

## STATEMENT OF EMERGENCY

### 781 KAR 1:040E.

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 As a result, individuals with the most significant disabilities are being placed on waitlists under outdated and noncompliant criteria.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 1:040E. Provision of Vocational Rehabilitation Services ~~[Assistive technology services]~~.**

RELATES TO: KRS 151B.190, 29 U.S.C. 705(30), 723, 34 C.F.R. 361.5(c)(9), 361.42, 361.45, 361.46, 361.48, 361.50, 361.53, 361.54

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency. This administrative regulation establishes the requirements for the provision of vocational rehabilitation services, including assistive technology and other goods and services necessary for individuals with disabilities to prepare for, secure, retain, advance in, or regain competitive integrated employment~~[in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals]~~.

**Section 1. General Provisions. ~~[Definitions.]~~**

- (1) Services under this administrative regulation shall be provided to individuals for diagnostic and assessment services necessary to determine eligibility or priority for services, and to enable an individual to prepare for, secure, retain, advance in, or regain competitive integrated employment as permitted by 34 C.F.R. 361.42.
- (2) Comparable services and benefits, including private insurance, Medicaid, Medicare, and other third-party payers, shall be used to the maximum extent allowable prior to the expenditure of office funds, unless the service is exempt under federal regulations or unless the use of the comparable service or benefit would result in unreasonable delay in the progress of the individual, consistent with 34 C.F.R. 361.53.
- (3) Financial participation requirements shall apply in accordance with 781 KAR 1:020 when permitted under federal law.
- (4) All services shall be provided consistent with the individual's informed choice and shall be aligned with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests as required under 34 C.F.R. 361.46 and 361.52. Informed choice does not obligate the office to provide higher-cost or non-essential services, equipment, or options when a less costly alternative meets the disability-related vocational rehabilitation needs.
- (5) All goods and services shall be purchased in accordance with the Kentucky Model Procurement Code and federal procurement standards.
- (6) The office shall not purchase general household or personal items not directly related to disability-related vocational need unless the item is necessary for the individual to participate in a vocational rehabilitation service or to achieve an employment outcome.
- (7) The office shall not impose fixed or arbitrary limits on the cost, type, or duration of services and shall allow for individualized exceptions consistent with 781 KAR 1:020.
- (8) Service fees, rate schedules, and maximum allowable costs for services shall comply with 781 KAR 1:020.
- (9) The office shall comply with applicable cost principles set forth in 2 C.F.R. Part 200 when making expenditures.
- (10) Direct payments to individuals.

(a) The office may issue a direct payment to an individual when necessary for the individual to obtain, maintain, or advance in employment or to participate in a vocational rehabilitation service under an IPE, and when no qualified vendor is reasonable available to provide or accept payment for the service.

(b) For purposes of this processing a direct payment under subsection (a), an individual may be required to register as a vendor solely to facilitate payment. Vendor registration under this subsection shall not classify the individual as a commercial vendor or service provider for any other purpose.

(c) Nothing in this subsection shall exempt the office from complying with state and federal procurement requirements.

~~[(1)] ["Assistive technology specialist" means an individual who analyzes the needs of individuals with disabilities, assists in the selection of the appropriate assistive technology, and trains the eligible individual on how to properly use the specific equipment.]~~

~~[(2)] ["Certified driver rehabilitation specialist" means a driver rehabilitation specialist who has obtained certification to provide services from the Association for Driver Rehabilitation Specialists.]~~

~~[(3)] ["Driver evaluation" means a clinical and behind-the-wheel evaluation by a certified driver rehabilitation specialist to identify an eligible individual's driver rehabilitation needs to allow that person to drive independently.]~~

~~[(4)] ["Driver rehabilitation specialist" means an individual who plans, develops, coordinates, and implements driver rehabilitation services for individuals with disabilities.]~~

~~[(5)] ["Driver training" means behind-the-wheel instruction required to teach an individual with a disability to drive with or without vehicle modifications.]~~

~~[(6)] ["Eligible individual" means an individual who has been determined by the office to meet the basic conditions of eligibility for vocational assistive services as defined in 34 C.F.R. 361.42.]~~

~~[(7)] ["Extended driver evaluation" means additional evaluation necessary in those cases in which an individual's ability to drive cannot be determined after a driver evaluation.]~~

~~[(8)] ["Family" means spouse, children, parents, grandparents, or siblings.]~~

~~[(9)] ["Individualized plan for employment" means a written plan for a specific employment outcome as required by 34 C.F.R. 361.46.]~~

~~[(10)] ["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.]~~

~~[(11)] ["Structural addition" means any improvement to real property that would increase the square footage or footprint of the property.]~~

## Section 2. Specialized Eligibility and Assessment Requirements.

### (1) Terminal Illness Affecting Ability to Benefit.

(a) For individuals with medical conditions that may be terminal, eligibility and service decisions shall be based on documented functional limitations and the individual's ability to benefit from vocational rehabilitation services in terms of achieving an employment outcome, consistent with 34 C.F.R. 361.42.

(b) The office may provide services when the individual's prognosis supports a reasonable expectation of achieving or maintaining competitive integrated employment for a sufficient period to prepare for, obtain, maintain, or advance from services.

(c) When the attending physician identifies a guarded prognosis, the office may require documentation regarding anticipated work capacity or work life expectancy to support eligibility or service decisions.

(d) When documentation indicates that the individual is unlikely to benefit from services due to imminent medical decline, the counselor shall consult with the Branch Manager prior to an eligibility determination or denial of services.

(2) Visual Impairments.

(a) Verification of a visual impairment shall be based on medical documentation from an ophthalmologist or optometrist that identifies the nature and extent of the visual condition and any resulting functional limitations relevant to vocational rehabilitation.

(b) When medical information is outdated or insufficient for eligibility or service planning, the office may require a current visual examination.

(c) When visual impairment co-occurs with hearing loss or when dual sensory loss is suspected, referral for audiological evaluation may be required to determine functional limitations and service needs.

(d) Individuals determined eligible for Social Security benefits based on statutory blindness shall be presumed eligible for vocational rehabilitation services consistent with 34 C.F.R. 361.42(a)(3).

(3) Rapidly Progressive Visual Conditions.

(a) A rapidly progressive visual disorder may be determined to constitute a disability prior to the onset of functional limitations when supported by medical documentation indicating that the condition:

1. Is progressive in nature;

2. Requires timely intervention; and

3. Is expected, if untreated, to result in functional limitations affecting employment.

(b) Eligibility and service planning for individuals with progressive visual conditions shall be based on documented functional limitations, anticipated vocational impact, and the individual's informed choice.

Section 3. Assistive Technology Services.

(1) Assistive technology services may be provided at any stage of the rehabilitation process when necessary to address disability-related functional limitations and enable participation in vocational rehabilitation services or achievement of the employment outcome identified in the individualized plan for employment (IPE).

(2) Assessment and Recommendation.

(a) Prior to authorization and purchase of any assistive technology device, an assessment shall be completed by the office.

