



*California's Protection & Advocacy System  
Toll-Free (800) 776-5746*

# Business Enterprises Program for the Blind Appeal Process

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## **What is BEP?**

The California Department of Rehabilitation (DOR) provides an opportunity for qualified DOR consumers, who are legally blind, to become independent food service professionals under the Business Enterprise Program (BEP). This fact sheet will address disputes between DOR and the BEP licensee or vendor regarding BEP services.

## **What is a BEP licensee or vendor?**

If your employment goal as a DOR client is to work in the BEP, once you have become eligible for the BEP you will become a BEP licensee or vendor. A licensee is a person who has been found eligible for the BEP but who is not currently operating a vending facility (Title 9 California Code of Regulations (CCR) § 7211(a)(30)). A vendor is a person who is eligible to participate in the BEP and who is currently operating a BEP vending facility (9 CCR § 7211(a)(55)).

## **What are my appeal rights if I disagree with DOR's actions?**

Any BEP licensee or vendor, who is dissatisfied with any action of the Department arising from licensing, selection as a vendor, termination or suspension of a license or vendor operating agreement, probation, or administration of the BEP shall have an opportunity for a prompt informal administrative review by the supervisory staff of BEP and/or a full evidentiary hearing before a hearing officer (9 CCR §7227(a)).

You have the right to request accommodations, a reader or other communication services at the administrative review or full evidentiary hearing (9 CCR § 7227(e)).

## **Can someone help me with my appeal?**

If you need assistance with your appeal, you may contact the California Vendors Policy Committee (CVPC). The CVPC is a biennially elected committee of licensed blind vendors who are fully representative of all licensed blind vendors in the BEP, as provided for in Welfare and Institutions Code Section 19638. You can request assistance from the CVPS delegate in your area to:

- Assist you in making a written request for administrative review and/or hearing;
- Provide you with assistance in the administrative review or full evidentiary hearing process;
- Intervene on your behalf to negotiate with DOR staff to resolve a complaint; and/or
- Endeavor to achieve a fair and equitable solution to the complaint.
- (9 CCR § 7227(c))

For more information about the CVPC, please visit their website at: [www.mycvpc.org](http://www.mycvpc.org) or you can contact CVPC at:

California Vendors Policy Committee Office  
(916) 558-5489  
721 Capitol Mall  
Sacramento, CA 95814  
[CVPC@dor.ca.gov](mailto:CVPC@dor.ca.gov)

## **What happens at the Administrative Review?**

An Administrative Review (AR) is an opportunity for you to address your concerns in an effort to resolve the dispute. The AR process is optional. You may choose to participate in an AR or request a full evidentiary hearing (9 CCR §7227(b)).

## **When can I ask for an AR?**

A request for AR must be made to the Supervising Business Enterprise Consultant within 30 working days of the date of the action with which you disagree. Your request should include the action you disagree with, why you disagree and the action you wish to have taken by the BEP (9 CCR §7227.1(a)(1) and (3)).

## **What happens after I request an AR?**

After your request has been made there are three levels of review that will take place before a final decision is made. At all levels of the review process the BEP must “thoroughly review all facts pertinent to the disputed issue and shall endeavor to achieve a fair and equitable resolution to the complaint in an expeditious manner” (9 CCR §7227.1(c)(1)). At the first level, the Supervising Business Enterprises Consultant will look at the facts of your case and recommend a proposed decision. The BEP Manager then reviews the case at the second level and either approve or change the Supervising Business Enterprises Consultant’s proposed decision. The Deputy Director of the BEP has the final review and will decide the issue by approving or changing the proposed decision (9 CCR §7227.1(b)). Each of the supervisory staff shall complete his or her level of review in sufficient time to ensure that the 15 day response/decision time frame, discussed below, is met.

If you disagree with any level of the review, you may elevate your request to the next level of review or choose to abandon your request and proceed to a full evidentiary hearing (9 CCR §7227.1(d)).

## **When should I expect a decision after the AR?**

The AR decision must be mailed to you within 15 working days of your request (9 CCR §7227.1(c) (2)). If the AR decision does not resolve your complaint, you may request a full evidentiary hearing in writing within 15 working days of the date you received the decision (9 CCR §7227.1(e)).

## **What if I don't agree with the AR decision?**

If you are dissatisfied with an action of the BEP arising from licensing, selection as a vendor, termination or suspension of a license or vendor operating agreement, probation, or administration of the BEP you may request a full evidentiary hearing before a hearing officer (9 CCR §7227.2(a)).

If I decide not to request an AR and go straight to an evidentiary hearing, when can I file my hearing request?

If you are not appealing an administrative review decision, you have 30 working days from the date of the action to request a full evidentiary hearing (9 CCR §7227.2(a)(1)).

## **How do I request a hearing?**

Your request must be made in writing to the Department's Legal Affairs Office and postmarked or date stamped by the Department's Legal Affairs Office when it is received (9 CCR §7227.2(a)(2), (a)(3)).

