

**TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION**

Control No. 795 Department or Agency Alabama Board and Dept. of Rehabilitation Services.

RuleNo. 795-7-12-.04

Rule Title: Full Evidentiary Hearing

         New;  Amend;          Repeal;          Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?         No        

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?         Yes        

Is there another, less restrictive method of regulation available that could adequately protect the public?         No        

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?         No        

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?         N/A        

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?         Yes        

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Does the proposed rule have an economic impact?         No        

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama, 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975, and that it conforms to all applicable filing requirements of the Alabama Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer   Stephen K. Siz  

Date 12-16-16

(DATE FILED)  
(STAMP)

**ALABAMA BOARD OF REHABILITATION SERVICES**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Board of Rehabilitation Services

**RULE NO. & TITLE:** Amend Rule No. 795-7-12-.04 Full Evidentiary Hearing.

**INTENDED ACTION:** The ALABAMA BOARD OF REHABILITATION SERVICES proposes to amend rules and regulations.

**SUBSTANCE OF PROPOSED ACTION:** The amendment of this rule is authorized under the authority of ALA. CODE 1975 §21-9-1 *et seq.*, and the Alabama Board of Rehabilitation Services wishes to amend this rule so as to come in compliance with requirements for the program. This amended rule and regulation is issued under the authority of ALA.CODE 1975 §21-9-1 *et seq.* This rule covers specific requirements and procedures necessary for the proper administration of Alabama law. The amendment corrects a grammatical error and clarifies that the SLA will provide a copy of the transcript to the vendor.

Copies of the proposed amended rule are available for inspection in the offices of the Board, 602 South Lawrence Street, Montgomery, Alabama 36104. Upon reasonable notice, persons requiring accommodation may obtain copies in large print, Braille or other media.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** All interested persons may submit written comments, and if requested in advance may personally appear before the Alabama Board of Rehabilitation Services by submitting a request to appear, to:

Stephen K. Simpson  
602 South Lawrence Street  
Montgomery, Alabama 36104  
Telephone: (334) 293-7187

To be considered by the Board, written comments must be received in the office of the Board no later than two days before the next regularly scheduled Board meeting on March 3, 2017, to wit: not later than March 1, 2017. Persons desiring to orally express their views before the Board must first submit their comments in writing as stated above, and shall be limited to ten minutes per person.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:** March 1, 2017.

**CONTACT PERSON AT AGENCY:**

Stephen K. Simpson  
602 South Lawrence Street  
Montgomery, Alabama 36104  
Telephone: (334) 293-7187

  
Stephen K. Simpson  
Alabama Board of Rehabilitation Services

**ALABAMA DEPARTMENT OF REHABILITATION SERVICES  
BUSINESS ENTERPRISE PROGRAM**

**CHAPTER 795-7-12  
DUE PROCESS**

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**795-7-12-.04 Full Evidentiary Hearing.** In the event a vendor is dissatisfied with the decision of the commissioner, he/she may request a full evidentiary hearing. Generally, a conference with the commissioner is a prerequisite to a full evidentiary hearing; however, the SLA will provide an opportunity for a full evidentiary hearing prior to taking adverse action such as suspension or termination of a vendor's license. The request for a full evidentiary hearing shall specifically identify the matter in dispute and the error(s) committed in the decision of the commissioner. No new issue or dispute may be raised which was not previously addressed in either the administrative review or the conference with the commissioner. The following procedures shall be utilized for a full evidentiary hearing:

(a) A vendor must file a request for a full evidentiary hearing, in writing, within 30 days after receipt of the commissioner's decision. The request shall be presented to the ADRS commissioner personally or by certified mail, return receipt requested.

(b) A vendor may represent himself/herself or be represented by his designee, at his own expense.

(c) Reader services or other communication or accommodating services shall be arranged for the vendor, if requested in writing.

(d) The hearing shall be held within 45 days of the request at the ADRS office in Montgomery, Alabama. The department, upon the receipt of a proper and timely request will schedule the hearing. The vendor shall be notified, in writing, of the time and date of the hearing.

(e) The hearing officer shall be an impartial official, appointed by the commissioner, who has had no involvement with either the issues, the administration, or the operation of BEP.

(f) The hearing officer shall conduct a full evidentiary hearing, maintain

order, and make a sufficient record of the proceedings. To accomplish these ends, the hearing officer shall have the power to rule on all procedural and evidentiary matters necessary and set such schedules for the effective conduct of the hearing.

(g) The hearing officer may schedule a pre-hearing conference to facilitate the clarification of disputed issues to be reviewed, the exchange of witness lists, the exchange of exhibits and objections thereto, and may address other matters that would facilitate the resolutions of the dispute. The hearing shall be open to the public unless otherwise determined by the hearing officer. Any of the parties may request a closed hearing which shall also be determined by the hearing officer.

(h) The burden of proof shall be upon the vendor to establish, by sufficient evidence, the irregularity of the decision of the commissioner.

(i) The vendor and the SLA may present their position by either oral or documentary evidence, or both. Each party may submit rebuttal evidence and conduct such examination and cross-examination of witnesses.

(j) All exhibits that may be introduced into evidence at the hearing shall be filed with the hearing officer and provided to the other party at least five days prior to the date of the hearing, consistent with the pre-hearing order of the hearing officer. Any party failing to exchange exhibit(s) and witness list(s) at least five days prior to the hearing shall be prohibited ~~the party~~ from introducing the exhibit(s) or offering the testimony of the witness(es), as the case may be.

(k) An official authorized to take oaths shall swear all witnesses who testify.

(l) At the request of either the vendor or SLA a transcript shall be made of the hearing. The SLA shall maintain the transcript. The vendor ~~may acquire~~ will be provided a copy of the transcript ~~at cost~~.

(m) The testimony, exhibits, transcript if requested, and all papers and documents admitted into evidence at the hearing shall constitute the exclusive record for decision.

(n) The decision of the hearing officer shall address the principle issue(s) for review and relevant facts presented at the hearing, and the applicable provisions of law, regulation, or SLA policy. The hearing officer shall decide each issue(s). If necessary, the reason and basis for remedial action(s) are within the power of the hearing officer to resolve the matter(s) in dispute. The decision shall be rendered within 30 days after the hearing, unless an expansion of time is required. The decision shall be mailed to the vendor by certified mail and furnished to the SLA.

(o) If the vendor is dissatisfied with the full evidentiary hearing decision, he/she may request that a federal arbitration panel be convened by filing a complaint with the Secretary of the United States Department of Education.

**Author:** Alabama Board of Rehabilitation Services, Alabama Elected Committee of Blind Vendors.

**Statutory Authority:** Alabama Code 1975 §§ 21-1-40 and 21-9-9; 20 U. S. C. § 107 et. seq.

**History:** **New Rule:** Filed January 19, 2000; effective February 23, 2000. **Amended:** Filed March 9, 2004; effective April 13, 2004; **Amendment:** Filed: December 16, 2016.