(b) Recommendations shall identify the most cost-effective device or service necessary to meet disability-related vocational needs and shall be documented in the case record.

(3) Assistive technology may be purchased consistent with federal and state procurement requirements and any applicable fee schedules established under 781 KAR 1:020.

(4) Ownership and Recovery.

(a) Assistive technology that is recoverable shall remain the property of the office until reassigned or disposed.

(b) Non-recoverable assistive technology shall become the property of the individual upon delivery and is not subject to recovery. Ownership status shall be communicated to the individual in writing at the time of delivery.

Section 4. Hearing Assistive Technology.

(1) Hearing aids and assistive listening or alerting devices shall be considered assistive technology devices for purposes of this administrative regulation.

(2) Prior to purchase authorization, an audiological evaluation and hearing assistive technology assessment shall be completed by a licensed audiologist or other qualified professional communication specialist consistent with current professional standards.

(3) Recommendations for hearing aids or related technology shall identify the device type and features required to address vocationally relevant communication needs and shall be

consistent with the most cost-effective device that meets those needs.

(4) Cochlear implants (CI) and bone-anchored hearing systems (BAHS) shall be considered medical restoration services subject to the requirements of Section 7 of this administrative regulation.

#### Section 5. Services for Individuals Who Are Deaf, Hard of Hearing, or Deafblind.

(1) For individuals who are deaf, hard of hearing, or late-deafened, the office shall obtain:

(a) A comprehensive audiological evaluation; and

(b) A communication assessment addressing functional communication needs relevant to home, training, community, and employment settings.

(2) When an individual has a diagnosis or indication of dual sensory loss, the office shall obtain a visual examination by a licensed optometrist or a physician skilled in diseases of the eye.

(3) When visual pathology or restricted visual fields are identified, referral to an ophthalmologist shall be made.

(4) Hearing Assistive Technology and Medical Referral.

(a) Hearing aids and other assistive listening devices shall be authorized in accordance with Section 4 of this administrative regulation.

(b) A recommendation for hearing aids shall be made by a qualified audiologist or other licensed professional authorized under state law to perform hearing aid evaluations.

(c) Individuals presenting symptoms of ear pathology or conductive hearing loss shall be referred to a physician skilled in diseases of the ear.

(5) Coordination of Services.

(a) Interpreter and communication access services shall be provided in accordance with Section 14 of this administrative regulation.

(b) Assistive technology, rehabilitation technology, or environmental communication supports shall be considered when required to enable the individual to participate in assessments, training, or employment.

(c) The office shall collaborate with educational programs, community agencies, and employers to identify appropriate communication supports needed for participation in vocational rehabilitation services or for successful performance of job functions.

#### Section 6. Wheelchairs and Mobility Devices.

(1) Wheelchairs, scooters, seating systems, and other wheeled mobility devices may be provided as assistive technology services when necessary for an individual to participate in vocational rehabilitation services or to prepare for, obtain, maintain, or advance in competitive integrated employment.

(2) Wheelchair services may be provided only to individuals who:

(a) Have been accepted for services by the office in accordance with 781 KAR 1:020;

(b) the need for wheeled mobility is identified on the IPE; and

(c) wheeled mobility is necessary for the individual to access home, community, training, transportation, or work settings related to the employment outcome.

(3) An assistive technology specialist employed or contracted by the office shall participate in all wheelchair and mobility device assessments, recommendations, and purchasing decisions authorized under this Section.

(4) Wheelchair and mobility device services shall be based on an assessment conducted by an assistive technology specialist or other qualified provider that considers:

(a) The individual's functional limitations and seating and positioning needs;

(b) The tasks the individual must perform in home, training, community, and employment settings; and

(c) The environments in which the wheelchair will be used, including access to and within the home, workplace, and vehicle.

(5) When a wheelchair or mobility device will be used in conjunction with adapted transportation or a vehicle modification, the Driver Rehabilitation Technology Program shall be consulted prior to authorization. The office shall not authorize a device that is incompatible with the individual's current or planned transportation unless an alternative transportation plan is approved.

(6) The office may authorize wheelchair components, seating systems, accessories, or features not covered by comparable services and benefits when documented by the assistive technology specialist as necessary to meet disability-related vocational needs.

(7) The office shall not reimburse for any wheelchair, mobility device, or related component purchased or delivered prior to authorization unless approved through the exception process described in 781 KAR 1:020.

(8) Ownership and recovery of wheelchair equipment shall be governed by Section 3(4) of this administrative regulation.

(9) The office may consider typical life expectancies of wheelchair bases and components when determining eligibility for replacement, however, replacement decisions shall be based on vocational necessity, documentation of the equipment's condition, and the individual's functional or medical status. Typical life expectancies shall not serve as hard caps; individual need governs.

(10) The individual shall be responsible for routine maintenance, upkeep, and replacement of consumable items, including but not limited to tires, batteries, cushions, and brakes, unless an exception is approved in accordance with 781 KAR 1:020.

(11) The office may authorize repairs when necessary for the individual to participate in vocational rehabilitation services or to maintain competitive integrated employment.

(12) The office shall not authorize repairs necessitated primarily by misuse, abuse, neglect, or lack of reasonable maintenance unless approved through the exception process in 781 KAR 1:020.

#### Section 7. Physical and Mental Restoration Services.

(1) Physical and mental restoration services may be provided when necessary to correct, substantially modify, or stabilize a physical or mental condition that constitutes a substantial impediment to employment, and when required for the individual to prepare for, obtain, maintain, or advance in competitive integrated employment.

(2) Allowable physical and mental restoration services may include diagnostic and treatment services, prosthetic and orthotic devices, medication management, mental health services, and other restoration services permitted under 34 C.F.R. 361.5, when vocationally necessary.

(3) Physical and mental restoration services shall be authorized only when:

(a) The condition is stable, slowly progressive, or expected to improve with treatment in a manner relevant to the employment outcome;

(b) Services are prescribed, provided, and supervised by licensed or otherwise qualified medical or mental health professionals; and

(c) The service is documented as vocationally necessary for the specific employment outcome identified in the IPE.

(4) Limitations. The office shall not authorize:

(a) Elective or cosmetic medical or surgical procedures, unless medical documentation demonstrates the procedure is necessary for the individual to achieve or maintain the employment outcome;

(b) Medical or surgical procedures, implants, transplants, or devices that are not approved by the United States Food and Drug Administration (FDA) for the intended use; or

(c) Procedures, equipment, or treatments that lack evidence of effectiveness in improving functional capacities related to the individual's vocational needs.

(5) Out-of-State Services.

- (a) Out-of-state physical or mental restoration services may be authorized only when:
1. The provider is in a geographic area that is routinely used and reasonably accessible for the individual;
  2. The out-of-state service is more economical to the office; or
  3. The procedure, mode of treatment, or qualified provider is not reasonably available in the Commonwealth.
- (b) The maximum amount authorized for out-of-state services shall be governed by the rates established by the vocational rehabilitation program in the state where the services are provided, unless approved under the exception process in 781 KAR 1:020.

