

## STATEMENT OF EMERGENCY

### 781 KAR 1:020E.

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a) and is necessary to address an imminent threat to public welfare, ensure continued compliance with federal vocational rehabilitation requirements, and implement the mandates of SB 103 RS 25. The Office of Vocational Rehabilitation (OVR) is currently operating under an Order of Selection (OOS) because available resources are insufficient to serve all eligible individuals with disabilities. Under the existing regulatory framework, OVR cannot correctly assign priority categories or administer OOS in a manner consistent with 34 C.F.R. §§ 361.36, 361.41, and 361.42. As a result, individuals with the most significant disabilities are being placed on waitlists under outdated and noncompliant criteria. Immediate regulatory correction is required to avoid continued improper prioritization and further delay in service delivery. Immediate action is also required to prevent jeopardizing federal funding for the OVR program. Continued administration of an unlawful OOS constitutes federal noncompliance and poses a direct risk to Kentucky's ability to draw federal vocational rehabilitation funds. This creates an imminent threat to public welfare, as OVR is currently unable to serve new eligible individuals and cannot release any of the approximately 3,000 individuals now waiting for services until the regulations are corrected. In addition, SB 103 RS 25 amended KRS 151B.195 to require OVR to promulgate administrative regulations that established a preference for in-state services and set forth its policy and procedure used to establish service fees. Ordinary administrative regulation procedures are inadequate to prevent this harm, because the delay inherent in the ordinary process would prolong improper administration of the OOS and extend service denials for individuals with the most significant disabilities. Therefore, this emergency regulation is necessary to establish the legally required framework for OVR to comply with federal and state law and to protect public welfare.

This emergency regulation will be replaced by an ordinary administrative regulation because it is necessary for agency operations and to ensure the agency's policies are more transparent. The companion ordinary administrative regulation is identical to this emergency regulation.

*ANDY BESHEAR, Governor*

*VICKIE WISE, Deputy Secretary*

**EDUCATION AND LABOR CABINET**  
**Department of Workforce Development**  
**Office of Vocational Rehabilitation**  
**(Emergency Amendment)**

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

RELATES TO: KRS 138.170, 151B.185, 151B.190, 151B.195, 151B.200, 34 C.F.R. Part 361~~[361.42,][361.49]~~, 29 U.S.C. 721, 722, 723

STATUTORY AUTHORITY: KRS 151B.185, 151B.195(1), 151B.200

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.200 authorizes the office 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. Application.

(1) An individual shall be considered an applicant for vocational services when the individual:

(a) Submits a request for vocational rehabilitation services, including completion of an OVR-2, Application for Services, or other expression of intent to apply;

(b) Provides the basic information necessary to initiate an eligibility determination, consistent with 34 C.F.R. 361.41(b)(2); and

(c) Is available to participate in the assessment process required under 34 C.F.R. 361.41.

(2) The office shall make a reasonable effort to contact individuals referred for services and offer them the opportunity to apply.

(3) An application shall be dated as of the date the request for services is received by the office.

(4) Prior to determination of eligibility, the office may require verification of identity and of employment authorization sufficient to establish that the individual is legally permitted to work in the United States.

(a) If the individual cannot establish legal authorization to work, the office shall find the individual ineligible for services in accordance with this administrative regulation; and

(b) The office shall provide information and referral services to individuals who are ineligible on this basis, as required by federal law.

(5) The office may accept applications from individuals who reside outside of Kentucky if the individual is available to participate fully in the rehabilitation process, including assessment for eligibility and rehabilitation needs.

(6) Applications may be accepted from individuals who are incarcerated if the individual is reasonably expected to become available to participate in an eligibility determination and vocational rehabilitation services upon release.

(7) Electronic Communication. The office may communicate electronically with individuals, including by email or text message, if the individual has provided informed consent for that method of communication. The individual may revoke consent at any

time. The individual's communication preferences shall be documented in the case record. If an individual changes their preferred email, they shall notify the office.

(8) The office shall provide each individual with information regarding program rights and responsibilities, including appeal procedures, consistent with 34 C.F.R. 361.38(b).

(9) If an individual has a guardian or legal representative, the individual shall inform the office and provide appropriate documentation. Any reference to individual in these regulations includes a guardian or legal representative, if applicable.

~~{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.}~~

Section 2. Eligibility.

(1) In accordance with 34 C.F.R. 361.42, an individual shall be eligible for vocational rehabilitation services if the office determines that:

(a) The individual has a physical or mental impairment that constitutes or results in a substantial impediment to employment;

(b) The individual requires rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(c) The individual can benefit in terms of an employment outcome; and

(d) The individual intends to achieve an employment outcome.

