**Oregon Commission for the Blind**

**Vocational Rehabilitation Services**

**Policy and Procedures Manual**

Adopted by the Oregon Commission for the Blind Board

10/7/16

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**Oregon Commission for the Blind**

**Vocational Rehabilitation Services**

**Policy Manual**

I. Mission & Values of the Oregon Commission for the Blind

The mission of the Oregon Commission for the Blind (OCB) is to Empower Oregonians who are Blind to Fully Engage in Life.

The agency core values include the following:

* Customer service- Dedication to meet the needs of our clients and customers and honoring our commitments
* Leadership - Being open, authentic and lifting others up while building consensus towards a common goal
* Integrity – Meet Commitments, act responsibly with public and personal trust and be accountable for words and actions
* Professionalism – Commitment to quality, pride in your work
* Operational Excellence – Strive for the highest quality and continuous improvement
* Innovation – Developing creative solutions and putting them into action
* Collaboration – The ability to facilitate, negotiate, build consensus, build strong teams and empower others

We are committed to ensuring that people have access to options/opportunities and are equipped with the tools and resources they need in order to make meaningful choices for their lives.

We achieve our mission by providing the following types of key services:

 \* a continuum of services from youth transition to older blind services.

 \* skills training that enables people to remain independent in their home communities while maximizing their ability to participate in their community.

 \* employment counseling, training, and job placement.

 \* individual and group counseling addressing adjustment to blindness.

 \* resources for employers hiring or retaining employees who

 are visually impaired employees.

 \* training in adaptive skills for reading, computer use, traveling, job seeking, and other skills which increase independence and work readiness.

 \* supported employment programs for people with the most significant disabilities.

 \* a registry of information on Oregonians who are legally blind.

 \* public education on the abilities of people who are blind or visually impaired.

The Vocational Rehabilitation (VR) Services Program assists eligible individuals to prepare for, achieve and maintain an employment outcome.

 “Employment outcome means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment, as defined in §361.5(c)(9) (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in §361.5(c)(53), that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.” (VR Final Regulations-pgs. 690-691)

Vocational Rehabilitation counselors (VRCs) within the Vocational Rehabilitation Services Program provide case management coordination. This includes providing information about services, assessing individual needs, assisting individuals in applying for services, determining eligibility, jointly developing an individualized plan for employment (IPE) with eligible individuals who are legally blind or have progressive conditions leading to legal blindness, and coordinating services for these individuals. The program is based on individual Informed Choice, with clients being given their choice of vocational goal, services, and service providers that is consistent with the client's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The program focuses on providing services that the client requires in order to obtain employment and is time limited in nature, with closure occurring after the client has obtained and stabilized in employment.

The majority of quotes in this policy manual have been pulled from the VR Final Regulations released by the Rehabilitation Services Administration on 6/30/16. The following terms used in these quotes are references to VR agencies such as the Oregon Commission for the Blind: “DSU” (designated State unit) or “State unit”.

****II. Pre-Employment Transition****

Due to changes made in the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) signed into law on July 22, 2014, the latest Vocational Rehabilitation (VR) Regulations require that “Pre-employment transition services must be made available Statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.” (VR Final Regulations-pgs. 854-855)

A. Student with a Disability Definition

“Student with a disability means, in general, an individual with a disability in a secondary, postsecondary, or other recognized education program who--

(A)(1) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or

(2) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under this Act, is not younger than that minimum age; and

(B)(1) Is not older than 21 years of age; or

(2) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), is not older than that maximum age; and

(C)(1) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

 (2) Is a student who is an individual with a disability, for purposes of section 504.” (VR Final Regulations-pgs. 717-718)

The Oregon Commission for the Blind will use an age range of 16 through 21 years old and down to 14 when deemed appropriate by the IEP team in serving students with a disability in Pre-Employment Transition Services.

Other recognized education programs include “secondary students who are homeschooled , as well as students in other non-traditional secondary educational programs.” (VR Final Regulations- Initial Summary-pg. 11 and Discussion pg. 331)

B. Pre-Employment Transition Services (Pre-ETS)

Pre-ETS funds can only be used for the following required and authorized activities which can be provided in a group setting or on an individual basis:

1. “Required activities. The designated State unit must provide the following pre-employment transition services:

(i) Job exploration counseling;

(ii) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible;

(iii) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(iv) Workplace readiness training to develop social skills and independent living; and

(v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

Note: “. . . none of these provisions mandate that all five “required” activities be provided to each student with a disability if all the activities are not necessary. Pre-employment transition services, as is true for any vocational rehabilitation service, must be provided solely on the basis of the individual’s need for that service.” (VR Final Regulations-Discussion-pgs. 375-376)

