1) full evidentiary hearing; and

(2) formal administrative review;

is complete, the licensed manager shall be reimbursed for the costs of the temporary operator. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-24; filed Aug 23, 2001, 2:30 p.m.: 25 IR 72; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-25 Disciplinary procedures; disciplinary suspension

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 25. (a) Disciplinary suspension of a licensed manager's operation of an assigned BEP facility for a minimum of thirty (30) calendar days may result from any of the following:

- (1) Failure to comply with a written action plan.
- (2) An action or a violation that is the basis of a written action plan is repeated following the written action plan.
- (3) A licensed manager:
 - (A) receives three (3) action plans within a period of twelve (12) months;
 - (B) is imprisoned after conviction of a criminal offense; or
 - (C) fails, without reasonable justification, to:
 - (i) give the notice required under section 18 of this rule, regarding the end of a leave of absence;
 - (ii) return to the manager's facility upon completion of an approved leave of absence; or
 - (iii) obtain prior approval from the state licensing agency for an extension of a leave of absence allowable under section 18 of this rule.

(b) The state licensing agency shall promptly notify by certified mail or personal service a licensed manager whose license is proposed to be suspended. The notice of proposed suspension shall inform the licensed manager of the following:

- (1) The action or violation that forms the basis for the proposed suspension.
- (2) The duration of the proposed suspension.
- (3) The consequence of the following:
 - (A) A failure to correct the violation or action after the proposed suspension.
 - (B) Repeated violations after the proposed suspension.

(4) The manager's right to a full evidentiary hearing before suspension of the manager's license.

(c) Except as provided in section 24 of this rule (immediate suspension without notice), a licensed manager must be afforded an opportunity for a full evidentiary hearing before suspension of the manager's license.

(d) If a licensed manager's operations are suspended after a full evidentiary hearing, the manager shall cease operation of the facility during the period of suspension. The operation of the facility shall continue under the authority of the state licensing agency.

(e) An immediate inventory of all stock, equipment, and documents shall be taken and recorded. The state licensing agency shall provide the suspended manager with a copy of the inventory.

(f) The state licensing agency, with the active participation of the Indiana elected committee of licensed managers, shall select and place a temporary operator in the facility. The costs of a temporary operator will be:

- (1) charged to; and
- (2) paid by;

the suspended manager from the facility's gross sales.

(g) The net proceeds from the facility shall be paid to the suspended manager on a monthly basis. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-25; filed Aug 23, 2001, 2:30 p.m.: 25 IR 72; errata filed Jan 10, 2002, 11:37 a.m.: 25 IR 1645; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-26 Disciplinary procedures; loss of facility

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 26. (a) A licensed manager shall lose the manager's assigned BEP facility, and the facility agreement between the manager and the state licensing agency shall be terminated and canceled, if any of the following occurs:

- (1) An action or violation resulted in a suspension and:
 - (A) was not corrected; or
 - (B) the action or violation was repeated.
- (2) A licensed manager has a repeated violation or failure to comply with the terms of a:
 - (A) permit for a BEP facility assigned to the licensed manager; or

(B) contract between the:

- (i) state licensing agency; and
- (ii) custodial authority of a BEP facility assigned to the licensed manager.

(b) The state licensing agency shall promptly notify a licensed manager by certified mail or personal service if the agency proposes to terminate the manager's operations in the manager's assigned BEP facility under this section. The notice of proposed loss of facility shall inform the licensed manager of the following:

- (1) The action or violation that forms the basis for the proposed loss of the manager's assigned BEP facility.
- (2) The consequence of a repeated violation after the manager's loss of the assigned BEP facility.
- (3) The manager's right to a full evidentiary hearing before loss of the manager's assigned BEP facility.

(c) A licensed manager must be afforded an opportunity for a full evidentiary hearing before loss of the assigned BEP facility under this rule.

(d) The:

- (1) loss of a facility by a licensed manager due to disciplinary action shall restrict the manager from bidding on another available facility for a period of one (1) year; and
- (2) manager shall not be awarded the facility that was lost in the future.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-26; filed Aug 23, 2001, 2:30 p.m.: 25 IR 73; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-27 Disciplinary procedures; termination of license

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 27. (a) The state licensing agency may terminate a manager's license for any of the following reasons:

(1) An action or violation that resulted in a loss of a licensed manager's BEP facility is:

- (A) not corrected; or
- (B) repeated.