(2) An individual who meets the criteria in subsection (1)(a)-(c) of this Section and who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act shall be presumed eligible for vocational rehabilitation services and considered an individual with a significant disability, so long as the individual intends to achieve an employment outcome. This presumption of eligibility may be overcome only if the individual participates in a period of trial work, as provided in Section 3 of this administrative regulation, and upon clear and convincing evidence that the individual

cannot benefit from vocational rehabilitation services in terms of an employment outcome. Because eligibility can generally be determined based solely on verification of benefits, the office shall determine eligibility as soon as practicable upon receipt of verification of benefits.

(3) Eligibility requirements shall be applied by the office without regard to race, color, national origin, sex, age, religion, type of disability, genetic information, marital status, sexual orientation, gender identity, citizenship, pregnancy, or veteran status.

(4) The individual shall meet legal age requirements for employment at the time rehabilitation services are provided. There shall be no maximum age at which an individual is ineligible for services.

(5) There shall be no residency requirements for eligibility purposes. However, the individual shall be available to participate in rehabilitation services.

(6) Eligibility determinations shall be made within sixty (60) calendar days from the date of application, unless:

(a) There are unforeseen circumstances beyond the control of the office that prevent making the determination within the timeframe; or

(b) The individual and office agree to a one-time extension that reflects the minimum additional time needed to obtain the information necessary to determine eligibility and that specifies a date by which eligibility shall be determined. The sixty (60) day eligibility deadline shall not be extended if presumptive eligibility under subsection (2) of this section has been established.

(7) Any agreement to extend the eligibility determination period shall be documented in the case record.

(8) Services shall be provided only to address the employment needs of individuals with disabilities.

(9) Signing an application for services shall document the individual's intent to achieve an employment outcome.

(10) Limitations in functional capacity must be a direct result of the disability and not the result of attendant factors such as lack of training, labor market conditions, or transportation. Functional capacity includes self-care, work skills, interpersonal skills, communication, mobility, self-direction and work tolerance.

(11) A comprehensive assessment may be needed prior to developing an Individualized Plan for Employment and assigning a priority category.

(12) An individual requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment if the unique skills of a qualified vocational rehabilitation professional are required to assist the individual in achieving an employment outcome.

(13) Individuals are considered underemployed when a disability adversely affects the ability to obtain a position that could reasonably be expected:

(a) Considering education, experience, and capabilities,

(b) Prior to the onset or worsening of a disabling condition, or

(c) Considering current capabilities with or without accommodations.

(14) The eligibility determination shall result in one of the following categories: Eligible and Accepted, Eligible and Out-of-Selection, Ineligible, or Eligibility Unknown.

(15) If the determination is "Eligible and Accepted," the case should progress toward development of an Individualized Plan for Employment in accordance with Section 6 of this administrative regulation.

(16) If the determination is "Eligible and Out-of-Selection," the individual shall be assigned to a priority category and served in accordance with Section 5 of this administrative regulation and 781 KAR 1:030, including placement on any applicable waitlist and provision of information and referral services as required by federal law.

(17) All individuals with disabilities who are assigned to a closed priority category shall be provided information and referral services consistent with 34 C.F.R. 361.36.

(18) If an individual is determined ineligible for services, the individual, and as appropriate, the individual's authorized representative, shall be notified and advised of the reasons for the ineligibility decision and information regarding appeal rights.

(19) If eligibility cannot be determined based on existing information, the eligibility determination shall be classified as "Eligibility Unknown," and the individual shall be afforded an opportunity for trial work in accordance with Section 3 of this administrative regulation.

~~{Section 2.} {Employees' Request for Services.}~~

~~{(1)} {An employee of the office who wishes to request rehabilitation services shall advise the Director of Field Services or a designee.}~~

~~{(2)} {The Director of Field 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. Trial Work.

(1) Trial Work Experience shall be provided when an individual's ability to benefit from vocational rehabilitation services in terms of an employment outcome cannot be determined based on existing information, as required by 34 C.F.R. 361.42(e).

(2) Before the office may determine that an individual is unable to benefit from vocational rehabilitation services due to the severity of disability, the office shall:

(a) Provide Trial Work Experience in realistic work settings, using appropriate supports; and

(b) Base any determination of ineligibility on clear and convincing evidence, consistent with 34 C.F.R. 361.42(e)-(f).

(3) Trial Work Experience shall be provided only when:

(a) The individual has applied for vocational rehabilitation services;

(b) Eligibility cannot be determined without direct observation of the individual's abilities, capabilities, and capacity to perform work; and

(c) The experience is necessary to obtain information required to make an eligibility determination.

(4) Trial Work Experience shall:

(a) Occur in one or more competitive, integrated, or community-based settings that reflect typical workplace demands;

(b) Include reasonable supports such as job coaching, assistive technology, or other services necessary for the individual to participate;

(c) Be individualized and adjusted as needed based on the individual's progress and functional needs; and

(d) Be conducted for a sufficient variety and duration to permit an informed eligibility decision.