2. “Authorized activities. Funds available and remaining after the provision of the required activities may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by—

(i) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

(ii) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;

(iii) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

(iv) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;

(v) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(vi) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;

(vii) Developing model transition demonstration projects;

(viii) Establishing or supporting multistate or regional partnerships involving States, local educational agencies, designated State units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and

(ix) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

3. “Pre-employment transition coordination. Each local office of a designated State unit must carry out responsibilities consisting of—

(i) Attending individualized education program meetings for students with disabilities, when invited;

(ii) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;

(iii) Working with schools, including those carrying out activities under section 614(d) of the IDEA, to coordinate and ensure the provision of pre-employment transition services under this section;

(iv) When invited, attending person-centered planning meetings for individuals receiving services under title XIX of the Social Security Act.” (VR Final Regulations-pgs. 855-858)

4. Services may begin once a student requests services or is recommended for Pre-ETS services and has provided documentation of disability to the VR agency.

C. Pre-Employment Transition Referral Process

For Students with Disabilities who receive Pre-Employment Transition services without applying for Vocational Rehabilitation services, the Oregon Commission for the Blind will establish the following referral procedures:

1. Referrals to the agency will be assigned to an OCB Vocational Rehabilitation Transition Counselor covering the geographical area where the referral lives. Referrals will be handled promptly, with an initial telephone or in person contact made within two weeks of the referral.
2. At a minimum OCB will collect the following basic referral information within the agency’s automated case management system:
3. Referral’s Name
4. Referral’s Address
5. Referral’s Phone Number
6. Name of Educational program referral is attending
7. Source of referral and contact information
8. Social Security Number (federally required if available)
9. Date of Birth (federally required)
10. Race (federally required if student is in secondary education)
11. Ethnicity (federally required if student is in secondary education)
12. Confirm that referral meets definition of being a Student with a Disability (federally required)
13. Record start date of Pre-Employment Transition services (federally required)
14. Record Pre-Employment Transition Services provided
15. If the referral is interested in applying for Vocational Rehabilitation services, the Vocational Rehabilitation Transition Counselor will assist the referral in applying for VR services. (See section IV below for starting information about the VR Process.) An individual can receive both Pre-ETS and VR services at the same time.

When individuals are referred to Pre-ETS without applying for VR services, they are considered to be “potentially eligible” students with disabilities. This term is only used for Pre-ETS. Just because a student with a disability has been referred to Pre-ETS, there is nothing that precludes an agency from also immediately taking that person’s application for VR services and making a timely eligibility decision. This is often advisable in case the individual needs services beyond Pre-ETS. (VR Final Regulations- Discussion- pgs. 322, 369-370)

4. When a student with a disability needs more individualized services (transition or VR services) beyond Pre-ETS, then an application for VR services, a determination of eligibility, assignment in a priority category if the agency is in an Order of Selection, and development of an individualized plan for employment are required before transition and VR services can be provided. (VR Final Regulations- Discussion- pgs.369-370)

 5. The difference between Pre-employment Transition Services and Transition services include the following:

“Pre-employment transition services, authorized by section 113 of the Act, as amended by WIOA, and implemented by final §361.48(a), are designed to help students with disabilities to begin to identify career interests that will be further explored through additional vocational rehabilitation services, such as transition services. Furthermore, pre-employment transition services are only those services and activities listed in section 113 of the Act, as amended by WIOA, and final §361.48(a). Job placement assistance is not included among the listed preemployment transition services, but it could constitute a transition service under section 103(a)(15) of the Act and final §361.48(b). Finally, pre-employment transition services are available only to students with disabilities, whereas transition services may be provided to a broader population--both students and youth with disabilities.

“Following the continuum, transition services represent the next set of vocational rehabilitation services available to students and youth with disabilities. They are outcome-oriented and promote movement from school to post-school activities, including postsecondary education, vocational training, and competitive integrated employment. As such, transition services may include job-related services, such as job search and placement assistance, job retention services, follow-up services, and follow-along services, based on the needs of the individual.

“Individualized transition services under section 103(a)(15) of the Act and final §361.48(b) must be provided to students who have been determined eligible for the VR program and in accordance with an approved individualized plan for employment. Transition services also may be provided in group settings to students and youth with disabilities under section 103(b)(7) of the Act, as amended by WIOA, and final §361.49(a)(7). Although these group services are not individualized, they can still be beneficial for job exploration, including presentations from employers in the community and group mentoring activities.” (VR Final Regulations- Discussion- pgs. 336-338)

**III. Transition Services**

Whereas Pre-employment transition services can only be provided to students with a disability who may or may not have applied for VR services with the Oregon Commission for the Blind, transition services can be provided either to a student with a disability or a youth with a disability who has applied or been determined eligible for VR services.