Section 8. Chiropractic Services.

- (1) Chiropractic services may be provided when necessary to address a neuromusculoskeletal condition that constitutes a substantial impediment to employment and when treatment is expected to improve functional limitations that are vocationally relevant.
- (a) Chiropractic services shall be time-limited and oriented toward achieving specific, vocationally relevant functional goals.
- (b) Long-term maintenance, wellness, or preventive care that is not directly necessary for the employment outcome shall not be funded.
- (2) Chiropractic services may be authorized only when:
- (a) The need is identified in medical or chiropractic documentation and linked to the IPE; and
- (b) The provider is licensed in the jurisdiction where services are delivered.

Section 9. Convalescent Care.

- (1) Convalescent care may be provided as a physical restoration service when medically necessary to support short-term recovery following surgery, illness, or treatment, and when required for the individual to prepare for, obtain, maintain, or advance in competitive integrated employment.
- (2) Conditions for Provision. Convalescent care may be authorized only when:
- (a) Recommended by the attending physician;
- (b) Provided in a facility appropriately licensed in the jurisdiction; and
- (c) The service is time-limited and necessary for recuperation directly related to achieving the employment outcome identified in the IPE.
- (3) Convalescent care may be approved when one (1) or more of the following conditions are documented:
- (a) The individual's home environment is not conducive to safe or adequate recuperation; or
- (b) Use of a convalescent facility will reduce the cost of hospitalization, private duty care, or alternative forms of recovery support.
- (4) Limitations.
- (a) Convalescent care shall be short-term and shall not be authorized as long-term custodial care or maintenance care.
- (b) Convalescent care shall not be authorized for conditions unrelated to the individual's disability-related vocational rehabilitation needs.
- (c) The level of care shall not exceed that which is medically necessary for recuperation and return to vocational rehabilitation services or employment.

Section 10. Mental Restoration.

- (1) Mental restoration services may be provided when necessary to correct, improve, or stabilize a mental or behavioral health condition that constitutes a substantial impediment to employment and when required for the individual to prepare for, obtain, maintain, or

advance in competitive integrated employment or to participate in vocational rehabilitation services.

(2) Mental restoration services may be authorized only when:

(a) The services are directly related to the disability and vocational rehabilitation needs identified in the IPE or trial work plan;

(b) Services are prescribed, recommended, or supported by a qualified mental health professional; and

(c) The service provider meets the credentialing requirements established in subsection (5) of this Section.

(3) Mental restoration services shall be time-limited and oriented toward enabling the individual to participate in vocational rehabilitation services or to achieve or maintain the employment outcome.

(4) Long-term maintenance therapy, including ongoing counseling or medication management not directly tied to the vocational rehabilitation plan, shall not be authorized except when an exception pursuant to 781 KAR 1:020 is approved.

(5) Provider Qualifications: Mental restoration services shall be provided only by licensed psychiatrists and psychologists; licensed clinical social workers; certified psychologists with autonomous functioning; licensed psychological practitioner; licensed marriage and family therapists; licensed professional clinical counselors; or advanced practice registered nurses certified in psychiatric or mental health nursing. Mental restoration services may also be provided by associate-level licensed mental health professionals practicing under required state supervision.

(6) Psychosocial rehabilitation programs, including partial hospitalization, shall not be funded unless necessary for short-term stabilization essential to participating in vocational rehabilitation services and shall require prior approval by the office.

#### Section 11. Conditions Requiring Specialized Assessment.

(1) For individuals whose primary or secondary disabilities include learning disorders, morbid obesity, or addiction, the office may authorize assessment or restoration services only when necessary for participation in vocational rehabilitation services or to achieve the employment outcome identified in the IPE.

(2) Learning Disorders.

(a) Assessment or documentation of a learning disorder may be used to determine functional limitations relevant to the vocational goal.

(b) Existing educational documentation, including psychoeducational evaluations, individualized education programs, or other school-based assessments, may be accepted when sufficient to identify disability-related functional limitations.

(c) Additional diagnostic evaluations shall be authorized only when necessary to determine vocational rehabilitation needs.

(d) Services for individuals with learning disorders shall be limited to vocationally necessary interventions, including assistive technology, disability-related tutoring, or other restoration services permitted under Section 7.

(3) Morbid Obesity.

(a) Morbid obesity may be considered a disabling condition when it results in functional limitations that constitute a substantial impediment to employment.

(b) Eligibility and service decisions shall be based on current, documented functional limitations and not solely on weight, body-mass index, or medical diagnosis.

(c) Physical restoration services may be provided only when necessary to address disability-related functional limitations affecting participation in vocational rehabilitation services or achievement of the employment outcome.

(d) Services shall not include elective weight-loss procedures unless medically necessary to achieve or maintain the employment outcome and consistent with Section

7 of this administrative regulation.

(4) Addiction.

(a) Addiction may constitute a substantial impediment to employment when associated functional limitations affect the individual's ability to prepare for, obtain, maintain, or advance in competitive integrated employment.

(b) Mental health or addiction treatment services may be authorized as mental restoration services only when necessary for the employment outcome and when provided by licensed professionals meeting Section 7 requirements.

(c) The office may require documentation from a treatment or recovery provider sufficient to demonstrate that the individual can participate safely and effectively in training, job placement, or employment support.

(d) Participation in treatment or recovery programs may be required when necessary for the individual to benefit from vocational rehabilitation services, and any such requirement shall be documented in the case record.

(e) The office may suspend or amend services when the individual is unable to participate in vocational rehabilitation services due to relapse or instability, consistent with informed choice and case documentation requirements.

Section 12. Nursing Services.

(1) Nursing services, including private duty nursing home health aide services, or similar supports, may be provided as a physical restoration service when medically necessary to enable the individual to participate in vocational rehabilitation services or to prepare for, obtain, maintain, or advance in competitive integrated employment.

(2) Nursing services shall be authorized only when:

(a) A written recommendation is provided by the attending physician or other licensed medical provider;

(b) Services are time-limited and necessary to support recovery or stabilization related to the employment outcome identified in the IPE; and

(c) Services are delivered by nursing personnel or aides who are appropriately licensed or credentialed in the jurisdiction where services are provided.

(3) Limitations.

(a) Nursing services shall be short-term in nature and shall not be authorized as long-term custodial maintenance, or attendant care.

(b) When nursing or attendant care is expected to extend beyond a short-term recuperative period, the service shall be considered under convalescent care in Section 9 of this administrative regulation or referral to appropriate community or public programs.

(c) Nursing services shall not be provided for conditions that are unrelated to the individual's disability-related vocational rehabilitation needs.

(4) Nursing services may be authorized in combination with other physical or mental restoration services, maintenance, or transportation when necessary to support participation in vocational rehabilitation services.

Section 13. Acute or Emergency Medical Conditions.

(1) Acute or emergency medical condition services may be provided when necessary to prevent an immediate or direct risk to the achievement of the employment outcome identified in the IPE, and only when the individual is already receiving vocational rehabilitation services at the time of onset of the condition.