(5) The office shall develop, in collaboration with the individual where possible, a written Trial Work Experience Plan that:

(a) Identifies the specific trial work activities, settings, and supports to be provided;

(b) Establishes the expected duration and review intervals;

(c) Identifies providers responsible for delivering supports.

(6) The office shall periodically assess the individual's performance, functional abilities, and support needs during Trial Work Experience with documentation of the individual's progress.

(7) Upon completion of Trial Work Experience, the office shall determine:

(a) The individual is eligible for vocational rehabilitation services because the individual can benefit in terms of an employment outcome; or

(b) The individual is ineligible for vocational rehabilitation services based on clear and convincing evidence obtained from Trial Work Experience.

(8) Limitations.

(a) Trial Work Experience shall not substitute for assessments or services provided under an Individualized Plan for Employment.

(b) Trial Work Experience shall not exceed the time necessary to obtain the information required to make an eligibility determination.

(c) Extended evaluation periods shall not be used in lieu of the requirements of this Section, consistent with 34 C.F.R. 361.42(f).

(9) Comparable services and benefits and financial participation requirements shall not apply to Trial Work Experience services, consistent with 34 C.F.R. 361.53(b)(2)(i), because these services occur prior to eligibility determination.

~~[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 Services or a designee.]~~

~~[(3)] [The Director of Field 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. Ineligibility.

(1) If any of the eligibility criteria are not met, the individual shall be determined ineligible for vocational rehabilitation services. Before issuing an ineligibility determination, the office shall provide the individual an opportunity for consultation regarding the proposed decision.

(2) If the consultation does not resolve the issue, the individual shall be informed in writing and in an accessible format of the ineligibility decision. This document shall contain the reason for the determination and information regarding the individual's appeal rights.

(3) If the individual is determined ineligible due to a finding that the individual cannot benefit in terms of an employment outcome following a period of trial work, the office shall:

(a) Consult with the individual;

(b) Issue written notice stating the reason for the determination and advising of the right to appeal under 781 KAR 1:010;

(c) Review the ineligibility decision within twelve (12) months of the initial decision; and

(d) Conduct additional reviews thereafter upon the request of the individual. Any review does not limit or replace the individual's right to appeal the ineligibility determination at any time.

(4) If the office determines that the individual is not eligible because the individual is unable to pursue competitive integrated employment or is otherwise unable to participate in such employment due to disability-related limitations, the office shall:

(a) Consult with the individual, consistent with 34 C.F.R. §§ 361.43 and 361.44;

(b) Issue written notice stating the reason for the determination and advising of the right to appeal under 781 KAR 1:010; and

(c) Provide information and referral services to assist the individual in obtaining services from other appropriate agencies.

(5) If an individual affirmatively states that they do not desire to continue pursuing competitive integrated employment at this time and chooses to withdraw from services, the office shall document the individual's voluntary decision and close the case. A voluntary withdrawal by the individual does not constitute an ineligibility determination

and does not trigger appeal rights. In addition, the individual may reapply for services at any time.

~~[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. Priority Categories.

(1) An individual determined eligible shall be assigned to one (1) of the following priority categories:

(a) Priority Category 1: Individual with a most significant disability is an individual with a disability who has been determined eligible for vocational rehabilitation services, requires multiple vocational rehabilitation services for a period of six (6) months or more, and experiences serious limitations in four (4) or more areas of functional capacity, in terms of an employment outcome.

(b) Priority Category 2: Individual with a significant disability is an individual with a disability who has been determined eligible for vocational rehabilitation services, requires multiple vocational rehabilitation services for a period of six (6) months or more and experiences serious limitations in three (3) areas of functional capacity, in terms of an employment outcome.

(c) Priority Category 3: Individual with a significant disability is an individual with a disability who has been determined eligible for vocational rehabilitation services, requires multiple vocational rehabilitation services for a period of six (6) months or more, and experiences serious limitations in one (1) to two (2) areas of functional capacity, in terms of employment outcome.

(d) Priority Category 4: Individual with a disability is an individual who has been determined eligible for vocational rehabilitation services and does not meet the criteria for priority categories 1, 2, or 3.

(2) If the assigned priority category is open, the individual shall be served.

(3) As set forth in 781 KAR 1:030, if the priority category is closed, the individual's case shall be held on a waitlist in their assigned priority category by date of application until funding is available to serve from the waitlist or the priority category assigned is opened or the order of selection is lifted.

(4) An individual who has been assigned to a priority category may be reassigned to a different category to correct an error; or if the office determines new information justifies the reclassification.

