

## **781 KAR 1:020. General provisions for operation of the Office of Vocational Rehabilitation.**

RELATES TO: KRS 151B.185, 151B.190, 151B.200, 34 C.F.R. 361.42, 361.49, 29 U.S.C. 722, 723

STATUTORY AUTHORITY: KRS 151B.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.200 accepts and agrees to comply with federal acts relating to vocational rehabilitation when these acts apply to joint state and federally funded vocational rehabilitation programs. KRS 151B.195(1) requires the executive director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the State Vocational Rehabilitation Agency. This administrative regulation establishes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for that purpose.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.

(2) "Eligible individual" means an individual with a disability who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(3) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

(4) "Office" means the Office of Vocational Rehabilitation and its staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(5) "Relative" means an individual related to another individual by lineage, marriage, or adoption and includes a:

- (a) Spouse;
- (b) Parent;
- (c) Grandparent;
- (d) Brother;
- (e) Sister;
- (f) Son;
- (g) Daughter;
- (h) Grandchild;
- (i) Aunt;
- (j) Uncle;
- (k) Niece;
- (l) Nephew; and
- (m) First cousin.

(6) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment.

Section 2. Employees' Request for Services. (1) An employee of the office who wishes to request rehabilitation services shall advise the Director of Program Services or a designee.

(2) The Director of Program Services or a designee and the employee shall select a counselor to take the request for services. If practicable, the counselor shall be located in an adjacent district to the district in which the employee resides.

Section 3. Employees' Relatives' Request for Services.

(1) An employee of the office shall not take a request for services or provide vocational rehabilitation services to a relative.

(2) The relative shall be referred to the Director of Program Services or a designee.

(3) The Director of Program Services or a designee and the individual shall identify a staff member who is not a relative to take the request for services and to provide services as deemed appropriate.

Section 4. Legal Fees. The office shall not be responsible for any fees incurred by an applicant or eligible individual for legal services.

Section 5. Payment Rates for Purchased Services. (1) A service vendor shall not charge or accept from the applicant, eligible individual or a relative payment for services unless the amount of the charge or payment is first presented to the office.

(2) Payment to out-of-state vendors shall be governed by the rates established by the vocational rehabilitation agency in the state where services shall be provided.

Section 6. Potentially Terminal Illness. Services shall not be provided to individuals with a potentially terminal illness unless:

(1) There is a favorable medical prognosis for recovery; or

(2) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(a) If surgery, chemotherapy, nuclear medical treatment, or similar ancillary medical service is expected to cure the condition, it may be provided as with another medical problem.

(b) If the attending physician feels the prognosis is guarded, the office shall request a letter indicating the individual's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be considered.

Section 7. Second Opinions. (1) The office may seek a second opinion from a qualified practitioner before determining eligibility or before authorizing services.

(2) If the office determines that eligibility is not met or does not authorize services, an individual may utilize the appeals process established in 782 KAR 1:010.

Section 8. Self-employment Enterprises. The requirements established in this section shall be met prior to planning for self-employment for an eligible individual.

(1) An eligible individual shall undergo an assessment to determine work potential, including mental and physical abilities, and interests, aptitudes, personality traits and other pertinent characteristics as prescribed by the office.

(2) An eligible individual shall participate in prevocational and small business training as prescribed by the office.

(3) An eligible individual shall obtain any required license, permit, certificate, or lease, and be in conformity with all federal and state laws and local ordinances to commence an enterprise.

(4) An eligible individual seeking to develop a self employment enterprise requiring start up costs of more than \$1,000 shall:

(a) Complete a feasibility study; and

(b) Submit a business plan and have it approved by the office prior to provision of services. The business plan shall consist of the following:

1. Executive summary;

2. Description of product or service;

3. Assessment of available consumers to be served;

4. Competitors currently in operation in the industry;
5. Marketing plan;
6. Costs of production;
7. Management details and structure; and
8. Detailed financial analysis.

(5) The office shall not be the sole source of capitalization for a self-employment enterprise with start up costs of \$5,000 or more.

