

## 102.00P Confidentiality Procedure

April 2016

See corresponding policy: 102.00 Confidentiality Policy

Note: Vocational Rehabilitation procedures provide internal guidance for ACCES-VR staff only and create no procedural or substantive rights for any individual or group.

### Table of Contents

- Overview
- Persons Having Access to Case Record Information
  - ACCES-VR Staff
  - Other than ACCES-VR Staff
- Subpoenas
  - Types of Subpoenas
  - Procedure for Subpoenas
- ACCES-VR Forms
- Reference

### Overview

1. Information gathered must be for the specific purpose of determining eligibility, planning, IPE development and providing services to meet IPE employment outcome. Discussion regarding maintaining confidentiality should occur early in the application process. The consumer's signature on the VR-21: Waiver for Release of Information, signifies this discussion has occurred.
2. District Offices must continually educate external sources regarding ACCES-VR's information requirements in order to limit our receipt of information that is not related to the ACCES-VR program. In some cases, referral sources may not be able, to easily modify the information that is sent to ACCES-VR and ACCES-VR may therefore need to accept more information than is actually required. We have the obligation to insure that this information is maintained as confidential and not for release unless necessary.
3. The distinction between ACCES-VR obtaining information for assessment, planning and placement purposes and ACCES-VR releasing information to third parties is an important distinction that has relevance in information management. It is therefore important to consider that:
  - A. ACCES-VR collects information that is often far in excess of what a third party would legitimately require (e.g. financial information). When ACCES-VR receives a request for information with an appropriate release, only the relevant information requested and needed should be released. This may require filtering of available information to insure that extraneous information is not included in the release.
  - B. An entire case record should not be released except for:

- i. Requests by audit agencies, approved by ACCES-VR administration, that have a bona fide need for the entire record.
  - ii. Records subject to release via subpoena (see Subpoenas, III. below, for more information).
  - iii. Requests for records in the administration of an Impartial Hearing (SED Council's Office can provide guidance, if needed).
  - iv. Requests for records by the consumer or consumer's authorized representative. When records are requested by the consumer or representative: The first choice is for the consumer to review the record on site at the District Office. If this is not sufficient, the requested sections should be photocopied for the consumer. Finally, the entire case may be photocopied, if requested.
- C. When a case record is reviewed by someone other than a ACCES-VR employee, the person, date and reason should be noted in the case record.
- D. After the consumer reviews his/her case record, the individual may request that specific information be changed if he/she feels that information is misleading or inaccurate.
- i. If the counselor agrees that the information is misleading or inaccurate, the errors should be corrected in the case record.
  - ii. If the counselor feels the information is accurate and necessary, it should be retained and the individual advised of the hearing process. The Record of Services must document that the change was requested and that the individual was informed of the hearing process.

## **Persons Having Access to Case Record Information**

### **ACCES-VR staff**

1. Only staff that have direct responsibility for handling cases should have access to either paper records or electronic access through the mainframe or locally maintained electronic files.
2. For non-routine use of case records, access must be restricted through development and use of locally determined charge-out procedures for paper records.

### **Other than ACCES-VR staff**

1. The District Manager or ACCES-VR staff person designated by the Manager must inform all non-ACCES-VR staff of the policies and procedures related to confidentiality.
2. Non-ACCES-VR staff roles:
  - A. Job coaches: Access is limited to information related to the cases for which they have direct responsibility. Information must be supervised directly by the ACCES-VR counselor in charge of the case.
  - B. Counselor interns: If the individual is completing an educational program and providing support to a ACCES-VR counselor, the intern may have access to

the information as determined by the ACCES-VR counselor assigned to the case.

C. Volunteers or interns: Access to information, including computer access, must be specifically determined by the District Office Manager or his/her designee. No volunteer, intern or job coach, under any circumstances, shall have the ability to authorize payments or modify any financial records.

D. All persons in a District Office, whether they are ACCES-VR staff or volunteers, must at all times refrain from discussing any ACCES-VR case information in hallways, elevators or other public places.

