

# Chapter 204:

## Closure

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Vermont Division of Vocational Rehabilitation  
Policy and Procedures Manual

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## Section I. Definitions

- A. **"Employment outcome"** means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment including customized employment, self-employment, telecommuting, or business ownership, or supported employment that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice for a minimum of ninety days.
- B. **"Trial Work Experiences"** means supported employment, on-the-job training, progressive employment training placements, and other experiences conducted in competitive, integrated work settings. Trial work experiences are designed to explore the individual's abilities, capabilities, and capacity to perform in real work settings and to determine ability to benefit from DVR services.
- C. **"Clear and Convincing Evidence"** means for DVR purposes that there is evidence to a high degree of certainty that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term clear means unequivocal.
- D. **"Reasonable number of attempts"** means that the DVR counselor has attempted to contact the individual or their representative at least three times by any combination of the following methods of communication: by mail, by email, by telephone, in person, and/or by another mode of communication available to the individual. At least one attempt must be in writing via text, email or letter.

### Guidance — Reasonable number of attempts.

*"Reasonable number of attempts" and type of communication may depend somewhat on the person's disability. For example, a person who is chronically depressed may need additional encouragement, perhaps in person, to participate in rehabilitative activities. The record of services must include a description of the attempts to encourage participation.*

### End Guidance.

## Section II. Closure Without Eligibility Determination

- A. An applicant's record of services may not be closed prior to making an eligibility determination unless:
  1. The applicant declines to participate in or is unavailable to complete an assessment for determining eligibility and priority for services; and
  2. A reasonable number of attempts have been made to contact the applicant or the applicant's representative to encourage participation. The record of services must include a description of the attempts to encourage participation.

### **Section III. Closure — Ineligible for VR Services**

- A. An individual can be determined ineligible for VR services at application or after receiving services under an IPE for the following reasons:
  - 1. The individual has no verifiable disabling condition;
  - 2. The individual's impairment does not result in a substantial impediment to employment;
    - a) For example, this might be the case when an individual has bipolar disorder but is in long term recovery and has been successfully employed for many years;
  - 3. The individual does not need VR services to achieve an employment outcome;
    - a) For example, this might be the case when an employer is willing to accommodate the individual even though they have a substantial impediment to employment;
  - 4. The individual is unable to benefit from VR services in terms of an employment outcome due to the severity of their disability.
- B. An individual is presumed to be able to benefit in terms of an employment outcome, unless DVR can demonstrate by clear and convincing evidence, as defined in Section I, that the individual is incapable of benefiting from VR services due to the severity of the individual's disability. Before this determination can be made, DVR must follow the procedures in Section IV of this Chapter.

### **Section IV. Required Procedures for Determination of Ineligibility Based on Inability to Benefit**

- A. Prior to any determination that an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, DVR counselors must follow the procedures set forth in this section. This applies whether the determination follows an initial application or after a finding of eligibility and development of an Individualized Plan for Employment (IPE). DVR must demonstrate by "clear and convincing evidence" as defined in Section I that the individual is unable to benefit from VR services. DVR must make the determination of inability to benefit on a case-by-case basis.
- B. To meet the clear and convincing standard, DVR must develop and implement a written plan to assess the individual's abilities, capabilities and capacity to perform in competitive, integrated work settings through two or more trial work experiences, provided in competitive integrated employment settings to the maximum extent appropriate. The trial work experiences must be consistent with the informed choice and rehabilitation needs of the individual. The trial work experiences must be of sufficient variety and over a sufficient period of time to conclude that the individual is unable to benefit from VR services. The plan might also include other sources of information, including:
  - 1. A description of assessments, including situational assessments and supported employment assessments, from providers who have concluded that they would be

- unable to meet the individual's needs due to the severity of the individual's disability; and
2. A functional assessment of skill development activities, with any necessary supports (including assistive technology) in real life settings, if appropriate.
- C. The DVR counselor must document the results of the trial work experiences in the case record and note how they provide clear and convincing evidence that the individual is incapable of benefiting from VR services due to the severity of their disability. The DVR counselor shall have a high degree of certainty before they conclude that the individual is incapable of benefiting from services in terms of an employment outcome. The DVR counselor and/or DVR manager must consult with the DVR field services manager when considering the determination that an applicant or consumer receiving services is incapable of benefiting from VR services due to the severity of their disability.
- D. If an applicant is determined to be ineligible for vocational rehabilitation services or a consumer receiving services under an Individualized Plan for Employment (IPE) is no longer eligible for services based on the determination that they are unable to benefit, the DVR counselor shall follow the procedures in Section VII of this chapter.