(a) In addition to requirements under subsection (4), an eligible individual seeking financial assistance with start up costs of \$5,000 to \$10,000 shall contribute fifty (50) percent of the cost in excess of \$5,000 either in capital or documented in kind resources and ninety (95) percent of the cost in excess of \$10,000.

(b) An eligible individual shall provide documentation that the assets necessary for the required financial participation are in place prior to provision of services by the office.

(6) The total office expenditures toward the start up costs for a self employment enterprise shall not exceed \$10,000 unless:

(a) All provisions of subsections (1) through (5) of this section are met; and

(b)1. The nature of the individual's vocational rehabilitation needs make it necessary that the service be provided;

2. The denial of the service will prohibit the individual from achieving the vocational goal; or

3. The provision of the service will result in a cost savings to the office.

Section 9. Sex Change. Office funds shall not be used to pay for sex change surgery.

Section 10. Tools and Equipment. The eligible individual shall return tools, equipment, and supplies to the office when no longer used for the employment outcome.

Section 11. Training. Postsecondary training shall be provided for an eligible individual pursuant to this section.

(1) Except as provided in subsections (3) and (4) of this section, tuition and initial registration fees provided to the training facility of the eligible individual's choice shall not exceed those of the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.

(2) The Director of Program Services or a designee may make exceptions to the limitations provided by subsection (1) if it is clearly demonstrated that exceptions are necessary to achieve the employment outcome as defined in 34 C.F.R. 361.5(b)(16).

(3) The office shall provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services including:

(a) Interpreting services;

(b) Note-taking services; and

(c) Tutoring services.

(4) Other postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services shall be used if the total cost of attendance does not exceed the total cost of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.

(5) Training shall be purchased only from training facilities that are accredited or licensed by accrediting or licensing bodies and which comply with all applicable state and federal requirements.

(6) Training shall be provided only to attain entry level of the employment outcome.

(7) An eligible individual planning to attend a postsecondary training facility shall apply for all financial assistance available through the training facility.

Section 12. Computer Hardware and Software Purchases. (1) Except as provided in subsection (2) of this section or in Section 13 of this administrative regulation, the office shall not purchase a computer, microcomputer, other hardware or software for the personal use of an applicant or eligible individual.

(2) The office shall consider the provision or upgrade or replacement of computer hardware and software if:

(a) 1. The equipment is essential to compensate for the limitations caused by the disability; or  
2. The equipment is required for the eligible individual to achieve or maintain a vocational objective of competitive employment; and

(b) One (1) of the following criteria are met:

1. The equipment is required for vocational preparation;  
2. The equipment is required to perform the job and no provision is made by the employer to supply the equipment; or  
3. The equipment enables an eligible individual to become competitive with nondisabled employees performing the same duties.

Section 13. Second Time Upgrades or Replacements. (1) Except as provided in subsection (2) of this section, the office shall not provide more than one (1) computer upgrade or replacement per individual.

(2) The office shall approve a second time upgrade or replacement if:

(a) The eligible individual has demonstrated a two (2) year continuous work history; and

(b) The eligible individual's employer attests that the upgrade or replacement is needed to maintain employment.

Section 14. Transplants or Implants. A transplant or implant procedure which is experimental or which does not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the office.

Section 15. Vehicle Purchase. The office shall not purchase a vehicle unless the occupation of the eligible individual requires a vehicle as occupational equipment.

Section 16. Visual Impairments. An eligible individual with a secondary disability of visual impairment shall be served if another impairment, other than visual, results in a more substantial impediment to employment. (17 Ky.R. 782; Am. 1493; eff. 12-7-90; 19 Ky.R. 1428; 1802; eff. 3-4-93; 21 Ky.R. 551; eff. 10-6-94; 24 Ky.R. 2429; 25 Ky.R. 78; eff. 7-13-98; 33 Ky.R. 2152; 3166; eff. 5-4-2007; 36 Ky.R. 2230; 37 Ky.R. 360; eff. 9-3-2010.)