1. Youth with a Disability Definition

The following age range for a youth with a disability covers individuals who are younger and older than a student with a disability.

“Youth with a disability means an individual with a disability who is not—

(A) Younger than 14 years of age; and

(B) Older than 24 years of age.”

 (VR Final Regulations-pg. 724)

 There is no requirement that a “youth with a disability” be someone who is participating in an educational program.

 B. Transition Services for youth or students with a disability

“Transition services means a coordinated set of

activities for a student or youth with a disability—

(i) Designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(ii) Based upon the individual student's or youth’s needs, taking into account the student's or youth’s preferences and interests;

(iii) That includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

(iv) That promotes or facilitates the achievement of the employment outcome identified in the student's or youth’s individualized plan for employment; and

(v) That includes outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.” (VR Final Regulations-pgs. 721-722)

 C. Transition Referral Process

1. Referrals to the agency will be assigned to an OCB Vocational Rehabilitation Transition Counselor covering the geographical area where the referral lives. Referrals will be handled promptly, with an initial telephone or in person contact made within two weeks of the referral.
2. The VR Counselor will be responsible for assisting the referral in applying for VR services and will process the individual’s case through the Vocational Rehabilitation process steps identified below starting with “Referrals and Applications to the Vocational Rehabilitation Program.”

**IV. Referrals and Applications to the Vocational Rehabilitation Program**

 A. Referrals

1*.* Individuals who are employed or who want to work will be referred to OCB’s Vocational Rehabilitation Program. Referrals to the vocational rehabilitation program will be handled promptly, with an initial telephone or in person contact made within two weeks of the referral. Within this time period referred individuals will be informed of the application requirements and the information that is necessary for an eligibility determination.

2. Referrals will be distributed to counselors based upon which counselor covers the geographical area where the referral lives. Exceptions to this procedure are made for transition students and individuals who are deaf-blind, who are referred to counselors with specialized caseloads.

 Due to the agency’s size, and thus the limited number of VRCs, the agency rarely moves clients from one VRC to another.  If a client wishes to engage in the process of asking for a new VRC, the steps are as follows:

a) Request a phone or in-person meeting with the Director of Vocational Rehabilitation Services

 b) The Director of Vocational Rehabilitation Services meets with the client to discuss any issues/challenges and if they are able to resolve, services continue with the current VRC. If issues are not able to be resolved…

 c) A meeting between the client, the VRC and the Director of Rehabilitation Services is scheduled to discuss/resolve issues and determine next steps

 d) In almost all cases, the agency is able to resolve any mitigating issues between the client and the VRC. However, in the rare instance where the Director of Rehabilitation determines that the VRC and client are not able to work together, an appointment to a new VRC may occur at the Director’s discretion.  In this instance, a VRC located in another office/service area may be assigned to the case and the VRC and client will need to work together to determine the best methods of meeting/communication.

3. Referral’s basic demographic information will be collected and inputted into the agency’s automated case management system. When possible this information should include name, address, Social Security number, telephone number, referral date, birthdate, race, gender, and source of referral.

## B. Applications

 1. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate…

a) Has completed and signed an agency application form or has otherwise requested services

 b) Has provided information necessary to initiate an assessment to determine eligibility and priority for services; and

 c) Is available to complete the assessment process.

 2. Application forms will be made widely available throughout the State.

3. Whenever possible initial interviews should take place in the individual's home*.* The counselor will explain the purpose of the vocational rehabilitation program, its eligibility requirements and the information that needs to be obtained, information about the order of selection

 process (if appropriate), as well as what services the program offers. This information will be provided using an “appropriate” mode of communication or the native language of the individual when available. “Appropriate modes of communication means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated.” (VR Final Regulations- pgs. 677-678)

 4. The counselor is responsible for informing individuals through the application process for vocational rehabilitation services that individuals who receive services under the program must intend to achieve an employment outcome. If the referral is not interested in working, the individual will be referred to other programs such as Independent Living. If the individual intends to achieve an employment outcome, the agency will verify and document the applicant’s identity and authorization to work in the U.S. following the requirements of the US Citizenship and Immigration Services’ Employment Eligibility Verification Form I-9. OCB is not required to make copies of the applicant’s identity and employment authorization documents but will keep a record of which documents were verified meeting the requirements of the I-9’s “List of Acceptable Documents.” Verification of legal status to work will be completed before the individual is determined eligible for VR services. Identity and authorization to work verification will be made each time an individual applies or re-applies for VR services.