(2) Violation of:

(A) the BEP facility agreement between:

- (i) the state licensing agency; and
- (ii) a licensed manager;

(B) the terms of the:

- (i) permit issued to the state licensing agency by the custodial authority of the BEP facility for the manager's assigned BEP facility; or
- (ii) BEP facility agreement between the:
 - (AA) state licensing agency; and
 - (BB) custodial authority of the BEP facility for the manager's assigned BEP facility; or

(C) this rule.

(3) Inability of a licensed manager to substantially comply with this rule for any reason.

(4) Conviction of a:

- (A) felony; or
- (B) misdemeanor that involves fraud, deceit, or misrepresentation.

(5) Continuing violation of state or local government health codes or laws, or failure to correct a violation of the health codes or laws.

(b) The state licensing agency shall promptly notify a licensed manager of a proposed license termination by certified mail or personal service. The notice shall inform a licensed manager of the following:

- (1) The action or violation that is the basis for the proposed termination.
- (2) The licensed manager's right to a full evidentiary hearing before termination of the manager's license.
- (c) A licensed manager will be afforded an opportunity for a full evidentiary hearing before termination of the manager's license.

(d) If a manager's license is terminated, the state licensing agency shall refer the manager to the office of vocational rehabilitation services for other services. *(Division of Disability and Rehabilitative Services; 460 IAC 2-4-27; filed Aug 23, 2001,*

2:30 p.m.: 25 IR 73; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-28 Grievance procedures for licensed managers

Authority: IC 12-9-2-3

Affected: IC 4-21.5-5; IC 12-12-5; 20 U.S.C. 107

Sec. 28. (a) At the time of licensing, a manager shall be informed of the right to, and the procedures for obtaining, administrative review, including a full evidentiary hearing, regarding a decision of the state licensing agency. A licensed manager shall be given access to this information in the manager's choice of:

- (1) Braille;
- (2) large print;
- (3) computer disk; or
- (4) recorded tape.

(b) If a licensed manager disagrees with an action taken by the state licensing agency arising from the operation or administration of the BEP facility program, the licensed manager may file a written grievance with the director of blind and visually impaired services within fifteen (15) business days of notification of the agency action complained of. The grievance must be filed in accordance with the procedures established in this section.

(c) Upon receiving a written grievance, the director of blind and visually impaired services shall conduct informal administrative review under section 29 of this rule.

(d) If the aggrieved party is dissatisfied with the outcome of informal administrative review, the aggrieved party may file a written request with the director of DDRS for a full evidentiary hearing. The written request must be filed within fifteen (15) business days after service of the written notice of the decision from informal administrative review. The hearing must be held before an impartial hearing officer appointed by the director or the director's delegate. The hearing officer shall:

- (1) conduct proceedings under IC 4-21.5; and
- (2) file a recommended order with the parties and the director of DDRS under section 30 of this rule.

(e) If a party is dissatisfied with the recommended order of a hearing officer, a party may file written objections with the director of DDRS within fifteen (15) business days of service of the hearing officer's recommended order. The director shall conduct proceedings and enter a final order under section 30 of this rule.

(f) If the aggrieved party is dissatisfied with the final order of the director of DDRS under subsection (e), the aggrieved party may either:

- (1) request that an arbitration panel be convened by filing a written complaint with the Secretary of the United States Department of Education, as authorized by 20 U.S.C. 107d-1 and 34 CFR 395.13; or
- (2) seek judicial review of the final order under IC 4-21.5-5.

(g) This section applies only to licensed managers. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-28; filed Aug 23, 2001, 2:30 p.m.: 25 IR 74; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-29 Informal administrative review

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 29. (a) A licensed manager may file a written grievance with the director of blind and visually impaired services within fifteen (15) business days of notification of the agency action complained of. The director or director's designee must hold an informal conference with the licensed manager within:

- (1) fifteen (15) business days of the receipt of the request; or
- (2) such other period of time agreed to by the licensed manager and the director.

(b) Transportation, reader, or other communication services, if needed and requested, must be arranged for the licensed manager by the state licensing agency.

(c) The director of blind and visually impaired services, or the director's designee, shall file a written decision from the informal conference on the licensed manager within ten (10) business days of the conference.

(d) If the licensed manager disagrees with the written decision from the informal conference with the director of blind and visually impaired services, or the director's designee, the licensed manager may request a full evidentiary hearing. The request must be:

- (1) made in writing; and
- (2) filed with the director of DDRS within fifteen (15) days after service of the blind and visually impaired services director's decision in subsection (c).

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-29; filed Aug 23, 2001, 2:30 p.m.: 25 IR 74; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-30 Formal administrative review; full evidentiary hearing procedures

Authority: IC 12-9-2-3

Affected: IC 4-21.5-3; IC 4-21.5-5; IC 12-12-5; 20 U.S.C. 107

Sec. 30. (a) This section controls proceedings governed by IC 4-21.5 for which the director of DDRS is the ultimate authority.