(2) For purposes of this administrative regulation, an acute or emergency medical condition means an accident, illness, or health event with sudden onset and relatively short duration that requires urgent attention and that, if left untreated, would pose a serious hazard to the individual's ability to prepare for, obtain, maintain, or advance in competitive integrated employment.

(3) Acute or emergency medical treatment may be authorized only when all the following conditions are met:

- (a) The individual was determined eligible for vocational rehabilitation services and had an approved IPE prior to the onset of the acute condition;
- (b) The untreated condition would constitute a direct hazard to the individual's ability to achieve, maintain, or regain the employment outcome identified in the IPE; and
- (c) The service is prescribed, provided, or supervised by a licensed medical professional appropriate to the condition.

(4) Acute or emergency medical services authorized under this Section are intended to be short-term and shall not exceed sixty (60) consecutive days for any single accident, illness, or episode, including necessary follow-up examinations or treatment, postoperative care, and any medically required intensive care during the acute period consistent with 781 KAR 1:020.

(5) Services under this Section shall not be provided when:

- (a) The condition is chronic, stable, or requires ongoing medical management unrelated to the vocational objective;
- (b) The service constitutes general health care or long-term maintenance; or
- (c) The condition does not present a demonstrable risk to the employment outcome.

#### Section 14. Interpreter and Communication Access Services.

(1) Interpreter and communication access services may be provided to an eligible individual when necessary to ensure effective communication between the office and an individual, or to enable participation in vocational rehabilitation services or activities required to prepare for, obtain, maintain, or advance in competitive integrated employment.

(2) Interpreter and communication access services shall be delivered by providers who possess the certification, licensure, or credentialing appropriate to the assignment and the individual's communication needs.

(3) The office shall provide the individual with information necessary to make an informed choice regarding interpreter qualifications, style, skill level, and certification appropriate to the assignment and communication preference of the individual.

(4) Interpreters and communication access providers shall comply with applicable professional codes of ethics, including requirements related to confidentiality and impartiality.

#### Section 15. Transportation Services.

(1) Transportation services may be provided to an individual when necessary for the individual to participate in a vocational rehabilitation service and shall not be provided as the sole service on the IPE.

(2) Transportation shall be the most reasonable and cost-effective option available that meets the individual's disability-related vocational needs.

(3) Transportation shall be time-limited and restricted to the period in which the individual is actively participating in the related vocational rehabilitation service, training, or activity.

(4) The office does not reimburse for travel when the individual uses a personal vehicle owned by someone else unless required for vocational reasons.

#### Section 16. ~~Section 2.~~ Driver Rehabilitation Technology Services.

(1) Driver rehabilitation technology services may be provided if:

- ~~(a)~~ personal ~~Personal~~ transportation is required to meet the job goals specified on the IPE or is necessary to participate in other services required to achieve the employment objective identified on the IPE ~~individualized plan for employment;~~

~~[(b)] [The individual meets the economic need qualifications established in 781 KAR 1:030; and]~~

~~[(c)] [The individual is within a category that is presently being served in the Order of Selection as established in 781 KAR 1:030].~~

(2) Driver training and extended driver evaluation may be provided if:

(a) The services are recommended by a qualified medical or rehabilitation professional, which may include a physician, an occupational therapist with driver rehabilitation training, a certified driver rehabilitation specialist, or another provider who meets applicable state licensure or certification requirements for driver rehabilitation services;

(b) If vehicle modification is required, the ~~[applicant or eligible]~~ individual meets the criteria for vehicle modification, as established in Section ~~18~~3 of this administrative regulation;

(c) The ~~[applicant or eligible]~~ individual agrees to obtain additional practice as recommended by a certified driver rehabilitation specialist; ~~[and]~~

(d) The ~~[applicant or eligible]~~ individual owns or has access to an appropriate vehicle both during and upon completion of driver's training; ~~[.]~~

(e) The individual possesses, at a minimum, a valid driver's permit before any referral for driver evaluation is provided; and

(f) A qualified medical or rehabilitation professional, which may include a physician, an occupational therapist with driver rehabilitation training, a certified driver rehabilitation specialist, or another provider who meets applicable state licensure or certification requirements for driver rehabilitation services, has completed a driver evaluation and identified the type and amount of driver training and any needed adaptive driving equipment or vehicle modification.

(3) Driver rehabilitation technology services may be provided to an ~~[applicant or eligible]~~ individual who does not meet the requirements of subsection (2) of this section if the office~~[the Director of Field Services or designee]~~ determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

(4) Driver rehabilitation technology services shall not include general driver education or permit-preparation courses that are not directly related to the individual's disability and vocational rehabilitation needs.

(5) Transport evaluations may be provided when an individual will not drive but requires evaluation of safe entry to, exit from, or transport in a private vehicle to participate in vocational rehabilitation services or to obtain or maintain competitive integrated employment.

(6) Services requiring access to a vehicle for evaluation or training may be authorized only when the office determines that the vehicle to be used is safe and appropriate for the recommended evaluation, training, or adaptive equipment.

(7) The office shall not purchase, lease or otherwise provide a motor vehicle for any individual. Vehicle purchase is not an allowable rehabilitation service and shall not be authorized as assistive technology, transportation, or as any other good or service under this administrative regulation. For purposes of this section, the term vehicle does not include wheelchairs, scooters, or any other mobility devices used as personal medical equipment under Section 6.

#### Section 17. Bioptic Driving Services.

(1) Bioptic driving services may be provided when independent transportation is vocationally necessary, the individual meets the visual and statutory requirements of KRS

186.576 to 186.579, and bioptic driving is identified as part of the employment strategy in the IPE.

(2) Bioptic driver rehabilitation services may include, as appropriate:

- (a) Instruction in the use of the bioptic telescopic device;
- (b) Preparatory or pre-driver training consistent with statutory and regulatory requirements;
- (c) Behind-the-wheel driver rehabilitation training provided by a certified driver rehabilitation specialist or a qualified employee of the office; and
- (d) On-road evaluation to determine readiness for driving skills testing and licensing.

(3) The office shall review annual comprehensive visual examination reports for licensed bioptic drivers as required by KRS 186.579(3)(b). If the report indicates instability or deterioration of visual function, the office may:

- (a) Require additional visual assessment; and
- (b) Notify the Kentucky Transportation Cabinet Medical Review Board if the individual no longer meets statutory visual requirements.

(4) When a qualified vision specialist recommends removal of a daytime-only driving restriction, the office shall:

- (a) Arrange the nighttime driving evaluation required by KRS 186.579(3)(b);
- (b) Coordinate scheduling of any required nighttime road test with the Kentucky State Police; and
- (c) Transmit evaluation results to the Kentucky Transportation Cabinet for licensing determination.

(5) The office may authorize bioptic driving services through programs that meet applicable state licensure or certification requirements. Individuals may also obtain bioptic services at their own expense, provided all statutory licensing requirements are met.