#### **Guidance – Use of trial work experiences.**

*Before considering if an individual is unable to benefit from VR services due to the severity of their disability, the DVR counselor is encouraged to use the medical and psychological consultation process to review the case. The clinician may provide insights and strategies on how to serve the individual.*

*The following are case examples of situations where a DVR counselor may want to use trial work experiences to determine if an individual can benefit from VR services:*

#### **In Application Status:**

*Joe has been a VR consumer on three separate occasions. On each occasion he was closed without achieving an employment outcome. Joe self-reports his disability as a back injury from prior work in the logging industry. However, the DVR counselor is aware that Joe also has a borderline personality disorder. Prior attempts to place Joe in various jobs or work experiences have quickly ended because he has great difficulty getting along with supervisors and co-workers. On multiple occasions he has left the job or work experience or been fired within a week. Joe has never acknowledged he has any kind of psychiatric disability and has consequently not been open to any treatment. In this situation, a DVR counselor may decide to require that Joe participate in trial work experiences before determining him eligible. The trial work experiences will provide the information necessary to document if anything has changed for Joe and if he can benefit from VR services upon reapplication.*

**In Plan Status:**

*Mary has an IPE goal of working in retail. She has a dual diagnosis of rheumatoid arthritis and an opioid dependence disorder. She is currently not engaged in any treatment. Mary insists she is ready to work and does not need treatment. However, based on their observations and Mary's history, the DVR counselor believes that, untreated, she is too severely impaired to benefit from VR services. Before making this determination, the DVR counselor must arrange for two or more trial work experiences to determine if the consumer is currently too impaired to benefit.*

***End Guidance.***

## **Section V. Closure without Achievement of an Employment Goal after Eligibility Determination**

A. DVR can close a consumer's case after an eligibility determination and development of an IPE for the following reasons:

1. **Unable to Benefit:** A DVR counselor may close a case if a consumer receiving services under an Individualized Plan for Employment (IPE), is no longer eligible for VR services based on the determination that they are no longer able to benefit from such services due to the severity of their disability.
2. **Unable to Contact:** A DVR counselor may close a case if a reasonable number of attempts have been made to contact the consumer or the consumer's representative without any response. The record of services must include a description of the attempts to encourage participation.
3. **Declined Services:** A DVR counselor may close a case if the consumer communicates that they no longer wish to receive services from DVR. The record of service must document how and when the consumer declined services and their efforts to encourage participation.
4. **Medical Condition is Rapidly Progressive or Terminal:** A DVR counselor may close a case if the consumer is unable to engage in VR services due to a medical condition that is rapidly deteriorating or terminal.
5. **Institutional Placement:** A DVR counselor may close a case if a consumer is unable to engage in VR services due to institutionalization for six months or greater. The record of service must document that institutionalization was the reason for case closure.

***Guidance – Use of “Service Interrupted” suspense status.***

*If a consumer is institutionalized for a period of less than six months, the DVR counselor may put the case in a suspense status until the consumer is available to engage in services.*

***End Guidance.***

6. **Illegal or Fraudulent Behavior:** A DVR counselor may close a case if DVR has determined that a consumer has participated in illegal or fraudulent behavior in the

course of their participation in VR services. If a DVR counselor has reason to suspect a consumer of illegal or fraudulent acts, they must immediately inform their supervisor, the regional manager and DVR field services manager.

7. **Failure to Cooperate:** A DVR counselor may close a case if the consumer is unwilling to cooperate in the implementation of the IPE services.
  - a) In order to determine that the consumer is not cooperating in their IPE, the DVR counselor must document a consistent pattern of uncooperative behavior. Examples of uncooperative behavior may include but are not limited to:
    - (i) The consumer consistently fails to follow through on agreed upon tasks or activities;
    - (ii) The consumer repeatedly misses or cancels scheduled appointments;
    - (iii) The consumer is unwilling to agree to participate in activities that may lead to an employment outcome;
    - (iv) The consumer has used DVR funds for an unauthorized purpose; or
    - (v) The consumer is engaging in aggressive behavior and/or use of abusive language with DVR staff and contractors that becomes a barrier to achieving an employment outcome.
  - b) The DVR counselor is responsible for documenting uncooperative behavior in the case record over time. It is recommended that DVR counselors use the Contact Action Form (VR 4.1) to provide clear documentation of a consumer's failure to cooperate.
  - c) The DVR counselor must consult with the regional manager and DVR field services manager when considering closing a consumer's case on the basis of non-cooperation. The field services manager will provide additional guidance and support in determining if the consumer's pattern of behavior rises to the level of non-cooperation.
  - d) A DVR counselor must consider the consumer's disability when determining if any specific behavior demonstrates non-cooperation or is in fact a result of their disabling condition. For example, an individual with a developmental disability may miss appointments because of lack of organizational skills. Or a person with a severe anxiety disorder may struggle to participate in job search activities. In both cases it maybe inappropriate to characterize the behavior as non-cooperation.
- B. A DVR counselor must follow the procedures outlined in Section VII of this chapter before closing a case for any of the listed reasons.