(b) An affected person who is aggrieved by a determination of the director of BVIS, or the director's delegate, under section 29 of this rule may request:

- (1) formal administrative review; and
- (2) a full evidentiary hearing;

under IC 4-21.5 and this rule.

(c) The director of DDRS is the ultimate authority for the state licensing agency and DDRS under IC 4-21.5, under IC 12-8-8-5 [IC 12-8-8 expired under IC 12-8-8-8. See IC 12-8-8.5].

(d) As soon as practicable after the initiation of administrative review under this subsection, the director of DDRS shall appoint a hearing officer to conduct proceedings under IC 4-21.5 and this rule. The hearing officer shall be an impartial and qualified person who has no involvement either with the:

- (1) agency action at issue in the proceeding; or
- (2) administration or operation of the state licensing agency.

(e) A licensed manager has the right to be represented by counsel at the manager's own expense.

(f) Transportation, reader, or other communication services, if needed and requested, must be arranged for the licensed manager by the state licensing agency.

(g) The hearing shall be held during regular business hours at:

- (1) the state licensing agency; or
- (2) such other location as the parties agree.

The hearing shall be open to the public.

(h) The hearing officer shall notify the:

- (1) parties, in writing, of the time and place of the hearing; and
- (2) licensed manager of the manager's right to be represented by counsel at his or her own expense.

(i) If the issues in the proceeding are not otherwise resolved, the hearing officer shall conduct a full evidentiary hearing. The hearing officer shall govern the:

- (1) conduct of a hearing; and
- (2) order of proof.

(j) The hearing officer shall avoid delay, maintain order, and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the hearing officer:

- (1) shall have all powers authorized by law; and
- (2) may make all procedural and evidentiary rulings necessary for the conduct of the hearing.

Unless inconsistent with IC 4-21.5 or this rule, the hearing officer may apply the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence.

(k) Both the licensed manager and the state licensing agency are entitled to:

- (1) present oral or documentary evidence;
- (2) submit rebuttal evidence; and
- (3) conduct such examination and cross-examination of witnesses as may be necessary for a full and true disclosure of all facts bearing on the issues.

(l) All papers and documents introduced into evidence at the hearing shall be filed with the hearing officer at the hearing, and a copy shall be provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.

(m) A transcript shall be made of the oral evidence and shall be made available to the parties. The state licensing agency shall:

- (1) pay all transcript costs; and
- (2) provide the manager with one (1) copy of the transcript.

(n) The record required to be kept by a hearing officer under IC 4-21.5-3-14:

- (1) commences when a proceeding is initiated; and
- (2) includes the items described in IC 4-21.5-3-33.

(o) The hearing officer shall issue a written recommended order within thirty (30) business days after the receipt of the official transcript. The recommended order shall be mailed promptly to the:

- (1) licensed manager;
- (2) state licensing agency; and
- (3) ultimate authority of the agency.

(p) The recommended order of the hearing officer shall set forth the:

- (1) principal issues and relevant facts adduced at the hearing; and
- (2) applicable provisions in law, regulation, and agency policy.

The order and decision shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute.

(q) Subject to the provisions of subsections (s) through (u), after a hearing officer issues a recommended order under this section, the director or the director's designee shall issue a final order within thirty (30) business days. The final order shall:

- (1) affirm;
- (2) modify; or
- (3) dissolve;

the hearing officer's order. The director or the director's designee may remand the matter, with or without instructions, to the hearing officer for further proceedings.

(r) In the absence of a party's objection or notice from the director of intent to review any issue related to the order under subsection (s) or (t), the director or the director's designee shall affirm the order.

(s) To preserve an objection to an order of a hearing officer for judicial review, a party who is dissatisfied with the order must not be in default under IC 4-21.5 and must object to the order, in writing, that:

- (1) identifies the basis of the objection with reasonable particularity; and
- (2) is filed with the director responsible for reviewing the order within fifteen (15) days after the order is served on the party.

(t) If an objection is filed, the director of DDRS or the director's designee will conduct proceedings to issue a final order. In these proceedings, the director or the director's designee shall afford each party an opportunity to present briefs. The director or the director's designee may:

- (1) afford each party an opportunity to present oral argument;
- (2) exercise the powers of a hearing officer to hear additional evidence under IC 4-21.5-3-25 and IC 4-21.5-3-26; or
- (3) allow nonparties to participate in the proceeding in accordance with IC 4-21.5-3-25.