#### Section 18. ~~Section 3.~~ Vehicle Modification Services.

(1) Modification of a private vehicle shall be authorized if the ~~eligible~~ individual:

- (a) Completes a driver evaluation and vehicle modification assessment by a rehabilitation technology specialist; and
- (b) Obtains a vehicle modification prescription from a certified driver rehabilitation specialist.

(2) Modification of a private vehicle shall be provided on the most cost-effective vehicle necessary for the individual's personal transportation for employment, using the most cost-effective means of modification as documented in the rehabilitation technology assessment.

(3) Recoverable, nonpermanent modifications shall be provided for private vehicles if available and cost-effective. Permanent modifications shall be considered only when recoverable options cannot meet the individual's disability-related vocational needs.

(4) A vehicle modification shall not be performed on a vehicle other than that recommended by the office or qualified vendor ~~[a certified driver rehabilitation specialist]~~, unless:

- (a) The vehicle can be modified to meet the individual's needs; and
- (b) The individual assumes all costs associated with the modification of the vehicle in excess of the cost of modification of the recommended vehicle.

(5) Before a non-recoverable, permanent vehicle modification will be approved, an ~~eligible~~ individual shall obtain a valid Kentucky operator's license or, for nondriver passenger modification, documentation demonstrating vocational necessity for safe transportation.

(6) A non-recoverable, permanent vehicle modification costing in excess of \$5,000 shall not be delivered to the ~~eligible~~ individual unless the ~~eligible~~ individual provides proof

of insurance for the replacement cost of the vehicle and vehicle modifications.

(7) A vehicle modification costing in excess of \$10,000 shall not be provided unless the ~~eligible~~ individual:

- (a) Has a vocational objective of competitive integrated employment;
- (b) Is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months; and
- (c) The ~~office~~ ~~Director of Field Services or designee~~ determines that the modification has a direct relationship to the employment objective and that failure to provide the modification would prevent the successful achievement of the employment objective or would result in a significant cost savings to the office.

(8) Vehicle modifications in excess of \$10,000 shall not be provided on a used vehicle unless:

- (a) The vehicle is no more than two (2) years old;
- (b) The odometer on the vehicle reads no more than 50,000 miles; and
- (c) An assistive technology specialist inspects the vehicle and determines that it is appropriate for the required modification.

(9) Vehicle modifications shall not be performed on a leased vehicle unless:

- (a) An assistive technology specialist inspects the vehicle and determines that it is appropriate for the required modification;
- (b) Written permission for the specific modification is obtained from the leasing company; and
- (c) Recoverable, nonpermanent equipment is used.

(10) The ~~eligible~~ individual shall be solely responsible for providing maintenance, repair, and upkeep to the modifications as established in any relevant warranties.

(11) The ~~eligible~~ individual shall pay for any maintenance, service, and repairs for modifications not under warranty except as provided in Sections 19 and 20 ~~Section 4(2)~~ of this administrative regulation.

#### Section 19. ~~Section 4.~~ Upgrade and Repair of Vehicle Modifications.

(1) An upgrade to a vehicle modification shall not be provided unless:

- (a) The upgrade is required due to a medically documented change in status or function that necessitates a change in driving equipment or vehicle chassis;
- (b) The ~~eligible~~ individual is employed in a competitive integrated employment setting; and
- (c) The ~~eligible~~ individual completes a driver evaluation or non-recoverable, permanent vehicle modification assessment ~~as established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010~~.

(2) If the vehicle upgrade involves the purchase of a driving system, the vehicle shall be inspected by the office ~~an assistive technology specialist~~ and found:

- (a) To be appropriate for the proposed modification; and
- (b) To meet all manufacturer requirements for the proposed driving system.

(3) A repair to a vehicle modification shall be provided if:

- (a) The ~~eligible~~ individual is currently competitively employed in an integrated setting, as defined in 34 C.F.R. 361.5(c)(9);
- (b) The repair is not required as a result of the ~~eligible~~ individual's negligence, misuse, abuse of the equipment, or failure to provide proper maintenance of the equipment;
- (c) The ~~eligible~~ individual provides the office with maintenance records for the vehicle and vehicle modifications;
- (d) The office ~~An assistive technology specialist~~:

1. Inspects the maintenance records of the vehicle and vehicle modifications;

2. Determines that the maintenance has met manufacturer requirements;
  3. Inspects the vehicle and modifications;~~[and]~~
  4. Determines that is reasonable to repair the modification; and
  5. Determines that the vehicle will be safe to operate once repaired; and
- (e) The ~~[eligible]~~ individual completes a driver evaluation by a certified driver rehabilitation specialist and obtains a non-recoverable, permanent vehicle modification prescription from the specialist, if requested by the office~~[as established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010].~~
- (4) An upgrade or repair to a vehicle modification costing in excess of \$10,000 shall not be provided unless the office~~[Director of Field Services or designee]~~ determines that failure to provide the update or repair would prevent the successful maintenance of competitive integrated employment or would result in a significant cost savings to the office.
- (5) An upgrade or repair may be provided to an ~~[eligible]~~ individual who does not meet the requirements of this section if the office~~[Director of Field Services or designee]~~ determines:
- (a) That documentation exists that failure to provide the services will preclude the successful achievement or maintenance of competitive integrated employment under~~[completion of]~~ the individualized plan for employment; or
  - (b) The provision of the service would result in a substantial cost savings to the office.

Section 20. ~~[Section 5.]~~ Repeat Vehicle Modifications.

- (1) Except as provided in this section, or as approved under the exception process in 781 KAR 1:020, the office shall not provide more than one (1) vehicle modification per ~~[eligible]~~ individual.
- (2) The office shall provide a repeat vehicle modification if:
  - (a) The ~~[eligible]~~ individual is currently working in a competitive integrated employment setting, as defined in 34 C.F.R. 361.5(c)(9);
  - (b) The ~~[eligible]~~ individual has a five (5) year work history since the last modification and has been working consistently for a minimum of two (2) years;
  - (c) The previously modified vehicle has at least 105,000 additional miles on it since the last modification;
  - (d) An assistive technology specialist inspects the vehicle and modifications and recommends replacement of the vehicle or modifications;
  - (e) The ~~[eligible]~~ individual provides the office with a maintenance record for the vehicle and modifications that demonstrates that the maintenance has been provided according to manufacturer requirements;
  - (f) The ~~[eligible]~~ individual completes a driver evaluation by a certified technology specialist and obtains a vehicle modification prescription from the specialist; and
  - (g) The office~~[Director of Field Services or designee]~~ determines that failure to provide the repeat modification will prevent successful maintenance of competitive integrated employment or would result in a significant cost savings for the office.

Section 21. ~~[Section 6.]~~ Property Modification.