## Section VI. Closure with the Achievement of an Employment Outcome

- A. A consumer may be determined to have achieved an employment outcome only if the following requirements are met:
  1. The consumer has achieved the employment outcome that is described in their Individualized Plan for Employment;
  2. The employment outcome is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
  3. The consumer has maintained the employment outcome for a period of at least 90 days;

4. At the end of the appropriate period under 3 of this section, the consumer and the DVR counselor consider the employment outcome to be satisfactory and agree that the consumer is performing well on the job; and
  5. The consumer is informed through appropriate modes of communication of the availability of post-employment services.
- B. The DVR counselor must follow the case closure procedures outlined in Section VII of this chapter.

## **Section VII. Procedures for Case Closure**

- A. DVR cannot close a case without providing an opportunity for full consultation with the individual, or the individual's representative.
- B. When DVR decides to close a case, it must provide the individual, or the individual's representative, with written notice of the decision. DVR counselors must only use the letter templates provided in Appendix A when providing notice of closure. The written notice may be supplemented as necessary by other appropriate modes of communication, consistent with the informed choice of the individual. The written notice must also include:
  1. The reasons for the decision;
  2. The means by which the individual may express and seek remedy for any dissatisfaction with the decision, including the appeals procedures set forth in Chapter 105;
  3. A description of services available from the Client Assistance Program and information on how to contact that program.
- C. For closures due to a determination that the individual is ineligible for VR services, DVR must also provide the individual, or the individual's representative, with additional information relevant to the reason for the ineligibility decision:
  1. For any ineligibility determination, DVR must provide information on:
    - a) Programs within the One-Stop service delivery system under WIOA that can address the individual's training or employment-related needs.
  2. If the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is incapable of achieving, an employment outcome, DVR must provide information on:
    - a) Federal, State, or local programs and services best suited to meet the individual's rehabilitation needs, including independent living and extended employment providers.
  3. If the reason for closure is that the individual has been determined too severely disabled to benefit from vocational rehabilitation services in terms of an employment outcome, as outlined in Section IV of this chapter, DVR must also provide the individual, or the individual's representative, with written notice of:
    - a) The right of the individual or their representative to request a review of the decision within 12 months and annually, thereafter.

- (i) This review need not be conducted in situations in which the individual has refused the review, the individual is no longer living in Vermont, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

## Appendix A. Required Letters

The following required letters are available in template form in AWARE.

### **Closure — Employment.**

*Dear {participant first name},*

*Congratulations on your successful employment! Now that you have been working well for more than 90 days, you have achieved a satisfactory employment outcome. For this reason, I plan to close your case. If I do not hear from you by {date}, I will assume you agree with the decision to close your VocRehab case.*

*{paragraph for personalization if desired.}*

*If, now or in the future, you need additional services to help you maintain your employment you can contact me to request post-employment services. If you want post-employment services, I will need to meet with you to add these services to your Individual Plan for Employment (IPE).*

*If, in the future, you would like VocRehab services to help you progress in your current employment or move into a different career, you can reapply for services at that time.*

*Please take a moment to complete the enclosed Employment Summary form and return it to me in the stamped and addressed envelope provided.*

*If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). CAP is not a VocRehab program. They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.*

*Again, congratulations on your successful employment. If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number} or my regional manager at {manager phone number}.*

*Sincerely,*

*{counselor signature block}*

### **Closure — No contact.**

*Dear {participant first name},*

*Our last contact was on {date}. I have tried to reach you multiple times since then, without success. I am writing to let you know that I plan to close your case if I do not hear from you by {date}.*

*Closing your case does not prevent you from receiving VocRehab services in the future. You can reapply for VocRehab services at any time that you are available to actively participate in the VocRehab process.*

*If you are ready to participate in an employment activity now and would like to keep your case open, please contact me by {date (must be a minimum of 10 calendar days from the date of the letter)} to schedule a meeting to review your employment goals and plans.*

*If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). CAP is not a VocRehab program. They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.*

*{paragraph for personalization if desired.}*

*If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number} or my regional manager at {manager phone number}.*