(u) If no objection to the order of the hearing officer is filed, the director of DDRS or the director's designee may serve written notice of the director's intent to review any issue related to the order within thirty (30) days of service of the hearing officer's recommended order. The notice shall be served on all parties. The notice must identify the issues that the director or the director's designee intends to review. In these proceedings, the director or the director's designee shall afford each party an opportunity to present briefs. The director or the director's designee may:

- (1) afford each party an opportunity to present oral argument;
- (2) exercise the powers of a hearing officer to hear additional evidence under IC 4-21.5-3-25 and IC 4-21.5-3-26; or
- (3) allow nonparties to participate in the proceeding in accordance with IC 4-21.5-3-25.

(v) A final order disposing of the proceeding or an order remanding an order to the hearing officer for further proceedings shall be issued within thirty (30) days after the latter of the:

- (1) date that the hearing officer's order was issued;
- (2) receipt of briefs or written comments; or
- (3) close of oral arguments.

After remand of an order to a hearing officer under this subsection, the hearing officer's subsequent order is also subject to review under this section.

(w) The final order of the director of DDRS or the director's designee must:

- (1) identify any differences between the director's final order and the recommended order issued by the hearing officer;
- (2) include findings of fact or incorporate the findings of fact in the hearing officer's recommended order by express reference to the recommended order;
- (3) inform a licensed manager that, if the licensed manager is dissatisfied with the final order issued by the director of DDRS or the director's designee, the licensed manager may request that an arbitration panel be convened by filing a complaint with the Secretary of the United States Department of Education, as authorized by 20 U.S.C. 107d-1 and 34 CFR 395.13; and
- (4) inform a party of the right to seek judicial review of the final order pursuant to IC 4-21.5-5.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-30; filed Aug 23, 2001, 2:30 p.m.: 25 IR 75; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-31 Business enterprise program facility equipment and inventory

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 31. (a) Requirements concerning inventory and equipment are as follows:

- (1) Start-up product inventory purchased by the state licensing agency as part of the vocational rehabilitation plan is the property of the licensed manager.
- (2) The state is the owner of the BEP facility equipment purchased by the state licensing agency for BEP facilities under 20 U.S.C. 107b and 34 CFR 395.4.
- (3) The use of BEP equipment is limited to the purposes designated by the state licensing agency for the BEP.

(b) Requirements for the repair of facility equipment are as follows:

(1) A licensed manager:

- (A) is responsible for the periodic maintenance and repair of equipment furnished by the state licensing agency; and
- (B) shall provide the care necessary to maintain the equipment in good working order and repair.

(2) A licensed manager who fails to maintain the BEP facility and equipment in good repair will be subject to disciplinary action.

(3) The state licensing agency shall give written notice to a licensed manager to perform or to make arrangements for necessary maintenance or repairs within a specific, reasonable period of time. If the manager does not comply with the notice, the state licensing agency shall make arrangements for necessary maintenance or repairs.

(4) If the state licensing agency has arranged for necessary maintenance or repairs under subdivision (3), the licensed manager shall reimburse the state for the costs thereof within:

- (A) thirty (30) days of the manager's receipt of the bill; or
- (B) a longer time period agreed to by the:
 - (i) licensed manager; and
 - (ii) state licensing agency.

(c) Requirements for the replacement of facility equipment are as follows:

(1) The state licensing agency will replace:

- (A) worn out;
- (B) severely damaged; or
- (C) obsolete;

equipment in a BEP facility, subject to the requirements of subdivision (2).

(2) Replacement of equipment described in subdivision (1) will be based on consideration of all of the following criteria:

- (A) The need for equipment replacement as determined by the state licensing agency.
- (B) If requested, the manager's providing the state licensing agency with written documentation of the need for equipment replacement.
- (C) A request from the custodial authority of the BEP facility.
- (D) The approval of the custodial authority of the BEP facility if the equipment is not listed among the equipment allowed under the:

- (i) permit for the facility; or
- (ii) contract between the state licensing agency and the custodial authority.

(E) The availability of funding.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-31; filed Aug 23, 2001, 2:30 p.m.: 25 IR 76; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-32 Relocation, installation, renovation of a business enterprise program facility

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 32. (a) The:

- (1) installation;
- (2) modification;
- (3) relocation;
- (4) removal; or
- (5) renovation;

of a BEP facility shall be subject to the prior approval and supervision of the state licensing agency and the custodial authority responsible for the property on which the facility is located, in consultation with the licensed manager.

(b) The cost of relocation initiated by the state licensing agency shall be paid by the state licensing agency.