~~[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. Individualized Plan for Employment.

(1) The Individualized Plan for Employment (IPE) shall be developed in accordance with the Rehabilitation Act of 1973, as amended, and the Workforce Innovation and Opportunity Act (WIOA), and 34 C.F.R. 361.45, and 361.46.

(2) The IPE, including any amendments, shall be jointly agreed upon by the office and the individual. The IPE shall be executed on office-approved forms.

(3) As required by 34 C.F.R. 361.45(c), a copy of the IPE, and any amendments, shall be provided to the individual in their native language or mode of communication that enables the full participation of the individual.

(4) The IPE implementation date shall be the date the office signs the IPE after all other required signatures have been obtained.

(5) The IPE shall be developed as soon as possible, but not later than ninety (90) days after the date of determination of eligibility, unless the office and individual agree in writing to a one-time extension that specifies a completion date.

(6) The individual may choose to develop all or part of the IPE independently, with the assistance of the office, or with the help of a representative or a disability advocacy organization, consistent with informed choice.

(7) The IPE shall specify:

(a) A specific employment outcome;

(b) The vocational rehabilitation services required to achieve the outcome;

(c) Providers of each service;

(d) Timelines for the initiation of services;

(e) Responsibilities of the individual and the office, including financial participation when applicable;

(f) Comparable services and benefits; and

(g) The need for post-employment services, if any.

(8) A complete copy of the signed IPE and any amendments shall be provided to the individual promptly after execution.

(9) Amendments to the IPE shall:

(a) Be made when any substantive changes in the employment outcome, services, or the provider are necessary; and

(b) Only be made when jointly agreed upon and signed by both the office and individual.

(10) The office may authorize incidental expenditures not exceeding \$200 per authorization or five hundred dollars (\$500) per fiscal year without obtaining the individual's signature if the expenditure is for maintenance, clothing, uniforms, transportation, licenses or permits, assistive technology devices, and specialized aids or appliances for the blind.

(11) The IPE shall be reviewed with the individual at least annually. The first annual review shall occur on or before the anniversary date of the IPE, and thereafter, on or before the most recent annual review. If a significant change to the rehabilitation program is required, an IPE amendment shall be written.

(12) Prior to developing or amending an IPE, the office shall provide the individual with information necessary for informed choice regarding potential employment outcomes, services, service providers, and methods of procuring services. Alternative methods of service delivery shall be identified unless prohibited by law.

(13) Prior to developing or amending an IPE, individuals shall be given a description of services and providers, allowing individuals to have input into the services and providers selected. Except where otherwise provided by state or federal law or regulation, alternative methods to provide services shall be identified for the individual.

~~{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 if the office has reason to believe that a second opinion would provide more information necessary to determine eligibility.]~~  
~~{(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 7. ~~[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 interests, interpersonal skills, related functional capacities, and other pertinent characteristics. Self-employment shall be considered only if:

(a) The self-employment venture is expected to be the individual's primary source of employment; and

(b) The anticipated earnings are comparable to the earnings of individuals without disabilities who are self-employed in similar occupations with similar training, experience, and skills.

(2) Prior to approval of a self-employment goal, the office shall:

(a) Assess the individual's work skills interests, interpersonal skills, related functional capacities, and other pertinent characteristics to determine suitability for self-employment; and

(b) Require the individual to participate in prevocational and small business training prior to starting a new self-employment business, if necessary to support an informed choice for a self-employment outcome.

~~{(2)} [An eligible individual shall participate in prevocational and small business training as established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010.]~~

(3) Prior to provision of services for a new self-employment venture, an [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. Proof of compliance with this subsection shall be provided upon request.

(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 of the proposed business; and

(b) Submit a written business plan and have it approved by the office~~[pursuant to the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010, prior to provision of services].~~ The business plan shall address, at a minimum, the nature of the product or service, market and competition, marketing approach, management structure, projected costs, and projected revenues~~[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. The individual shall document other financial resources or in-kind contributions that will be used to support the venture.

~~{(a)} [In addition to requirements under subsection (4) of this section, 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 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) In addition to requirements under subsection (5) of this section, an individual seeking financial assistance with start up costs shall contribute:

(a) Fifty (50) percent of the portion of start up costs between five thousand dollars (\$5,000) and ten thousand dollars (\$10,000); and

(b) Ninety-five (95) percent of that portion of start up costs that exceeds ten thousand dollars (\$10,000). [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.]~~

(7) The individual's contribution may be made in cash or documented value of existing equipment used in the daily operation of the business.

(8) An individual shall provide documentation that the assets necessary for the required financial participation under subsection (6) of this Section are in place prior to provision of services by the office.

(9) The total office expenditures toward the start up costs for a self employment enterprise shall not exceed ten thousand dollars (\$10,000).