- (1) Permanent, nonrecoverable modification to a private home, business, or property may be provided if:
  - (a) The office ~~[A qualified rehabilitation counselor]~~ determines the property modification~~[it is]~~ essential to achieve the employment objective of the ~~[eligible]~~ individual;
  - (b) ~~[The eligible individual meets economic needs qualifications established in 781 KAR 1:030;]~~

~~{(e)}~~ The office ~~{A qualified rehabilitation counselor}~~ determines that failure to provide the modification will preclude the successful achievement of the employment goal;

~~(c)~~ ~~{(d)}~~ A property modification assessment identifying the most effective and lowest-cost modification that will meet the individual's disability-related needs is completed by the office~~{an assistive technology specialist}~~;

~~(d)~~ ~~{(e)}~~ The ~~{eligible}~~ individual or family member owns the property to be modified and is current on any mortgage payments, and has owned the property for at least two (2) years unless an exception is approved under subsection (4) of this section; and

~~(e)~~ ~~{(f)}~~ The ~~{eligible}~~ individual has not received permanent, nonrecoverable modifications to a home from the office in the past~~{, and}~~

~~{(g)}~~ ~~{The eligible individual is within a category that is presently being served in the order of selection as established in 781 KAR 1:030.}~~

(2) Property modifications in excess of \$30,000 or twenty (20) percent of the Property Value Administrator (PVA) assessment value of the home or property, whichever is less, shall not be provided.

(3) Property modifications shall be limited to the most cost effective means of safely addressing the disability needs of the ~~{eligible}~~ individual as required for employment and shall:

(a) Be recoverable, nonpermanent modifications~~{, if possible}~~;

(b) Be cost effective;

(c) Provide access to one (1) entrance to and exit from the home, business, or property;

(d) Provide access to entrance to and exit from one (1) bathroom area and use of the facilities in that bathroom;

(e) Provide access to entrance to and exit from one (1) bedroom area; and

(f) Allow access to corridors necessary to access the bathroom and entrance and exit area of the property.

(4) A property modification shall not be provided when a qualified contractor determines that the existing structure cannot safely support the modification without structural reinforcement, reconstruction, or other improvements prohibited under subsection (5) or requiring upgrades to underlying systems or structures as described in subsection (6).

~~(5)~~ ~~{(4)}~~ Property modifications shall not be provided to homes or properties purchased within the last two (2) years unless there is medical documentation to support a finding that there has been a significant change in status or function of the ~~{eligible}~~ individual that has occurred since the initial purchase of the property, and that finding could not have been anticipated when the home or property was purchased.

~~(6)~~ ~~{(5)}~~ Property modifications shall not include structural additions to existing properties or the purchase of new property. Structural additions include any improvement that increases the footprint or square footage of the structure.

~~(7)~~ ~~{(6)}~~ The office shall not restore modified property to its original condition or upgrade areas of the property not affected by the modification into compliance with current local building codes.

(8) All work funded by the office shall comply with applicable building codes, but the property owner shall be responsible for upgrades required to bring underlying structures or systems into compliance before a modification is undertaken.

~~(9)~~ ~~{(7)}~~

(a) A request from the individual to make changes or additions to the recommendation of the office ~~{assistive technology specialist}~~ shall be approved in writing by the office~~{specialist}~~ prior to being implemented in order to ensure that the modification does not affect the accessibility of the project; and

(b) The cost of all changes or additions shall be assumed by the ~~{eligible}~~ individual.

~~(10)~~ ~~{(8)}~~ The ~~{eligible}~~ individual shall provide maintenance, repair, and upkeep to the modifications as required for relevant warranties.

(11) ~~{(9)}~~ The ~~{eligible}~~ individual shall be solely responsible for maintenance, service, and repairs for modifications not under warranty.

(12) ~~{(10)}~~ Property modifications may~~{shall}~~ be provided to an ~~{eligible}~~ individual that does not meet all the requirements of this section if the office~~{Director of Field Services or designee}~~ determines that failure to provide the modification would prevent the successful achievement of the vocational objective or would result in a significant cost savings to the office. Exceptions shall not be granted for modifications requiring structural reinforcement, additions, or upgrades to underlying structures or systems prohibited under subsections (5) or (6).

## Section 22. Community Rehabilitation Program ("CRP") and Supported Employment Services.

(1) The office may purchase community rehabilitation services from a community rehabilitation program when such services are necessary for an individual to prepare for, obtain, maintain, or advance in competitive integrated employment.

(2) CRP services shall be consistent with the IPE and shall be provided only when they address disability-related vocational needs.

(3) CRP services may include, as appropriate:

(a) Comprehensive vocational evaluation;

(b) Limited assessment services;

(c) Adjustment services;

(d) Employment and retention services; and

(e) Supported employment services for individuals with the most significant disabilities.

(4) Adjustment services shall be time-limited and shall not be used as long-term or permanent employment. The expected duration generally shall not exceed six (6) months from the authorization date unless an exception is approved in accordance with 781 KAR 1:020.

(5) Employment and retention services may include job development, job placement, initial job coaching, and time-limited follow-up supports when necessary to achieve or maintain a competitive integrated employment outcome.

(6) Supported employment services may be provided to individuals with the most significant disabilities through community rehabilitation programs or other qualified providers, consistent with 34 C.F.R. 361.5(c), 361.48(b), 361.55, and 34 C.F.R. Part 363.

(7) Supported employment services shall be:

(a) Provided in competitive integrated employment and shall be designed to achieve and maintain a competitive integrated employment outcome;

(b) Time-limited; and

(c) Provided in conjunction with ongoing support services and extended services to be provided by another public or private entity after vocational rehabilitation services are concluded.

(8) Community Rehabilitation Program Eligibility and Payment. To receive payment as a community rehabilitation program under this section, an entity shall:

(a) Meet the federal definition of a community rehabilitation program in 34 C.F.R. 361.5(c);

(b) Be approved by the office as a vendor in accordance with state procurement requirements; and

(c) Receive authorization for the services provided.

(9) CRPs shall provide written reports and documentation sufficient to support case decisions and payment.

## Section 23. Post-Secondary Training and Transition Services.

- (1) Post-secondary education and post-secondary transition program services may be provided when required to achieve the employment outcome identified in the IPE and when consistent with the individual's strengths, interests, abilities, and informed choice.
- (2) Post-secondary transition program services may be provided if:
  - (a) The individual meets age and eligibility criteria; and
  - (b) Participation in the program is necessary to achieve the employment outcome identified in the IPE.
- (3) Allowable services may include, as appropriate:
  - (a) Tuition, required fees, books, and supplies;
  - (b) Training-related transportation and maintenance consistent with Sections 15 and 31(2) of this administrative regulation;
  - (c) Classroom accommodations and auxiliary aids, including interpreters, note-takers, adaptive materials, and assistive technology;
  - (d) Tutorial services and educational assistance consistent with Section 29 of this administrative regulation; and
  - (e) Disability-related supports necessary for participation and progress.
- (4) The office shall coordinate post-secondary education funding with federal student aid and other available funding sources before authorizing payment for post-secondary education.
- (5) Support for post-secondary training shall be limited to the most cost-effective program that meets the individual's vocational needs and shall not be authorized when training is not clearly linked to an employment outcome.
- (6) The individual shall maintain satisfactory academic or training progress consistent with institutional standards and expectations documented in the IPE. The office may authorize continued support for one (1) additional term when justified and documented.
- (7) Recognized secondary or post-secondary credentials and measurable skill gains for individuals receiving training services shall be documented, in accordance with 34 C.F.R. 361.155.