 5. At the time of application individuals will be informed and given a copy of their rights and responsibilities. These include: eligibility requirements, expectations for client's full participation in making informed choices regarding their program, a description of the vocational rehabilitation process including eventual case closure, confidentiality, the use of comparable benefits when appropriate, the need to keep appointments and follow through with other professional instructions, the right of appeal and information on the Client Assistance Program.

 Copies of these rights and responsibilities are available in large print, Braille, audio (e.g. MP3), or electronic format.

**V. Eligibility**

A. Eligibility Basic Requirements

“The designated State unit's determination of an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements” (VR Final Regulations-pg. 823):

1. “**A determination by qualified personnel that the applicant has a physical or mental impairment**.” (VR Final Regulations-pg. 823)For OCB this determination is made by a VR Counselor who sometimes consults with a medical consultant. To be eligible for OCB VR services the individual must be legally blind or have a condition likely to lead to legal blindness from which they are currently experiencing functional limitations. Legally blind is defined as 20/200 or worse in the better eye after all possible correction or fields of 20 degrees or less. The eye condition must be congenital or organic in nature.

 2. “**A determination by qualified personnel that the**

**applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant**.” (VR Final Regulations-pg. 823) For OCB this determination is made by the VR Counselor. “The term ‘substantial impediment to employment’ should be interpreted in its broadest context, not just considered with respect to the applicant’s specific vocational goal when determining eligibility. Final §361.42(c)(2)(ii)(B), as it did in prior regulations, prohibits the DSU from considering the individual’s desired employment objective, even if known, during this stage of the vocational rehabilitation process.” (VR Final Regulations- Discussion- pgs. 259-260)

3. “**A determination by a qualified vocational rehabilitation counselor employed by the designated State unit that the applicant requires vocational 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, interest, and informed choice.** For purposes of an assessment for determining eligibility and vocational rehabilitation needs under this part, an individual is presumed to have a goal of an employment outcome.” (VR Final Regulations-pg. 823)

“Section 102(a)(1)(B) of the Act, as amended by WIOA, allows for an individual with a disability, whose physical

or mental impairment constitutes a substantial impediment to employment, to be determined eligible for vocational rehabilitation services if he or she requires services to prepare for, secure, retain, advance in, or regain employment. By adding the phrase “advance in,” section 102(a)(1)(B) of the Act, as amended by WIOA, reinforces the Department’s long-standing commitment that the VR program must provide comprehensive services to assist individuals with disabilities to achieve their maximum vocational potential. The VR program is not intended solely to place individuals with disabilities in entry-level jobs but rather to assist them to obtain appropriate employment, given their unique strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The VR program’s purpose is the same regardless of whether an individual wants to advance in employment or obtain employment.” (VR Final Regulations- Discussion-pgs. 255-256)

“Consistent with long-standing Department policy, we interpret the phrase “advance in employment,” as used in section 102(a)(1)(B) of the Act and final 361.42(a)(1)(iii), broadly to include advancement within an individual’s current employment or advancement into new employment.” (VR Final Regulations- Discussion-pg. 257)

A “DSU may not use an applicant’s employment or education to determine his or her eligibility for vocational rehabilitation services.” However employment history and education can be considered when evaluating VR service needs. (VR Final Regulations- Discussion-pgs. 261-262)

“A DSU must examine a variety of factors when developing an individualized plan for employment, including the individual’s past and current employment and education credentials, to ensure that the appropriate vocational rehabilitation services are identified to assist the individual to achieve his or her chosen vocational goal specified in the approved individualized plan for employment. However, a DSU may not use an applicant’s employment or education to determine his or her eligibility for vocational rehabilitation services.” (VR Final Regulations- Discussion-pgs. 261-262)

“Regardless of his or her education or employment history, the applicant still must demonstrate that he or she has a disability and that the disability constitutes a substantial impediment to employment as required in §361.42(a)(1)(ii) and requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment in accordance with final §361.42(a)(1)(iii). In making these determinations,

the qualified vocational rehabilitation counselor would review all known information about the applicant in order to assess the individual’s impediments and service needs, but the eligibility determination itself must not be based on the fact that the individual has an extensive employment or educational history.” (VR Final Regulations- Discussion-pgs. 262-263)

B. Presumption of Benefit

1. If an applicant meets the eligibility requirements in V.A.1. and 2. above, then OCB must presume that the individual can benefit in terms of an employment outcome. (VR Final Regulations- pg. 824)

2. In the rare instances when an applicant’s disability may be considered so severe that it does not appear that the individual can benefit from VR services in terms of an employment outcome, the determination of not benefitting in terms of employment can only be made when it can be demonstrated based on clear and convincing evidence through the provision of trial work experiences in competitive integrated employment settings to the maximum extent possible (see section V. E. below).

