

**Education and Workforce Development Cabinet**  
**Department of Workforce Investment**  
**Office of Vocational Rehabilitation**  
**(Amendment)**

**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 Field~~[Program]~~ Services or a designee.

(2) The Director of ~~Field[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 ~~Field[Program]~~ Services or a designee.

(3) The Director of ~~Field[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 skills~~[potential, including mental and physical abilities, and]~~ interests, interpersonal skills, related functional capacities~~[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~~[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 \$5000 to \$10,000 shall contribute fifty (50) percent of the cost in excess of \$5,000 either in capital or documented value of existing equipment used in the daily operation of the business~~[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~~[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. If there is no similar program in the state, the amount of support is determined by the current fee for service memo.
- (2) The Director of Field~~[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.

(7)

(a) An eligible post-secondary student shall:

1. Maintain full-time status as defined by the institution;

2. Maintain less than full-time status if full-time status is inconsistent with the consumer's unique strengths, abilities, and capabilities; or

3. Maintain less than full-time status for one (1) semester if those hours are needed to graduate in the current year;

4. All coursework shall facilitate the achievement of positive outcomes.

5. By the end of the second term or semester and throughout each subsequent term or semester, the student shall achieve the higher or:

(a) An overall "C" grade average; or

(b) Standing required for admission, licensure, or certification.

6. An exception to a requirement established in subsection (1) or (4) of this section shall:

(a) Be granted if the student:

1. Has a need or circumstance that renders him unable to meet the requirement; and

2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution.

(b) Not be granted for the requirements established in subsection (5) of this section for a period beyond one (1) semester.

~~(8)~~ The student shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.

~~(9)~~ If the student does not maintain the standards of this section, the counselor shall:

(a) Terminate serviced at the institution of higher education; and

(b) Simultaneously notify the student of the appeal procedure established in KRS 138.170.

~~(10)~~ A service terminated under subsection (12) of this section shall be reinstated if the student:

(a) Successfully appeals the counselors decision, in accordance with KRS 138.170; or

(b) Subsequently meets the standard under which the service was terminated.

## 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.}~~ Medical treatment ~~{Transplants or Implants}~~. A medical treatment or ~~{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 14. ~~{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.}~~

*CORA MCNABB, Executive Director*

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend at least five workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email [SusieM.Edwards@ky.gov](mailto:SusieM.Edwards@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:**Susie Edwards

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:**

This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians by establishing general criteria for the provision of these services. These services are specifically the provision of services mandated by Section 723 of the Rehabilitation Act and regulation, 34 C.F.R. § 361.49(b)(1).

**(b) The necessity of this administrative regulation:**

This administrative regulation is necessary to implement provisions of Section 723 of the Rehabilitation Act and regulation, 34 C.F.R. § 361.49(b)(1). (c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of self-employment services as set out in, and mandated by, Section 723 of the Rehabilitation Act and regulation, 34 C.F.R. § 361.49(b)(1).

**(c) How this administrative regulation conforms to the content of the authorizing statutes:**

No answer provided.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:**

This regulation provides specific administrative guidance for the implementation of the state's provision of self-employment services to applicants and eligible individuals with disabilities as required by Section 723 of the Rehabilitation Act and regulation, 34 C.F.R. § 361.49(b)(1).

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:**

The proposed amendments are made to adapt the regulations to provide better guidance to individuals with disabilities and to provide for more efficient use of limited agency resources. The revisions enhance and more clearly set out expectations and requirements that individuals with disabilities have regarding provision of self-employment services.

**(b) The necessity of the amendment to this administrative regulation:**

Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. Self-employment services are a vital part of vocational rehabilitation services and the agency has found that its resources are increasingly limited for this program. The changes made to the regulation were needed to more clearly define what can be provided to each applicant and eligible individual with disabilities and when it could be provided. (c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing self-employment services to applicants or eligible individuals as necessary for the achievement of the employment outcome.

**(c) How the amendment conforms to the content of the authorizing statutes:**

No answer provided.

**(d) How the amendment will assist in the effective administration of the statutes:**

This amendment provides more specific guidance to individuals with disabilities on what is required to obtain self-employment services, when those services can be provided, and what continuing obligations the consumer may have.

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:**

Any disabled individual with a disability seeking vocational rehabilitation self-employment services to assist in the achievement of an employment outcome, all vocational rehabilitation staff statewide that assist disabled individuals with disabilities seeking self-employment services.

**(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

**(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:**

Agency staff will only have to apply the regulations as written, ensuring that the monetary limits are applied correctly. Applicants or eligible individuals with disabilities may be required to provide for more financial resources as the cost the self-employment service increases as a result of this amendment. The amendments also provide more specific guidance to clear up any ambiguities and to ensure that resources are used efficiently.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):**

There are no new costs to the staff affected. Applicants or consumers with disabilities will be required to provide more of the funding for self-employment services that exceed \$5,000.00.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):**

It is anticipated that agency staff will be able to provide self-employment services to a larger pool of applicants and consumers. Applicants and eligible individuals with disabilities will have a better understanding of the requirements for obtaining self-employment services and what is expected of them because the amended regulations provide more specific guidance than what previously existed.

**(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

**(a) Initially:**

No additional costs are expected.

**(b) On a continuing basis:**

The proposed amendment does not result in additional costs.

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:**

Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:**

There is no increase in fees or funding necessary to implement this amendment to the existing regulation. (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

**(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:**

No answer provided.

**(9) TIERING: Is tiering applied?**

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

**(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

The Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

**(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. § 701 et seq., 29 U.S.C. § 723(b)(1), 34 C.F.R. § 361.49.

**(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

**(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?**

No revenue will be generated.

**(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?**

No revenue will be generated.

**(c) How much will it cost to administer this program for the first year?**

There shall be no cost associated with this amendment.

**(d) How much will it cost to administer this program for subsequent years?**

There shall be no cost associated with this amendment.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

**Revenues (+/-):**

**Expenditures (+/-):**

**Other Explanation:**