(10) For an existing business in which the individual has been self-employed for at least one (1) year, the office may provide only those disability-related services or accommodations that are necessary for the individual to maintain competitive integrated employment in that business. The office shall not fund expansion of an existing business beyond disability-related needs.

(11) The office shall not provide start-up funding for self-employment ventures that are speculative in nature, organized as nonprofit entities, or that involve purchase of real estate, franchise fees, or payment of existing business debt. Additional limitations on the scope of services for self-employment shall comply with federal vocational rehabilitation requirements, including 34 C.F.R. Part 361, and all applicable state laws.

#### Section 8. Financial Participation.

(1) The Office may require financial participation from individuals for certain vocational rehabilitation services, consistent with 34 C.F.R. 361.53 and 361.54. Financial participation shall be determined through a financial participation assessment that evaluates the individual's adjusted income and applicable comparable services and benefits.

(2) Individuals who have been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act shall be exempt from financial participation; however, comparable services and benefits shall still be applied consistent with 34 C.F.R. 361.53.

(3) Financial participation shall apply only to services subject to an economic need determination under this administrative regulation and 781 KAR 1:040, and shall not apply to services that are exempt under 34 C.F.R. 361.54(b).

- (4) A financial participation assessment shall be completed prior to implementation of an IPE and when the IPE is amended to add services subject to financial participation.
- (5) The financial participation assessment shall consider:
- (a) The individual's adjusted gross income and household size;
  - (b) The amount by which adjusted income exceeds 250 percent of the federal poverty guideline for the household size; and
  - (c) Disability-related expenses paid directly by the individual that are necessary for the individual to achieve an employment outcome.
- (6) The Office shall determine the individual's required contribution toward the cost of services based on the individual's adjusted excess income and the percentage of participation applicable to that income level. The percentage of participation shall be established by the office and shall be made publicly available. The amount of financial participation shall be reflected in the IPE.
- (7) The individual shall be responsible to pay the amount of financial participation agreed to in the IPE. The Office shall not be responsible for any outstanding or unpaid balance for an authorized good or service owed to a vendor resulting from the individual's share of financial participation.
- (8) The Office may request updated financial information when there is a reasonable basis to believe that the individual's financial circumstances or household composition has changed in a manner that may alter the amount of financial participation.
- (9) An individual who experiences a significant change in financial circumstances may request a review of the financial participation assessment. If a change results in a revised contribution amount, the individualized plan for employment shall be amended accordingly.

#### Section 9. Confidentiality.

- (1) The Office shall maintain the confidentiality of all personal information obtained from an individual. Each individual, or their representative, shall be informed of:
- (a) The authority under which information is collected;
  - (b) The principal purposes for which the information will be used;
  - (c) Whether providing the requested information is mandatory or voluntary and the effects of not providing the requested information;
  - (d) The circumstances under which information may be released without informed written consent; and
  - (e) Identification of the agencies to which information is routinely released.
- (2) The office may only communicate with individuals via text/SMS only when the individual has provided consent for that mode of communication and the consent is documented in the case record. If the individual revokes consent, the Office shall cease using that communication method.
- (3) Except as provided in subsections (8) through (11) of this Section, personal information shall not be released without the individual's informed written consent, except to:
- (a) The individual or their authorized representative; or
  - (b) A service provider or medical provider for purposes directly related to the individual's vocational rehabilitation services.
- (4) Informed written consent is required to release information to any party not otherwise authorized in subsection (3) of this Section, including a parent of an individual who is 18 years of age or older.
- (5) Informed written consent shall specify:
- (a) The purpose for which the information is released;
  - (b) The specific information to be released;
  - (c) The date of expiration of the informed written consent;

- (d) An assurance that information will not be re-released to the individual or others;  
and
- (e) The dated signature of the individual or their legal representative.
- (6) If personal information has been obtained from another agency or organization, including the individual's medical providers, it may only be released by or under the conditions established by the other agency or organization.
- (7) An individual who believes information in their case record is inaccurate or misleading may request that the office amend the information. If the information is not amended, because the office determines the information is accurate, the request for the amendment shall be documented in the case record.
- (8) Personal information may be released to other programs or authorities only for its program purposes under the same conditions that govern the release of information to an individual or that individual's representative, but only with the written consent of the individual.
- (9) In compliance with 34 C.F.R. 361.38, personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research shall only use de-identified information and shall not contain personal identifiers without the individual's informed written consent and only for purposes directly connected with administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for persons with disabilities and only if the organization, agency, or individual assures that:
- (a) Information will be used only for the purposes for which it is being provided;
  - (b) Information will be released only to persons officially connected with the audit, evaluation, or research;
  - (c) Information shall not be released to the involved individual;
  - (d) Information shall be managed in a manner to safeguard confidentiality; and
  - (e) Final products shall not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.
- (10) Informed written consent is not required for release of information when the request is:
- (a) For purposes directly related to the administration of the vocational rehabilitation program,
  - (b) Required by Federal or State law;
  - (c) In response to a court order, warrant, subpoena, or other similar legal requirement;  
or
  - (d) In response to investigations in connection with law enforcement, fraud, or abuse (except where expressly prohibited by Federal or State laws or regulations), and in response to an order issued by a judge, magistrate, or other authorized judicial officer.
- (11) The Office may release personal information when necessary to protect the individual or others when the individual poses a direct threat to the individual's safety or the safety of others.