C. Presumption of Eligibility for Social Security Recipients and Beneficiaries

 1. If an applicant was determined eligible for Social Security benefits under title II or title XVI of the Social Security Act, then that applicant should be presumed eligible and meeting requirements under V.A.1. and 2. above and should be considered an individual with a significant disability.

“If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under title II or title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under paragraph (a)(3)(i)(A) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the State unit must verify the applicant's eligibility under title II or title XVI of the Social

Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with §361.41(b)(2).” (VR Final Regulations- pgs. 824-825)

 2. Because OCB uses specific medical criteria identified in V.A.1 above to determine eligibility for its services and for planning purposes, the agency would still want to get a copy of eye reports from Social Security or from the applicant’s eye doctor if the agency doesn’t already have existing records establishing legal blindness. This is especially needed if the Social Security recipient is receiving benefits as a disabled individual instead of as an individual who is legally blind.

 Once confirmation has been made that the individual is receiving SSA benefits as an individual who is legally blind, the eligibility statement should be completed as soon as possible and the individual should be moved out of applicant status in less than 60 days.

D. Timeline to determine Eligibility

 The eligibility determination must be made within 60 days of application, unless-

 1. Exceptional and unforeseen circumstances beyond the control of the agency preclude a determination within 60 days and the agency and the individual agree to a specific extension of time. If an extension is needed, the counselor needs to fill out an extension to determine eligibility form; or

2. Trial work experiences are necessary if the eligibility determination cannot be made because there is a question of client being able to benefit from services in terms of employment.

E. Trial Work Experiences for individuals with significant disabilities

1. “Prior to any determination that an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability or that the individual is ineligible for vocational rehabilitation services, the designated State unit must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations.

2. “(i) The designated State unit must develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in competitive integrated work situations through the use of trial work experiences, which must be provided in competitive integrated employment settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual.

“(ii) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic integrated work settings.

“(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that –

(A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(B) There is clear and convincing evidence that due to the severity of the individual’s disability, the individual is incapable of benefitting from the provision of vocational rehabilitation services in terms of an employment outcome; and

“(iv) The designated State unit must provide appropriate supports, including, but not limited to, assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.” (VR Final Regulations- pgs. 829-831)

3. The counselor and client or, as appropriate, the client’s representative must complete, date, and sign a Trial Work Plan to assess periodically the individual's abilities, capabilities, and capacity to perform in competitive integrated work situations through the use of trial work experiences. The counselor should also address in the eligibility form what questions need to be answered during the trial work experiences in order to determine whether or not the individual can benefit from vocational rehabilitation services in terms of an employment outcome.

4. “Clear and convincing evidence means that the designated State unit has a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term clear means unequivocal. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of “clear and convincing evidence” must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.”

(VR Final Regulations- pg.832)

F. Intent to achieve Employment Outcome

“Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under title II or title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.” (VR Final Regulations- pg. 825)

 G. No entitlement to VR Services

Eligibility determination and presumptive eligibility should not be interpreted as creating an entitlement to any vocational rehabilitation service. (VR Final Regulations- pg. 826)

 H. Prohibited Factors in Determining Eligibility

The following factors cannot be used in making an eligibility determination:

 1. Duration of residency requirement

OCB “will not impose, as part of determining eligibility under this section, a duration of residence requirement that excludes from services any applicant who is present in the State. The designated State unit may not require the applicant to demonstrate a presence in the State through the production of any documentation that under State or local law, or practical circumstances, results in a de facto duration of residence requirement.” (VR Final Regulations- pg. 827)

 2. “No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability”; (VR Final Regulations- pg. 827) and

3. “The eligibility requirements are applied without regard to the—

(A) Age, sex, race, color, or national origin of the applicant;

(B) Type of expected employment outcome;

(C) Source of referral for vocational rehabilitation services;

(D) Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family;

(E) Applicants’ employment history or current employment status; and

(F) Applicants’ educational status or current educational credential.” (VR Final Regulations- pgs. 827-828)

I. Review and assessment of data for eligibility determination

 1. Eligibility determinations shall be based on “a review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, particularly information used by education officials, and determinations made by officials of other agencies; and

 2. “To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible;” (VR Final Regulations- pgs. 828-829) and

 3. For applicants determined eligible for Social Security benefits under title II or title XVI of the Social Security Act, must presume the basic eligibility requirements are satisfied by determinations made by the Social Security Administration.

 4. When additional eye information is required to determine eligibility, the applicant will be given the choice of an optometrist or ophthalmologist unless an evaluation from a particular type of specialist is necessary. The agency will cover the costs not covered by medical insurance for this exam.