## **Subpoenas**

### **Types of subpoenas**

There are two types of subpoenas:

1. A subpoena which demands the personal appearance of the person named at a specified time and place for the purpose of giving testimony.
2. A subpoena (generally referred to as a Subpoena Duces Tecum) which typically requires an individual identified by name or by function to appear at a given time and place with Department records. All subpoenas for records require a judge or magistrate's signature. This subpoena seeks records, not testimony.

### **Procedure for Subpoenas**

The procedure for both types of subpoenas is as follows:

1. Whenever a subpoena is served upon a member of the field office ACCES-VR staff, the District Office Manager (or in his or her absence, the person designated in charge of the District Office) should be notified immediately. The District Office Manager or his or her designee should contact ACCES-VR's attorney. In urgent situations in which ACCES-VR's attorney is not available, the State Education Department's Office of Counsel should be notified directly at (518) 486-2270. Whenever a subpoena is served upon Central Office staff, the appropriate Coordinator should be notified immediately. The Coordinator or his or her designee should notify SED Counsel.
2. In most cases, the attorney will ask that a copy of the subpoena be faxed to his/her office for review in order to determine the appropriate course of action. (The current fax number for the Office of Counsel is 518-473-2925) In all cases, the attorney will be interested in whether the service of the subpoena, whether in person or by mail, was accompanied by the required subpoena fee and mileage charge; also whether the caller sees any problem in providing copies of the requested records or appearing in person in response to the subpoena. Subpoenas, even when signed by a judge, are insufficient to obtain records containing HIV/AIDS related information. Questions about HIV/AIDS should be referred to the ACCES-VR attorney. Subpoena requests are generally found to be proper and in such cases the person served will be informed that they should comply with the subpoena. In most cases, certified copies of records will be acceptable. Where possible, we will endeavor to

provide records and avoid a staff member having to appear in person. In some situations, we may conclude that the records in question may not be provided or that the person subpoenaed should not appear. Such situations are relatively rare. In such cases, we will attempt to resolve the matter informally with the party serving the subpoena. If that is not possible, the ACCES-VR attorney will provide or arrange for legal representation by the Attorney General to make a motion to "quash" the subpoena. Although it is rarely necessary to seek an order to quash, in all cases every effort must be made to preserve the confidentiality of consumer records.

3. Monies received with any subpoena should be sent directly to either the Manager, District Office Administration, or the ACCES-VR attorney who will forward them to Administrative Support for processing.

### **ACCES-VR Forms**

The following release forms are required depending upon the individual's disability:

1. For obtaining or releasing general information, VR-21: Waiver for Release of Information must be used. In addition, specific waivers, identified in 2. and 3. below, must be used for individuals with identified disabilities.
2. To obtain or release information that pertains to substance abuse, alcoholism or mental illness, use VR-22: Authorization to Release or Obtain Information. If information being released by ACCES-VR includes information concerning a consumer's disability of alcoholism or substance abuse, VR-540: Prohibition on Redisclosure of Information Concerning Individuals with a Disability of Alcoholism or Substance Abuse must be attached to the VR-22.

**NOTE:** If the information being requested or released does not contain reference to or information about substance abuse, alcoholism or mental illness, the VR-21: Waiver for Release of Information must be used.

3. To obtain or release information concerning HIV, including HIV-related testing, HIV infection, HIV-related illness, AIDS or any information which could indicate that a person has been potentially exposed to HIV, use [VR-32: Authorization to Obtain or Release Confidential HIV/AIDS Related Information](#).
4. In cases where ACCES-VR or an agency with whom we are working wishes to use a consumer's photograph, audio recording, or any form of written description about the consumer, VR-20: Permission to Use Photograph, Audio or Written Description or Account in a Publication is to be used.
5. For open cases involving alcoholism, substance abuse, mental health or AIDS, information release forms need to be updated every six months if we are to release information.
6. For closed cases, the VR-22 is no longer in effect after the case is closed. Accordingly, you must obtain a new release form in order to be able to release information.

**Reference:**

- HIV TAB