#### Section 24. Job Placement Services.

- (1) Job placement services may be provided when necessary to achieve the employment outcome in the IPE.
- (2) Job placement services may be delivered by office staff, community rehabilitation programs, supported employment providers, on-the-job training providers, or other qualified vendors, consistent with informed choice.
- (3) Job placement services may include, as appropriate:
  - (a) Job development and job leads;
  - (b) Assistance with job applications and interviews;
  - (c) Identification of reasonable accommodations;
  - (d) Coordination of supports needed to begin employment; and
  - (e) Other services necessary to obtain competitive integrated employment.
- (4) Employment obtained through job placement services shall occur in the most integrated setting appropriate and shall meet the definition of competitive integrated employment in 34 C.F.R. 361.5.
- (5) Self-employment may be considered a suitable employment outcome if it meets the definition of competitive integrated employment in 34 C.F.R. 361.5 and is developed and approved in accordance with 781 KAR 1:020.
- (6) Home-based employment, including telework or remote work, may be considered suitable if it meets competitive integrated employment requirements. Home-based work shall not be considered self-employment unless the individual owns and operates the business.

#### Section 25. Post-Employment Services.

- (1) Eligibility and status.
  - (a) Post-employment services may be provided only to individuals who:
    1. Have been determined eligible for vocational rehabilitation services;
    2. Have achieved an employment outcome; and
    3. Require limited vocational rehabilitation services to maintain, regain, or advance in competitive integrated employment.
  - (b) A re-determination of eligibility is not required for post-employment services.
  - (c) Post-employment services shall be provided under an amended IPE, developed and implemented in accordance with 34 C.F.R. 361.45 and 361.46.
- (2) Post-employment services shall:
  - (a) Consist of one (1) or more vocational rehabilitation services permitted under 34 C.F.R. 361.48(b);
  - (b) Be limited in scope and duration; and
  - (c) Address rehabilitation needs that do not require a complex or comprehensive provision of services.
- (3) Post-employment services may include, as appropriate, maintenance of assistive technology, short-term training or support to address changes in job duties, or other time-limited services necessary to maintain, regain, or advance in competitive integrated employment.
- (4) Post-employment services shall not be used to provide a comprehensive new sequence of services equivalent to initial vocational rehabilitation services. If comprehensive services are required, the office shall:
  - (a) Conclude post-employment services;
  - (b) Close the existing case in accordance with federal requirements; and
  - (c) Assist the individual to apply for a new case, including assessment to determine eligibility and development of a new IPE, if appropriate.
- (5) Post-employment services shall be provided only under an IPE amendment that:
  - (a) Identifies the employment outcome being maintained, regained, or advanced;
  - (b) Specifies the post-employment services to be provided; and
  - (c) Describes how the services are necessary to maintain, regain, or advance in competitive integrated employment.
- (6) Post-employment services should be initiated and completed, when feasible, prior to case closure and reporting of the employment outcome to the Rehabilitation Services Administration.
  - (a) A case that has been closed in competitive integrated employment and reported to the Rehabilitation Services Administration shall not be re-opened solely for the purpose of providing post-employment services.
  - (b) If an individual whose case has been closed in competitive integrated employment later requires vocational rehabilitation services to maintain, regain, or advance in employment, the individual shall apply for services and be evaluated for eligibility in accordance with 781 KAR 1:020 and federal requirements.

#### Section 26. On-The-Job Training Services.

- (1) On-the-job training (OJT) services may be provided when:
  - (a) The individual has been determined eligible for vocational rehabilitation services;
  - (b) The training is necessary to achieve the employment outcome identified in the IPE; and
  - (c) The employer agrees to hire the individual as an employee for the duration of the training.
- (2) An OJT agreement shall be executed between the office, the employer, and the individual and shall describe the duties, duration, supervision, and reimbursement terms.
- (3) The office may:

- (a) Reimburse the employer for a portion of wages paid during training, consistent with allowable reimbursement rates and conditions;
- (b) Authorize training for the period reasonably required to learn the essential job duties; and
- (c) Provide related vocational rehabilitation services needed to support successful completion of the training.
- (4) The employer shall.
  - (a) Comply with all applicable wage, hour, and nondiscrimination laws;
  - (b) Provide wage and benefit parity with similarly situated employees; and
  - (c) Provide regular progress evaluations as required by the office.
- (5) OJT shall lead to competitive integrated employment and shall not be authorized when that outcome is not expected.

#### Section 27. Work Experience Program Services.

- (1) Work Experience Program (WEP) services may be provided when necessary to:
  - (a) Determine vocational potential;
  - (b) Develop work behaviors, skills, or tolerances; or
  - (c) Support the employment outcome identified in the IPE.
- (2) WEP Services may include, as appropriate:
  - (a) Orientation in work readiness or work behaviors;
  - (b) Slot placement in a community worksite for supervised work experience; and
  - (c) Job placement assistance needed to secure competitive integrated employment.
- (3) WEP positions shall be temporary, shall not displace existing employees, and shall comply with applicable wage and labor requirements.
- (4) WEP stipends are paid to participants and shall not constitute wages or create an employer–employee relationship with the office.
- (5) WEP services shall be limited to the level and duration necessary to accomplish the objectives identified in the IPE and may be extended only as approved in accordance with 781 KAR 1:020.

#### Section 28. Pre-Employment Transition Services.

- (1) Pre-employment transition services (Pre-ETS) shall be provided to students with disabilities in accordance with 29 U.S.C. § 733; 34 C.F.R. 361.48; and in coordination with state and local educational agencies responsible for the provision of special education or related services under the Individuals with Disabilities Education Act.
- (2) The office shall provide or arrange for the provision of Pre-ETS to students with disabilities who are eligible or potentially eligible for vocational rehabilitation services. Pre-ETS may be provided individually or in groups.
- (3) Pre-ETS shall include the following required activities:
  - (a) Job exploration counseling;
  - (b) Counseling on opportunities for enrollment in comprehensive transition and post-secondary programs;
  - (c) Workplace readiness training to develop social skills and independent living skills;
  - (d) Instruction in self-advocacy, including peer mentoring; and
  - (e) Work-based learning experiences in competitive, integrated settings to the maximum extent possible.
- (4) Potentially eligible students may receive only the required Pre-ETS described in subsection (3) of this Section and auxiliary aids or services necessary to enable participation in those activities.
- (5) Additional vocational rehabilitation services, including maintenance, transportation, job coaching, or rehabilitation technology, may be provided only after the student applies for and is determined eligible for vocational rehabilitation services and has an approved IPE.

(6) Work-based learning experiences shall occur in competitive integrated settings to the maximum extent possible and shall comply with applicable child labor, wage, and safety requirements.