 5. If the agency has older eye information that establishes that the applicant is legally blind and the applicant does not have an eye condition which will improve, then this existing information (even if it is from a previous time when client applied for services) can be used to establish eligibility for services for the latest application that was filed. If the client reports that their eye condition improved from the last reports that were submitted, then updated information should be obtained before determining eligibility. If the agency has existing eye information which confirmed that the applicant was legally blind and the applicant reports that their vision has deteriorated since the last report was submitted, in order not to delay the eligibility process the VR counselor can establish eligibility based on the last report. After eligibility is determined, the counselor is encouraged to obtain updated eye information for assessment, accommodation and planning purposes.

 6. In order to determine whether or not an individual is legally blind, eye information is submitted to the agency’s ophthalmological consultant for review. The consultant will determine, based on available information, whether or not the individual is legally blind, what their visual acuity is, identify the diagnosis, make recommendations for further treatment and identify working conditions or physical activities to be avoided. If the person is not legally blind, the consultant will indicate whether or not the condition is likely to lead to legal blindness. The consultant will also indicate whether further eye information is needed to make a determination of legal blindness. It is then the counselor’s responsibility to follow-up with this request so that the agency has sufficient information to establish medical eligibility for services. The medical consultant makes a determination of legal blindness but the counselor is responsible for making a determination as to whether or not the individual is eligible for services.

See agency’s “Standard Operating Procedures” for information on actions to complete this determination.

7. When necessary, other medical and psychological information may be submitted to the agency’s internist consultant for review and consultation. The consultant should be asked to specifically address the need for interpretation of information or for specific recommendations on the individual's medical or psychological condition and possible work restrictions.

8. Individuals experiencing “functional blindness”, also sometimes called a conversion or hysterical blindness, where the individual experiences vision loss which cannot be attributed to organic causes, are not eligible for services from this agency. When appropriate these individuals should be referred to Oregon Vocational Rehabilitation (OVR).

 9. Upon completion of the eligibility assessment, for each individual determined eligible for vocational rehabilitation services, the counselor must complete a certificate of eligibility in the agency’s automated case management system. This document must be printed, dated, and signed by the counselor.

J. Ineligibility Determination Procedures

 If OCB determines that an applicant is ineligible for VR services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the VR counselor must -

1. “Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

 2. “Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of State unit personnel determinations in accordance with §361.57;

3. “Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program;

4. “Refer the individual—

(1) To other programs that are part of the one-stop service delivery system under the Workforce Investment Act that can address the individual's training or employment-related needs; or

(2) To Federal, State, or local programs or service providers, including, as appropriate, independent living programs and extended employment providers, best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is incapable of achieving, an employment outcome as defined in §361.5(c)(15).

5. “Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.” (VR Final Regulations- pgs. 833-834)

Note: See agency’s “Standard Operating Procedures” for referral to Oregon Vocational Rehabilitation (OVR) which is appropriate when the applicant does not meet OCB’s vision criteria for eligibility. Ineligibility decisions based on the severity of the disability must be based upon clear and convincing evidence and require trial work experiences prior to closure.

K. Closure prior to eligibility determination

1. “The designated State unit may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.” (VR Final Regulations- pg. 835)

2. The VR Counselor will notify the applicant in writing using their preferred mode of communication of the closure decision.

**VI. Order of Selection**

A. Purpose of Order of Selection

 If the agency is unable to provide the full range of VR services to all eligible individuals due to a projected shortfall of case service funds or a shortage of qualified staff to provide services, the agency will enter a statewide Order of Selection.

 B. Order of Selection Federal Requirements

“a) General provisions.

(1) The designated State unit either must be able to provide the full range of services listed in section 103(a) of the Act and §361.48, as appropriate, to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals in the State who apply for the services, include in the vocational rehabilitation services portion of the Unified or Combined State Plan the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(2) The ability of the designated State unit to provide the full range of vocational rehabilitation services to all eligible individuals must be supported by a determination that satisfies the requirements of paragraph (b) or (c) of this section [(b) & (c) refer to assurance that services can be provided to all eligible individuals and the need to implement an order of selection] and a determination that, on the basis of the designated State unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within the State, it can—

(i) Continue to provide services to all individuals currently receiving services;

(ii) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

(iii) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(iv) Meet all program requirements.