(c) The cost of relocation initiated by the custodial authority shall be paid by that entity, subject, however, to the terms of the:

- (1) permit for the BEP facility; or
- (2) facility agreement entered into by the:
 - (A) custodial authority; and
 - (B) state licensing agency.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-32; filed Aug 23, 2001, 2:30 p.m.: 25 IR 77; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-33 Set-aside funds

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 33. (a) Operator-assessed set-aside funds accrue for use in the BEP for only the following purposes:

- (1) The maintenance and replacement of equipment.
- (2) The purchase of new equipment.
- (3) Management services, including administrative costs of the Indiana elected committee of licensed managers.
- (4) Assuring a fair minimum return to licensed managers.
- (5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time if a majority vote of managers licensed by the state licensing agency determines that funds should be set aside for such purposes.

(b) Every operator of a BEP facility, including licensed managers, manager trainees, and temporary operators, must set aside a portion of the net proceeds from the operator's assigned BEP facility or facilities in accordance with the following:

- (1) The percentage of net proceeds to be set aside will be determined and reviewed annually by the state licensing agency with the active participation of the Indiana elected committee of licensed managers in accordance with 34 CFR 395.9.
- (2) The percent of net proceeds required to be set aside will be based on the estimated amount of revenue needed by the state licensing agency to fund only the following:
 - (A) The maintenance and replacement of equipment.
 - (B) The purchase of new equipment, subject, however, to the requirement that the state licensing agency will use funds from the office of vocational rehabilitation to purchase new equipment whenever possible.
 - (C) Management services performed by the state licensing agency.
 - (D) Assuring a fair minimum return to licensed managers.
 - (E) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision

for paid sick leave and vacation time if a majority vote of managers licensed by the state licensing agency determines that funds should be set aside for the purposes set out in this clause.

(3) The percentage determined in subdivision (2) shall become effective upon:

(A) approval by the Secretary of the United States Department of Education; and

(B) written notification to all operators of the approval by the Secretary of the United States Department of Education.

(4) The percentage approved under this subsection will remain in effect until changed in accordance with this section.

(c) Each operator shall pay the approved set-aside to the state licensing agency for any given month by the fifteenth of the following month, if assessed in accordance with this section. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-33; filed Aug 23, 2001, 2:30 p.m.: 25 IR 77; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-34 Allowable business expenses

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 34. (a) Each operator must file with the state licensing agency a monthly report of the:

(1) gross income;

(2) allowable business expenses paid by the operator; and

(3) net proceeds;

of the assigned BEP facility or facilities. The report must be filed in a form set by the state licensing agency.

(b) Allowable business expenses are expenses that are allowed by the Internal Revenue Service and the Indiana department of state revenue to operate a BEP facility.

(c) Upon request of the state licensing agency, the operator is required to submit a copy of their Schedule C from the previous tax year within fifteen (15) business days from the date of request. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-34; filed Aug 23, 2001, 2:30 p.m.: 25 IR 78; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-35 Distribution and use of income from vending machines not designated as part of a manager's facility on federal property

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 35. (a) The state licensing agency shall disburse the following:

(1) Income received from vending machines on federal property, when those machines are not designated as part of a BEP facility, in accordance with the requirements in this section.

(2) That income to a licensed manager or managers operating a BEP facility on the same federal property. However, the total amount of income disbursed to a licensed manager shall not exceed the maximum amount allowed under 34 CFR 395.32 and 34 CFR 395.8(a).

(b) If the income from such vending machines exceeds the maximum amount that may be disbursed to a licensed manager under subsection (a)(1), the additional income shall accrue to the state licensing agency for the following purposes:

(1) The income shall be used first for:

(A) the establishment and maintenance of retirement or pension plans;

(B) health insurance contributions; or

(C) the provision of paid sick leave and vacation time for licensed managers in the state;

if a majority vote of managers licensed by the state licensing agency determines that funds should be used for such purposes.

(2) Any vending machine income not necessary for the purposes set out in subdivision (1) shall be used by the state licensing agency for the following purposes:

(A) The maintenance and replacement of equipment.

(B) The purchase of new equipment.

(C) Management services.

(D) Assuring a fair minimum return to licensed vendors.

(3) Any assessment or set-aside charged to licensed managers shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

(c) If there is no licensed manager operating a BEP facility on the same federal property, the income shall accrue to the state licensing agency for the purposes set out in subsection (b).