Section 10. ~~[Section 9.]~~ Gender Reassignment. Office funds shall not be used to pay for gender reassignment surgery.

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

Section 11. Case Closure.

- (1) A case shall be closed when no further services from the Office are justified, required, or anticipated in the immediate future.
- (2) A case shall be closed as a competitive integrated employment outcome when:

- (a) The individual has been determined eligible; and has received an assessment for determining eligibility and vocational rehabilitation needs;
- (b) Services have been provided in accordance with the IPE; and
- (c) The individual has maintained competitive integrated employment for at least ninety (90) consecutive days or for supported employment cases, 90 days after transition to extended services.
- (3) For closures based on achievement of a competitive integrated employment outcome, the Office shall provide written notice of case closure to the individual summarizing the employment outcome and services provided. When a case is closed due to ineligibility, the Office shall provide written notice of the ineligibility determination. Ineligibility may result from:

  - (a) A determination that the individual does not meet the eligibility criteria in Section 2 of this administrative regulation;
  - (b) A determination, based on trial work experiences, that the individual is unable to benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of disability; or
  - (c) A decision by the individual not to pursue competitive integrated employment at this time.
- (4) An individual who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act shall not be determined ineligible:

  - (a) based on inability to benefit unless, after participating in trial work experiences, clear and convincing evidence establishes that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome; or
  - (b) Such an individual may be determined ineligible if they choose not to pursue competitive integrated employment.
- (5) Before a determination of ineligibility, the Office shall consult with the individual or provide an opportunity for consultation. At the time of determination, referrals should be made to appropriate agencies and facilities.
- (6) If an individual is determined ineligible based on a finding that the individual is incapable of benefiting in terms of an employment outcome, the Office shall review that determination within twelve (12) months and thereafter upon the request of the individual or representative. Consultation shall be provided unless the individual cannot be located, refuses services or review, is no longer present in the state, has a rapidly progressive or terminal condition, or is deceased.
- (7) If an individual continues to seek competitive integrated employment but declines further services, or chooses not to pursue competitive integrated employment, the case may be closed as ineligible or unsuccessful, as appropriate.
- (8) Cases may be closed as unsuccessful if an intervening reason, including but not limited to death, inability to locate the individual, individual institutionalized, transfer to another agency, failure to cooperate, refusal of services, transportation not feasible or available, referral to an independent living program, precludes a determination of eligibility or achievement of an employment outcome.
- (9) For cases closed from Applicant status for a reason other than ineligibility, the Office shall document the rationale for closure in the case record.
- (10) Prior to case closure, the Office shall provide information and referral services to the individual, as appropriate.
- (11) For a student with a disability in potentially eligible status, the record shall be closed as soon as possible when the individual no longer meets the definition of a student with a disability, including when the individual reaches the maximum program age or is no longer enrolled in an education setting.
- (12) For a student with a disability in application, accepted or IPE status, the case may be closed when eligibility or an IPE cannot be completed within applicable federal deadlines

and reasonable efforts to contact the individual have been unsuccessful. Specific contact and documentation procedures shall be consistent with federal and state vocational rehabilitation requirements.

(13) Cases shall be closed from post-employment when one of the following criteria is met and documented in the case record:

(a) Employment appears secure following the provision of appropriate provision of post-employment services;

(b) A new or substantially revised program of rehabilitation services is required, in which situation, a new case may be opened; or

(c) Services have failed to maintain or return the individual to competitive integrated employment.