(3) If the designated State unit is unable to provide the full range of vocational rehabilitation services to all eligible individuals in the State who apply for the services, the vocational rehabilitation services portion of the Unified or Combined State Plan must—

(i) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(ii) Provide a justification for the order of selection;

(iii) Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under §361.29(c)(5);

(iv) Assure that—

(A) In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(B) Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under §361.37; and

(v) State whether the designated State unit will elect to serve, in its discretion, eligible individuals (whether or not the individuals are receiving vocational rehabilitation services under the order of selection) who require specific services or equipment to maintain employment, notwithstanding the assurance provided pursuant to paragraph (3)(iv)(A) of this section.” (VR Final Regulations- pgs. 799-801)

“In administering the order of selection, the designated State unit must—

(1) Implement the order of selection on a statewide basis;

(2) Notify all eligible individuals of the priority categories in a State's order of selection, their assignment to a particular category, and their right to appeal their category assignment;

(3) Continue to provide services to any recipient who has begun to receive services irrespective of the severity of the individual's disability as follows--

(A) The designated State unit must continue to provide pre-employment transition services to students with disabilities who were receiving such services prior to being determined eligible for vocational rehabilitation services; and

(B) The designated State unit must continue to provide to an eligible individual all needed services listed on the individualized plan for employment if the individual had begun receiving such services prior to the effective date of the State’s order of selection; and

(4) Ensure that its funding arrangements for providing services under the vocational rehabilitation services portion of the Unified or Combined State Plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit must renegotiate these funding arrangements so that they are consistent with the order of selection.” (VR Final Regulations- pg. 806-807)

C. OCB Order of Selection Process

1. Applicants to the agency will be classified by placement in a priority category upon certification of eligibility. The priority categories will be based on the significance of the individuals' needs due to disability related functional limitations and the services they require. Individuals will be placed in the highest category for which they are determined eligible with the highest priority being those with the most functional limitations needing the most services.

2. Within each priority category, the date of application will be used to place individuals in chronological order.

3. As funds become available, the individuals in the highest priority level (most functional limitations needing the most services) will be removed from the list in order by application date. If there are sufficient funds, then those in the next priority level will be removed.

 4. Priority will be given to providing services to existing clients before new clients are removed from the waiting list.

 5. Order of selection will not affect the provision or authorization of diagnostic and evaluation services needed to determine the eligibility of new applicants.

 6. Clients will be notified of their Order of Selection category when they are notified of their eligibility. They will also be notified of the right to appeal the category decision and their responsibility to notify the agency if their condition changes in order that they can be reclassified if appropriate.

7. If the individual is placed in a closed priority category, they must be notified of other resources available to them such as options in the statewide workforce development system.

“If the individual is placed into a closed category of that order, under sections 101(a)(5)(E) and 101(a)(20) of the Act, and final §§361.36(a)(3)(iv)(B) and 361.37(a)(2), the DSU must refer the individual to other programs and providers for those services not covered by the exemption. These provisions require a DSU to assure in the VR services portion of the Unified or Combined State Plan that individuals who do not meet the order of selection criteria will have access to an information and referral system through which the DSU will refer them to other appropriate Federal and State programs, including other components of the statewide workforce development system.” (VR Final Regulations- Discussion-pg. 228)

 D. OCB Priority Categories

The Oregon Commission for the Blind defines each priority level as follows:

1-Most Significantly Disabled

At least three functional limitations related to employment and require two or more substantial types of services provided over an extended period of time. *(Must be significant enough to require that services be provided over an extended period of time)*

2-Significantly Disabled

At least two functional limitations related to employment and require one or more substantial types of services provided over an extended period of time. *(Must be significant enough to require that services be provided over an extended period of time)*

 3-Non-Significantly Disabled

At least one functional limitation related to employment and require one or more substantial types of services. *(Service(s) are required for employment but are not necessarily provided over an extended period of time.)*

 E. Services

Services which constitute substantial types of services are those included in §361.48 of the VR Final WIOA Regulations and may include but are not limited to the following:

\* Counseling & guidance

\* Orientation & Mobility training

\* Techniques of Daily Living training

\* Adaptive Computer & Technology training

\* Adaptive or Non-adaptive products

\* Job Placement

\* Job Site Modification

 F. Functional Limitations

A functional limitation is a physical or mental disability that seriously limits one or more of the following: mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome.

The following checklist will be used to determine the individual’s priority category for the order of selection.

**FUNCTIONAL LIMITATIONS CHECKLIST**

a) Only count functional limitations that result from a disability. Note that non-disability related limitations have been separated out and should be considered in IPE planning but should not be counted in establishing a priority level for order of selection.

b) Only identify and count a limitation if IPE services will be needed to deal with the limitation or barrier.

c) When counting the number of functional limitations, only count the major categories (shown in bold) and not the specific limitations within a major category. Check all that apply:

**Disability Related Limitations**

**Mobility:** Due to client's disability, client….

( ) lacks the skills to travel independently or safely.