(d) The state licensing agency shall disburse vending machine income under this section on at least a quarterly basis. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-35; filed Aug 23, 2001, 2:30 p.m.: 25 IR 79; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-36 Operation of facility; business requirements

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 36. (a) A licensed manager must comply with the business requirements set forth in this section. Failure to comply with these business requirements will result in disciplinary action under section 21 of this rule.

(b) A licensed manager and the manager's employees shall not discriminate against any person in furnishing, or by refusing to furnish, to such person the use of any BEP facility, including any and all goods, services, privileges, accommodations and activities provided by the facility, on the basis of:

- (1) sex;
- (2) race;
- (3) age;
- (4) creed;
- (5) color;
- (6) national origin;
- (7) physical or mental disability; or
- (8) political affiliation.

(c) A licensed manager is responsible for the operations and profitability of the assigned BEP facility.

(d) A licensed manager must comply with the terms of:

- (1) the agreement between the:
 - (A) state licensing agency; and
 - (B) licensed manager; and
- (2) either the:
 - (A) permit issued to the state licensing agency for the BEP facility; or
 - (B) facility agreement between the:
 - (i) custodial authority of the facility; and
 - (ii) state licensing agency.

(e) A licensed manager:

- (1) is a self-employed person; and
- (2) must comply with all applicable federal, state, and local laws, regulations, and ordinances, including, but not limited to, those applicable to:
 - (A) taxes;
 - (B) worker's compensation;
 - (C) unemployment insurance; and
 - (D) Social Security.

(f) A licensed manager must operate the BEP facility in compliance with applicable:

- (1) health;
- (2) sanitation; and
- (3) building;

codes and ordinances.

(g) The accounting records for a BEP facility shall be kept separate from the accounting records for any other business venture.

(h) A BEP facility shall not be used for the operation of any business venture except a business operated under IC 12-12-5, this rule, or the facility agreement between the licensed manager and the state licensing agency. BEP:

- (1) money;
- (2) product;
- (3) equipment; and
- (4) assets;

shall not be used in, or commingled with the assets of, any other business venture.

(i) A licensed manager must:

(1) accurately complete all reports and forms:

(A) approved by the state licensing agency; and

(B) developed with the active participation of the Indiana elected committee of licensed managers; and

(2) submit the reports and forms to the state licensing agency within established time frames.

(j) A licensed manager must file the following reports with the state licensing agency in the format prescribed by BVIS:

(1) A monthly report of the gross income, the allowable business expenses paid, and the net income of the assigned BEP facility or facilities. The report for any month is due and must be filed with the state licensing agency by the close of business on the fifteenth day of the following month, except that, if the fifteenth day is on a:

(A) Saturday;

(B) Sunday;

(C) legal holiday as defined by state statute; or

(D) day when state offices are closed during regular business hours;

the report shall be due on the following business day.

(2) Upon request, a detailed ending inventory of facility merchandise from the prior year must be submitted to the state licensing agency within fifteen (15) days from the date of request.

(k) A licensed manager must establish procedures to:

(1) maintain:

(A) inventory control; and

(B) adequate inventory; and

(2) ensure correct charges by the suppliers of articles sold at the BEP facility.

(l) A licensed manager must maintain a:

(1) physical presence; and

(2) personal involvement;

in the daily management and operation of the BEP facility.

(m) A licensed manager shall employ other persons as necessary for the effective and efficient operation of the BEP facility.

(n) A licensed manager is responsible for the following:

(1) The conduct of the manager's employees and must ensure that any employee:

(A) is aware of; and

(B) complies with;

the business practices set out in this rule.

(2) Correcting actions of an employee.

(3) Enforcing the business practices that apply to an employee.

(o) If a licensed manager becomes or is unable to personally operate the BEP facility and to perform under provisions of the agreement between the manager and the state licensing agency, the manager must:

(1) notify the state licensing agency within two (2) business days;

(2) select an individual, approved in advance by the state licensing agency; and

(3) make arrangements for that individual to operate the facility in the operator's absence.

If a manager fails or is unable to comply with this subsection, the state licensing agency shall have the right to place a temporary operator in the BEP facility and to assess the costs of the temporary operator to the manager.