*Sincerely,*

*{counselor signature block}*

### **Closure – Declined services.**

*Dear {participant first name},*

*You have informed me that you do not want services from VocRehab at this time. Based on your decision, I am closing your case as of today.*

*Closing your case does not prevent you from receiving VocRehab services in the future. You can reapply for VocRehab services at any time that you are available to actively participate in the VocRehab process.*

*If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). CAP is not a VocRehab program. They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.*

*If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number} or my regional manager at {manager phone number}.*

*Sincerely,*

*{counselor signature block}*

**Closure — Ineligible for services.**

Dear {participant first name},

I am writing to inform you that you are ineligible for VocRehab services. Therefore, I plan to close your case. As we discussed, a person must meet multiple requirements to meet VocRehab eligibility requirements. You do not meet the following requirement(s):

{space for text outlining the specific reason.}

If you feel that this decision was made in error, or you have additional information that would support your need for services, please contact me before {date}.

I would encourage you to explore employment and training resources available through the Department of Labor at [www.vermontjoblink.com](http://www.vermontjoblink.com) or call 211 (a local call throughout Vermont). You may also want to contact the Vermont Center for Independent Living at [www.vcil.org](http://www.vcil.org) or toll-free at 800-639-1522. They offer support and independent living resources to individuals with disabilities.

Closing your case does not prevent you from receiving VocRehab services in the future. You can reapply for VocRehab services at any time that you feel you meet the criteria for services and are available to actively participate in the VocRehab process.

If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). CAP is not a VocRehab program. They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number} or my regional manager at {manager phone number}.

Sincerely,

{counselor signature block}

**Closure — Unable to benefit from VR services.**

Dear {participant first name},

I am writing to inform you that I plan to close your case. VocRehab has determined that you are not able to benefit from our services at this time due to the severity of your disability. In making this decision we considered your Trial Work Experiences and other sources of information, which demonstrated the following:

{space for text outlining the Trial Work Experiences and findings from other sources of information.}

You have the right to request that DVR review this decision in 12 months, and annually thereafter.

I would also encourage you to explore employment and training resources available through the Department of Labor at [www.vermontjoblink.com](http://www.vermontjoblink.com) or call 211 (a local call throughout Vermont). You may also want to contact the Vermont Center for Independent Living at [www.vcil.org](http://www.vcil.org) or toll-free at 800-639-1522. They offer support and independent living resources to individuals with disabilities.

If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). CAP is not a VocRehab program. They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number} or my regional manager at {manager phone number}.

Sincerely,

{counselor signature block}

### **Closure – Individual is in an institution.**

Dear {participant first name},

I am writing to inform you that I plan to close your case based on your inability to engage in VocRehab services at this time. If you feel that this decision was made in error, or your circumstances have changed, please contact me before {date}.

Closing your case does not prevent you from receiving VocRehab services in the future. You can reapply for VocRehab services at any time that you are available to participate in the VocRehab process.

If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). CAP is not a VocRehab program. They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number} or my regional manager at {manager phone number}.

Sincerely,

{counselor signature block}

**Closure — Illegal or fraudulent behavior.**

*There is no specific letter for this situation. Please consult the field services manager as to how to proceed.*

**Closure — Failure to cooperate, missed or cancelled appointments.**

*Dear {participant first name},*

*VocRehab tries to have at least monthly contact with those receiving our services in order to provide them with the best services possible. I have tried to schedule a number of meetings with you. You have missed all of these appointments. VocRehab cannot deliver services under these circumstances. Therefore, I am writing to let you know that I plan to close your case if I do not hear from you by {date}.*

*Closing your case does not prevent you from receiving VocRehab services in the future. You can reapply for VocRehab services at any time that you are available to actively participate in the VocRehab process.*

*If you disagree with the decision to close your case, you may also appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). CAP is not a VocRehab program. They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.*

*If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number} or my regional manager at {manager phone number}.*

*Sincerely,*

*{counselor signature block}*

**Closure — Failure to cooperate, unwilling to participate in activities or failure to follow through.**

*Dear {participant first name},*

*I am writing to inform you that I plan to close your case. Over the last few months you have refused to participate in or have failed to follow through with services that were agreed upon in your Individualized Plan for Employment (IPE). If I do not hear from you by {date}, I will assume that you agree with this decision.*

*Closing your case does not prevent you from receiving VocRehab services in the future. You can reapply for VocRehab services at any time that you are available to actively participate in the VocRehab process.*

*If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). CAP is not a*

VocRehab program. They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number} or my regional manager at {manager phone number}.

Sincerely,

{counselor signature block}