~~{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 shall be determined by the current fee for service memo.]~~

~~{(2)} [The Director of Field Services or a designee shall make exceptions to the limitations provided by subsection (1) if it is clearly demonstrated that exceptions are necessary to achieve the employment outcome as established 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 that comply with all applicable state and federal requirements.]~~

~~{(6)} [An eligible individual planning to attend a postsecondary training facility shall apply for all financial assistance available through the training facility.]~~

~~{(7)} [An eligible post-secondary student shall:]~~

~~{(a)} [Maintain full-time status as defined by the institution;]~~

~~{(b)} [Maintain less than full-time status if full-time status is inconsistent with the consumer's unique strengths, abilities, and capabilities; or]~~

~~{(c)} [Maintain less than full-time status for one (1) semester if those hours are needed to graduate in the current year;]~~

~~{(d)} [All coursework shall facilitate the achievement of positive outcomes.]~~

~~{(e)} [By the end of the second term or semester and throughout each subsequent term or semester, the student shall achieve the higher of:]~~

~~[1.] [An overall "C" grade average; or]~~

~~[2.] [Standing required for admission, licensure, or certification.]~~

~~{(f)} [An exception to a requirement established in subsection (1) or (4) of this section shall:]~~

~~[1.] [Be granted if the student:]~~

- ~~{a.} [Has a need or circumstance that renders him unable to meet the requirement; and]~~
- ~~{b.} [Notifies the counselor of the need or circumstance prior to a change of standing at the institution.]~~
- ~~{2.} [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 service 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. Other.

- (1) Gender Reassignment. Office funds shall not be used to pay for gender reassignment surgery.
- (2) Mandatory reporting. Office staff, upon request of a victim of any act of domestic violence and abuse or dating violence and abuse, shall personally report the alleged abuse to a law enforcement officer after discussing the report with the victim.
- (3) Individuals shall be informed that the Client Assistance Program (CAP) at Kentucky Protection and Advocacy is available to assist them in their relationship with OVR.
- (4) Electronic signatures are allowed.
- (5) Legal Fees. The Office shall not be responsible for any fees incurred by an individual for legal services, except as required by federal law. Nothing in this section prohibits the office from providing benefits counseling, advocacy training, or other vocational rehabilitation services permitted under 34 C.F.R. § 361.48, so long as those services do not include the payment of private legal fees.

## ~~{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, or 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 the equipment is:]~~
- ~~{(a)}~~
- ~~{1.} [Essential to compensate for the limitations caused by the disability; or]~~
- ~~{2.} [Required for the eligible individual to achieve or maintain a vocational objective of competitive integrated 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 in an integrated setting with nondisabled employees performing the same duties.]~~

## Section 13. Service Fees.

- (1) The office shall establish service fees in compliance with applicable state and federal procurement laws.

- (2) The office may utilize multiple methods to establish service fees, including:
  - (a) Fixed predetermined rates;
  - (b) Fair market rates; and
  - (c) Value-based purchasing or a performance-based or milestone payment.
- (3) OVR may procure a third party to conduct a rate study.
- (4) The following factors shall be considered when establishing a service fee:
  - (a) Historical price of the good or service;
  - (b) The rate of inflation since last service fee change;
  - (c) Analysis of personnel costs to determine whether the service can be performed more economically by direct employment of office staff rather than utilizing a vendor;
  - (d) The professional qualifications required to render the service;
  - (e) Budgetary analysis to determine the impact on the federal award to ensure the office does not over obligate funds;
  - (f) A survey of multiple neighboring states;
  - (g) A survey of factors that may be unique to a geographic region such as availability of a service and transportation costs;
  - (h) A survey of other Kentucky agencies that provide the same service;
  - (i) A survey of community rehabilitation programs and other providers; and
  - (j) Cost analysis of the individual elements of the price.
- (5) The office shall permit exceptions to the published service fee as necessary to ensure the individual receives approved services. A rate differential may be applied when the office determines a high level of provider effort or higher intensity for the service is required to meet the unique needs of the individual.
- (6) The office shall maintain all documentation used to determine a service fee.
- (7) The office shall revise service fee procedures and standards prior to the start of the fiscal year in which the revision will become effective.
- (8) The executive director shall have final approval authority for all service fees and service fee memorandums.
- (9) The office shall review service fees, service fee memoranda, and related rate schedules at least every other year and shall issue revised service fees or fee memoranda as necessary. Updated service fee schedules and memoranda shall be made publicly available.

~~[Section 13.] [Medical Treatment. A medical treatment or procedure that is experimental or that 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. Exceptions.

- (1) The Office may approve an exception to a requirement, condition, or limitation in this administrative regulation when permitted under federal law, including 34 C.F.R. 361.50(d), and when necessary to ensure that services are provided consistent with individualized assessments, informed choice, and the individual's vocational rehabilitation needs.
- (2) Any exception granted under this Section shall be consistent with state and federal vocational rehabilitation requirements, including 34 C.F.R. Part 361 and 2 C.F.R. Part 200, and shall support the achievement of the individual's employment outcome.

~~[Section 14.] [Vehicle Purchase. The office shall not purchase a vehicle unless the occupation of the eligible individual requires a vehicle as occupational equipment.]~~

#### Section 15. Incorporation by Reference.

- (1) "OVR-2", November 20, 2025, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort,

Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available at [kcc.ky.gov/vocational-rehabilitation](http://kcc.ky.gov/vocational-rehabilitation).