(p) A licensed manager shall:

(1) obtain each policy of insurance required, in the amount required, pursuant to the operating agreement with the state licensing agency;

(2) ensure that each policy of insurance names DDRS as an additional insured;

(3) provide the state licensing agency with a copy of a certificate of insurance; and

(4) immediately notify the state licensing agency if either:

- (A) an insurer; or
 - (B) the licensed manager;
- cancels any required insurance.
- (q) A licensed manager must ensure that each BEP facility will be open during the days and hours:
- (1) specified in the:
 - (A) permit issued to the state licensing agency for the BEP facility; or
 - (B) agreement between the:
 - (i) state licensing agency; and
 - (ii) custodial authority of the BEP facility; or
 - (2) otherwise agreed upon by the:
 - (A) state licensing agency;
 - (B) manager; and
 - (C) custodial authority of the BEP facility.
- (r) Articles sold at a BEP facility may consist of:
- (1) newspapers;
 - (2) periodicals;
 - (3) publications;
 - (4) confections;
 - (5) tobacco products;
 - (6) foods;
 - (7) beverages; and
 - (8) any other articles or services suitable for a particular location as determined by the state licensing agency, in consultation with the custodial authority and the licensed manager.

However, the state licensing agency, in consultation with the custodial authority and the licensed manager, may exclude the sale of various types of merchandise or products at a particular site.

- (s) A licensed manager:
 - (1) has the right to make the ultimate decision as to particular brands of articles sold;
 - (2) shall select suppliers of merchandise to be sold at the assigned BEP facility;
 - (3) has full responsibility for all financial arrangements necessary to obtain merchandise for the BEP facility; and
 - (4) must pay all bills, including purchases for goods or services, in a timely manner.
- (t) The:
 - (1) possession;
 - (2) consumption; or
 - (3) use;

of alcoholic beverages or illegal drugs at a BEP facility by a licensed manager or by an employee of the manager is not permitted. A licensed manager or an employee of a manager shall not work under the influence of alcohol or illegal drugs at a BEP facility. No alcoholic beverages shall be allowed at a BEP facility unless contractually obligated.

- (u) A licensed manager must do the following:
 - (1) Maintain fresh stock.
 - (2) Not sell out-of-date product.
 - (3) Assure that services are provided to customers and the public in a courteous and professional manner at all times. Any contact with the custodial authority or management of the BEP facility must be conducted in a professional and courteous manner.

(Division of Disability and Rehabilitative Services; 460 IAC 2-4-36; filed Aug 23, 2001, 2:30 p.m.: 25 IR 79; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA)

460 IAC 2-4-37 Business performance of a business enterprise program facility

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 37. (a) A BEP facility must produce a reasonable amount of net proceeds in order to:

(1) provide:

- (A) a significant economic opportunity for a licensed manager or manager trainee; and
- (B) for a productive use of program assets; and

(2) be suitable as a BEP facility.

(b) The state licensing agency, with the active participation of the Indiana elected committee of licensed managers, shall select criteria to determine whether a BEP facility produces a reasonable amount of net proceeds. The criteria includes, but is not limited to, the following:

(1) The criteria set out in section 14(a)(2) of this rule.

(2) An operator's need for assistance in performing any operational responsibility under this rule.

(c) The state licensing agency will perform quarterly evaluations of each BEP facility to determine whether a facility is producing a reasonable amount of net proceeds. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-37; filed Aug 23, 2001, 2:30 p.m.: 25 IR 81; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-38 Indiana elected committee of licensed managers

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 38. (a) The Indiana elected committee of licensed managers shall be fully representative, to the extent possible, of all licensed managers in the Indiana program on the basis of geography, facility type, and designation as a federal or nonfederal facility. The Indiana elected committee of licensed managers shall consist of a total of nine (9) members selected from the following categories in the number or numbers indicated:

(1) By geographic location of a licensed manager's primary facility located:

- (A) north of I-70, one (1) committee member; and
- (B) south of I-70, one (1) committee member.

(2) By facility type of a licensed manager's primary facility:

- (A) vending, one (1) committee member; and
- (B) snack bar, cafeteria, and other type of facility, one (1) committee member.

(3) By designation of a licensed manager's primary facility as a federal or nonfederal facility:

- (A) federal facility, one (1) committee member; and
- (B) nonfederal facility, one (1) committee member.

(4) At large represents all categories, and all licensed managers are eligible to elect these candidates, three (3) committee members.

(b) Requirements for the election of committee members are as follows:

(1) All members of the elected committee shall be elected every two (2) years at a conference sponsored by the state licensing agency.

(2) Only licensed managers may:

- (A) nominate;
- (B) vote for; and
- (C) elect;

members to the committee.

(3) The participation of a licensed manager in the election of committee members shall not be conditioned upon the payment of dues or any fees.

(c) The state licensing agency shall notify all licensed managers, in writing, at least thirty (30) days before the election of the committee at a biennial conference. The notice must include the following information:

(1) The:

- (A) date;
- (B) time; and
- (C) place;

of the election of members of the Indiana elected committee of licensed managers.