You can contact the Department's Legal Affairs Office at:

Mediation and Fair Hearing Office  
c/o Department of Rehabilitation  
Legal Affairs  
P.O. Box 944222  
Sacramento, CA 94244-2220  
Fax: (916) 558-5861  
appealsinfo@dor.ca.gov

After submitting your request you will be notified of:

- The time and place of the hearing. The hearing should be held in a location that is accessible to both you and the hearing officer and at a geographical location convenient to you;
- The hearing procedures, including but not limited to the circumstances under which a continuance may be granted and your opportunity to be represented by an authorized representative of your choice;

- The necessity of confirming attendance at the scheduled hearing.
- (9 CCR §7227.2(b))

### **What happens at the hearing?**

An Administrative Law Judge (ALJ) will hear your case. At the hearing both parties will have the opportunity to submit relevant evidence and call and examine witnesses who testify under oath (9 CCR §7227.2(f)(5), (f)(6)). For detailed information about how to prepare for a DOR-related hearing, see DRC's publication titled How to Prepare for a Vocational Rehabilitation Hearing (January 2014, pub #5532.01), which can be found at: <http://www.disabilityrightsca.org/pubs/553201.pdf>.

### **What if DOR's BEP and I are able to reach an agreement prior to the hearing's completion?**

If you and the BEP are able to reach an agreeable resolution or settlement agreement, prior to the record in the full evidentiary hearing being closed, the written settlement agreement signed by both parties must be submitted to the Director of the Department of Rehabilitation (Director) who may issue the final decision in confirming the settlement. If the Director does not issue a final decision, the matter shall be sent back to the judge for a full evidentiary hearing (9 CCR §7227.2(f)(8)).

### **What happens after the hearing is completed?**

Within 15 days after the hearing records is closed, the judge will submit the proposed decision to the Director and mail a copy to you. The proposed decision must include the issues, the finding of facts, and the reasons for the proposed decision referencing applicable laws, regulations and policy (9 CCR §7227.2(f)(9)).

Within 15 calendar days from receipt of the proposed decision from the judge, the Director shall review the proposed decision and either adopt the proposed decision in its entirety as final or decide an additional review is necessary to either modify the proposed decision or reject the proposed decision and decide the matter on the basis of the record with or without additional evidence (9 CCR §7227.2(f)(10)). When determining which

course of action to take, the Director must consider if the proposed decision shall be adequately supported by the evidence, the findings of fact, applicable state and federal laws and regulations, and any new evidence submitted by either party in response or rebuttal (9 CCR §7227.2(f)(13)).

If the Director adopts the decision, you should receive the final decision within 5 working day of said adoption (9 CCR §7227.2(f)(14)).

### **What if I am not satisfied with the hearing decision?**

If you disagree with the decision of the full evidentiary hearing, you have the right to (1) file a complaint with the Secretary of the Department of Education requesting arbitration (see 9 CCR §7227.2(i) or (2) appeal the decision in Superior Court in the form of a Writ of Mandamus. These are mutually exclusive appeal options. In other words, if you go to arbitration, which is a final and binding process, you cannot appeal that decision through the Writ of Mandamus process in state Superior Court. Likewise, you may not appeal the decision of a judge in Superior Court through the arbitration process. You can, however, appeal a Writ decision through the Court of Appeal and up to the California Supreme Court.

### **How do I make a complaint to the Secretary of the Department of Education?**

If you are dissatisfied with any action taken or decision rendered as a result of your full evidentiary hearing, you may file a complaint with the Secretary of the Department of Education who shall convene a panel to arbitrate the dispute pursuant to section 20 United States Code § 107d–2. The decision of the panel shall be final and binding on the parties except as otherwise provided by law (see 20 U.S. Code §107d-1).

You may submit a written complaint which outlines the issues and includes a copy of your hearing decision to:

Attn: Mary Yang  
Office of Special Education and Rehabilitative Services (OSERS)  
United States Department of Education  
400 Maryland Avenue, SW, PCP 5028  
Washington, DC 20202

Once you submit the complaint, OSERS will send a written acknowledgement of your complaint and request that you and the DOR/BEP try to come to an amicable agreement. If parties are not able to reach an agreement, each party should notify OSERS in writing. OSERS will then contact the parties regarding convening an arbitration panel and selecting panel members. When the panel has been selected the arbitration will take place and a decision will then be issued.

### **What is a Writ of Mandamus?**

A Writ of Mandamus can be filed pursuant to California Code of Civil Procedure (CCP) section 1094.5. The Writ is not a re-trial of the hearing; it is a review of the hearing record for which the scope is limited to determine if the hearing was fair, if the hearing officer's jurisdiction was proper and if the decision amounted to a prejudicial abuse of discretion. Prejudicial abuse of discretion exists if: (a) the hearing officer did not proceed in the manner required by law; (b) the hearing officer's decision is not supported by the findings; or (c) the hearing officer's findings are not supported by the evidence.

A Writ of Mandamus challenge is brought based upon the evidence presented at the hearing. In very limited circumstances additional evidence not presented at the hearing will be allowed into the administrative record. Code of Civil Procedure section 1094.5(e) provides two limited exceptions to this rule: (1) relevant evidence is offered that, in the exercise of reasonable diligence, could not have been presented at the administrative hearing; and (2) relevant evidence was improperly excluded at the administrative hearing (which in practice means you (the petitioner) must have made the necessary offer of the evidence at the hearing, and failure to do so usually waives any right to assert the issue on judicial review).

If you wish to file a Writ of Mandamus, you must do so within six months from the date you received the Administrative Law Judge's/Director's decision. If you want to proceed, you should contact a lawyer immediately. If you wait too long, you may not be allowed to file your case.

If you have questions or problems with the services you receive from the DOR and/or BEP, you can contact the Client Assistance Program (CAP) at Disability Rights California at 1-800-776-5746.

*Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.*