*VICKIE WISE, Deputy Secretary*

APPROVED BY AGENCY: December 30, 2025

FILED WITH LRC: December 31, 2025 at 12:10 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2026, at 1:00 pm, at Mayo-Underwood Hearing Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 February 28, 2026. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Brooke McDaniel, Administrative Specialist Senior, Office of Vocational Rehabilitation, 500 Mero Street, First Floor, Frankfort, Kentucky 40601, 502-782-2539, [brooke.mcdaniel@ky.gov](mailto:brooke.mcdaniel@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:** Brooke McDaniel

**Subject Headings:** Disability and Disabilities, Workforce Development, Education

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

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

This administrative regulation outlines the requirements for the determination of eligibility for the receipt of goods and services from the Office of Vocational Rehabilitation (OVR) in compliance with the federal Rehabilitation Act and KRS 151B.180, et seq.

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

KRS 151B.195 requires OVR to promulgate administrative regulations outlining the administration of vocational rehabilitation services in Kentucky in compliance with the federal Rehabilitation Act and KRS 151B.180, et seq.

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

This administrative regulation governs the eligibility determination process and the assignment of a priority category for the Order of Selection.

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

This regulation assists individuals seeking services from OVR in understanding the application and eligibility determination process.

**(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 comply with federal requirements regarding the Order of Selection categories and the changes made to KRS 151B.195 by SB 103 RS 25 for establishing service fees and a preference for in state services.

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

Changes to the regulation are necessary to comply with amendments made to KRS 151B.195 in SB 103 RS 25 and federal requirements regarding the Order of Selection categories.

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

This amendment conforms to the authorizing statutes by outlining the specific requirements for eligibility and financial participation determinations and the assignment of priority categories for the Order of Selection.

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

This amendment makes the eligibility determination, financial participation, and assignment of priority categories process more clear to the regulated individuals.

**(3) Does this administrative regulation or amendment implement legislation from the previous five years? Yes, this proposed amendment implements Senate Bill 103 RS25.**

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

The approximately 46,000 individuals served by the Office of Vocational Rehabilitation.

**(5) Provide an analysis of how the entities identified in question (4) 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 (4) will have to take to comply with this administrative regulation or amendment:**

The approximately 46,000 individuals served by the Office of Vocational Rehabilitation.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4):**

There are no new costs to any person or entity.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (4):**

The regulated individuals will have a better understanding of how eligibility and financial participation determinations are made and how individuals are assigned to priority categories.

**(6) 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:**

No additional costs are expected.

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

Federal vocational rehabilitation funds received by the Office of Vocational Rehabilitation and the required state match funds; however, there are no additional costs as a result of this proposed amendment.

**(8) 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 administrative regulation.

**(9) 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.

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

Tiering is not required in this administrative regulation because it applies equally to all affected entities.

## **FISCAL IMPACT STATEMENT**

**(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation:**

29 U.S.C. § 721-723; 34 C.F.R. Part 361; KRS 13B.170, 151B.017(4), 151B.185, 151B.190, 151B.195(1), 151B.200.

**(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:**

This act is authorized by KRS 13B.170, 151B.017(4), 151B.185, 151B.190, 151B.195(1), 151B.200.

**(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions:**

The Office of Vocational Rehabilitation is the promulgating agency, and no other agencies are affected. (b) Estimate the following for each affected state unit part, or division identified in (3)(a):

**(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):**

**1. Expenditures:**

**For the first year:None**

**For subsequent years:None**

**2. Revenues:**

**For the first year:None**

**For subsequent years:None**

**3. Cost Savings:**

**For the first year:None**

**For subsequent years:None**

**(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts):**

No local entities are affected.

**(b) Estimate the following for each affected local entity identified in (4)(a):**

**1. Expenditures:**

**For the first year:None**

**For subsequent years:None**

**2. Revenues:**

**For the first year:None**

**For subsequent years:None**

**3. Cost Savings:**

**For the first year:None**

**For subsequent years:None**

**(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):**

None

**(b) Estimate the following for each regulated entity identified in (5)(a):**

**1. Expenditures:**

**For the first year:None**

**For subsequent years:None**

**2. Revenues:**

**For the first year:None**

**For subsequent years:None**

**3. Cost Savings:**

**For the first year:None**

**For subsequent years:None (6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a) and (5)(a): Not applicable.**

**(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)**

**(a) Fiscal impact of this administrative regulation:**

None.

**(b) Methodology and resources used to reach this conclusion:**

Not applicable.

**(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):**

**(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(14):**

This proposed amendment will not have a major economic impact.

**(b) The methodology and resources used to reach this conclusion:**

Not applicable.