(2) The process whereby the manager may contact the state licensing agency within ten (10) days of receipt of the notice if

the manager believes that the primary facilities list contains an error concerning the manager's primary facility.

(3) Notice that:

(A) a licensed manager may submit written nominations prior to the conference for any position on the committee, and the process for doing so; and

(B) nominations for all positions on the committee will also be taken from the floor at the election. To be considered, the person nominated must be present at the election unless otherwise excused by the current elected committee and the director of blind and visually impaired services.

(d) Official committee action requirements are as follows:

(1) A quorum of the elected committee shall consist of five (5) members.

(2) Motions shall be passed by a majority of those members present.

(3) Establishing and maintaining a set of bylaws for which elected committee meetings will be governed.

(e) The duties of the elected committee are as follows:

(1) To actively participate with the state licensing agency in major administrative decisions and policy and program development decisions affecting the BEP.

(2) To:

(A) receive and transmit grievances of licensed managers to the state licensing agency; and

(B) serve as advocate for licensed managers in connection with the grievances.

(3) To actively participate with the state licensing agency in:

(A) decisions regarding the transfer and promotion of licensed managers; and

(B) the development of training and retraining programs for licensed managers.

(4) To sponsor meetings and instructional conferences for licensed managers with the state licensing agency.

(5) To keep confidential any confidential information concerning program participants that is disclosed to elected committee members during the exercise of their duties under this section.

(f) The payment of any expenses incurred by the elected committee in conjunction with the duties of the elected committee shall be subject to the prior approval of the state licensing agency. Elected committee members will be reimbursed in accordance with state travel and administrative policies. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-38; filed Aug 23, 2001, 2:30 p.m.: 25 IR 81; errata filed Jan 10, 2002, 11:37 a.m.: 25 IR 1645; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-39 Accessibility of written materials

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 39. (a) A licensed manager and a manager trainee may designate a preferred format for receiving access to written materials or communications from the agency. Available formats are as follows:

(1) Braille.

(2) Large print.

(3) Electronic format.

(4) Recorded tape.

(b) If reasonably possible, the state licensing agency shall provide a licensed manager and a manager trainee with access to written materials or communications in the preferred format requested under subsection (a). (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-39; filed Aug 23, 2001, 2:30 p.m.: 25 IR 82; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

460 IAC 2-4-40 Teaming partnerships

Authority: IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 40. (a) Teaming partnership facilities are BEP facilities, and all rules and policies pertaining to managers in other BEP facilities apply to managers in teaming partnership facilities.

(b) A separate business entity shall be established between the:

(1) BEP manager; and

(2) teaming partner company.

(c) BVIS and the Indiana elected committee of blind managers shall develop policies to administer teaming partnership ventures. (*Division of Disability and Rehabilitative Services; 460 IAC 2-4-40; filed Nov 26, 2007, 10:19 a.m.: 20071226-IR-460070254FRA; readopted filed Nov 30, 2007, 4:47 p.m.: 20071226-IR-460070733RFA*)

Rule 5. Interpreter Standards for the Deaf and Hard of Hearing in Educational Settings

460 IAC 2-5-1 Scope (Voided)

Sec. 1. (*Voided by P.L.30-2010, SECTION 3, effective July 1, 2010.*)

460 IAC 2-5-2 Definitions (Voided)

Sec. 2. (*Voided by P.L.30-2010, SECTION 3, effective July 1, 2010.*)

460 IAC 2-5-3 Registration requirements (Voided)

Sec. 3. (*Voided by P.L.30-2010, SECTION 3, effective July 1, 2010.*)

460 IAC 2-5-4 Certificate (Voided)

Sec. 4. (*Voided by P.L.30-2010, SECTION 3, effective July 1, 2010.*)

460 IAC 2-5-5 Certification requirements for new interpreters and transliterators (Voided)

Sec. 5. (*Voided by P.L.30-2010, SECTION 3, effective July 1, 2010.*)

460 IAC 2-5-6 Certificate requirements for practicing interpreters and transliterators (Voided)

Sec. 6. (*Voided by P.L.30-2010, SECTION 3, effective July 1, 2010.*)

460 IAC 2-5-7 Limited state certification requirements for graduates of interpreter training programs (Voided)

Sec. 7. (*Voided by P.L.30-2010, SECTION 3, effective July 1, 2010.*)

460 IAC 2-5-8 Interpreter code of ethics (Voided)

Sec. 8. (*Voided by P.L.30-2010, SECTION 3, effective July 1, 2010.*)

460 IAC 2-5-9 Grievances (Voided)

Sec. 9. (*Voided by P.L.30-2010, SECTION 3, effective July 1, 2010.*)

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