(7) Pre-ETS funds may be used to provide stipends directly to students when the payment is part of a structured work-based learning experience or program delivery by the office, and when the payment does not replace wages otherwise due from an employer or create an employer-employee relationship with the office.

(8) A potentially eligible student who has not applied for vocational rehabilitation services shall not be subject to the order of selection. A student who applies for services shall be subject to the order of selection consistent with federal requirements.

#### Section 29. Tutorial Services and Educational Assistance.

(1) Tutorial services and educational assistance may be provided when necessary for an individual to participate in or benefit from training or education required for the employment outcome identified in the IPE.

(2) Disability-related tutoring may be authorized when:

(a) The individual has a documented disability that results in functional limitations affecting learning or academic performance; and

(b) The tutoring is designed to address those limitations or to teach compensatory strategies needed to succeed in the training program.

(3) Remedial instruction and content tutoring may be authorized when:

(a) the individual requires basic skill development or assistance in a specific course to complete training necessary for the employment outcome; and

(b) comparable services and benefits, such as adult education or institutional tutoring services, are unavailable, inadequate, or would result in unreasonable delay.

(4) Educational assistance services may be provided when non-instructional support is required for the individual to access or participate in training, post-secondary education, or other vocational services included on the IPE. Educational assistance may include, as appropriate:

(a) reading or recording of course materials;

(b) typing or transcription of assignments;

(c) note-taking or page-turning;

(d) locating or organizing reference materials; or

(e) similar supports required for full participation.

(5) Tutorial and educational assistance services shall be coordinated, to the maximum extent appropriate, with accommodations and auxiliary aids provided by the training institution or other comparable services and benefits.

#### Section 30. Independent Living Services and Older Individuals Who Are Blind Services.

(1) Independent Living (IL) and Older Individuals Who Are Blind (OIB) services may be provided to assist individuals who are blind or visually impaired to improve or maintain their ability to function independently. An employment outcome shall not be required for eligibility for IL or OIB services.

(2) Eligibility, service categories, and allowable expenditures for IL and OIB shall be consistent with applicable federal grant requirements. IL and OIB services must be non-duplicative and coordinated with vocational rehabilitation services.

(3) For individuals who receive both vocational rehabilitation and IL or OIB services, the Rehabilitation Counselor for the Blind and the IL or OIB counselor shall coordinate assessment, planning, and service delivery.

(4) Bioptic-related services provided solely for independent living purposes shall comply with KRS 186.576 to 186.579 and applicable federal program requirements. Payment for bioptic devices, private driver training, licensing fees, or other driving-related costs under

the IL or OIB programs shall be at the discretion of the office, consistent with available program funds and allowable cost categories under 34 C.F.R. Part 367.

(5) Services and adaptive devices under IL and OIB programs shall be subject to the availability of funds and any federal grant conditions governing those programs.

### Section 31. Other Allowable Services.

#### (1) Personal Assistance Services.

(a) Personal assistance services may be provided when necessary for participation in vocational rehabilitation services or to maintain competitive integrated employment.

(b) Personal assistance services shall be provided only while the individual is receiving other vocational rehabilitation services or is engaged in employment consistent with the IPE.

(c) Long-term ongoing personal assistance needs shall be referred to appropriate community or Medicaid-funded programs.

(d) Personal assistance services shall be excluded from financial participation but remain subject to comparable services and benefits.

#### (2) Maintenance.

(a) Maintenance may not be used to fund an individual's normal living expenses.

(b) Maintenance may include short-term room and board, or other subsistence costs required to participate in vocational rehabilitation services.

(c) Payments in such circumstances may not exceed three months.

#### (3) Medication.

(a) Medication, as used in this Section, means prescribed pharmaceutical agents and related medical supplies provided for a limited duration to support the individual's participation in other vocational rehabilitation services.

(b) Medication may be provided when necessary for the individual to participate in or benefit from a substantial vocational rehabilitation service, and when comparable services and benefits are unavailable or would result in unreasonable delay.

(c) Medication shall not be provided as a stand-alone service or for long-term maintenance treatment of chronic conditions.

#### (4) Occupational Licenses, Examinations, Tools, Equipment, and Supplies.

(a) The office may purchase occupational licenses, certification or board examinations, required permits, and related documentation necessary for an individual to enter or maintain employment consistent with the IPE.

(b) The office may purchase tools, equipment, supplies, or initial stock when essential for participation in training or for initial employment, and when such items are not routinely provided by the employer or training program. "Initial stock" means the minimum consumable materials required to begin the job or training activity and does not include ongoing inventory or replenishment.

(c) The office shall pay only initial fees for licensure, certification, or union membership unless additional payments are necessary to complete the vocational rehabilitation plan.

(d) The office shall not purchase voluntary or optional memberships unless they are required for the specific employment outcome.

#### (5) Ownership and Recovery of Tools and Equipment.

(a) Items purchased by the office under subsection (4) shall remain the property of the office until the individual successfully completes training or retains employment and closed as successfully employed.

(b) If items are no longer needed or the individual does not complete the training or employment objective, the office may recover items in reusable condition and reassign them to other individuals.

(c) The office shall not purchase deluxe, optional, or premium versions of tools or equipment when a standard model is adequate.

(d) The office shall not replace lost, stolen, or damaged items except where loss occurred through no fault of the individual and with supporting documentation.

(6) Services to Family Members.

(a) Services to family members may be provided when necessary for the individual to participate in assessments, vocational rehabilitation services, or to carry out the IPE.

(b) Such services shall be provided only when failure to provide them would reasonably be expected to delay, interrupt, or prevent achievement of the employment outcome of the individual, and when they are not otherwise readily available through existing community resources.

(7) Other Goods and Services.

(a) The office may authorize goods and services not specifically listed in this administrative regulation when necessary for an individual to participate in vocational rehabilitation services or to achieve the employment outcome identified in the IPE, consistent with 34 C.F.R. 361.48(b).

(b) Goods or services that are personal in nature, unrelated to vocational rehabilitation, or primarily for general health, wellness, or household support shall not be authorized.

(c) The office shall not provide goods or services that constitute long-term maintenance or supports more appropriately provided through other public programs or community resources.

(d) Goods and services authorized under this subsection shall be documented in the case record and must be directly related to the individual's vocational rehabilitation needs.

*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 receiving 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 KRS 151B.180, et seq.

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

This administrative regulation governs the provisions of goods and services to individuals by OVR.

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

This regulation assists individuals seeking goods and services from OVR in understanding the requirements to obtain the different types of goods and services.

**(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 clearly outline the requirements regarding each type of good or service provided by OVR.

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

Changes to the regulation are necessary so that individuals will understand the requirements regarding each type of good or service provided by OVR. (c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes by outlining the specific requirements for each good or service provided by OVR.

**(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 clearly outlines the requirements regarding each type of good or service provided by OVR.

**(3) Does this administrative regulation or amendment implement legislation from the previous five years? No.**

**(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:**

No person or entity is required to take action as a result of this amendment.

**(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 the requirements to obtain goods and services.

**(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.