( ) is unable to travel reliably to/from work and in the community due to a lack of transportation resources.

( ) lacks the knowledge of or access to assistive devices (cane, visual aids, crutches, prosthesis, walker, wheelchair) to be more mobile.

( ) Other:

**Motor Skills/Dexterity Coordination:** Due to client's disability, client….

( ) is unable to use upper and/or lower extremity(ies) to obtain, control and use objects.

( ) is unable to control and coordinate fine and/or gross motor movements such as button buttons, wind watch, etc.

( ) is unable to perform manual tasks at a normal speed.

( ) has loss of use of dominant hand.

( ) Other:

**Self-Care:** Due to client's disability, client…

( ) places self or others at risk due to deficits in decision making, reasoning or judgment.

( ) is unable to perform prevocational skills such as grooming, eating, dressing, money management, personal management without assistance.

( ) is unable to get ready for work each day without assistance.

( ) is unable to manage personal health at a level to prepare for or maintain employment.

( ) lacks adaptive equipment techniques for monitoring diabetes.

( ) Other:

**Self-Direction:** Due to client's disability, client…

( ) is unable to provide informed consent for life issues without the assistance of a court appointed legal representative or guardian; or has been declared legally incompetent.

( ) has loss of self- confidence and/or lack of positive psychological adjustment to disability

( ) is unable to identify logical steps necessary to reach goals due to emotional/mental health problems, severe learning disabilities, serious head injury, or other cognitive impairments.

( ) is unable to independently seek employment and/or convey information to an employer about his/her disability and possible job adaptations needed.

( ) Other:

**Interpersonal Skills:** Due to client's disability, client…

( ) has not acquired cultural, age appropriate skills.

( ) has disfigurement, deformity or behavior(s) so pronounced as to cause social rejection.

( ) has significant difficulty interpreting and responding to behavior and communication of others or is socially withdrawn.

( ) does not socially interact with non-disabled peers and/or co-workers.

( ) shows evidence of work adjustment problems such as frequent conflict with co-workers or supervisors.

( ) Other:

**Communication:** Due to client's disability, client…

( ) needs assistive technology, accommodations, and/or training to read/write sufficiently for a job.

( ) is unable to hear or converse without accommodation or assistive technology (language board, interpreter, TDD, hearing aid, etc.).

( ) is unintelligible to non-family members or general public due to difficulty with expressive communication.

( ) has minimal expressive and/or receptive communication skills.

 ( ) Other:

**Work Skills:** Due to client's disability, client…

( ) is having increased difficulty in performing critical job tasks.

( ) is unable to remember, understand instructions, or process information effectively.

( ) is unable to learn new tasks without intensive and/or specialized instruction.

( ) is unable to follow written/verbal instructions due to cognitive problems.

( ) has significantly reduced speed in performing basic work tasks (not due to stamina problems).

( ) is unable to perform household activities such as cooking, cleaning, laundry, shopping, etc. to prepare for work or to perform job tasks.

( ) has reading, writing, or math skills below industry standards for the client's vocational goal.

( ) needs to change vocations and is unable to identify any significant transferable marketable skills.

( ) is unable to identify or select a vocational goal consistent with the individual's "unique strengths, resources, priorities, concerns, abilities, and capabilities."

( ) has a work history that includes recent negative references, firings, multiple short term jobs.

( ) has minimal work history not typical for someone of client's age.

( ) has a history of poor attendance, lack of follow through, or unacceptable work behaviors due to physical or mental health problems.

( ) Other:

**Work Tolerance:** Due to client's disability, client…

( ) requires frequent or extended periods of time from work due to necessary treatments or medical problems.

( ) is unable to perform work requiring frequent lifting and carrying of objects weighing 10 lbs or more and/or occasionally lifting objects weighing 20 lbs or more.

( ) is unable to sit/stand for more than 2 hours.

( ) is unable to perform tasks at a competitive work pace due to stamina problems.

( ) is unable to work for an 8 hour day with breaks every two hours due to limitations in mental or physical stamina.

( ) Other:

**Non-Disability Related Limitations**

The following are non-disability related barriers which will likely require services or consideration in planning. Do NOT count these non-disability related limitations in determining order of selection priority levels.

Due to non-disability related factors, client….

( ) has minimal work history

( ) has poor work history (firings, many short term jobs, frequent or long gaps of unemployment, etc.)

( ) does not speak/read English

( ) has a history of poor attendance, lack of follow through,

lack of motivation in working toward achieving an employment outcome.

( ) does not have the qualifications to perform a desired job

( ) Other:

G. Factors excluded in determining order of selection

”Factors that cannot be used in determining order of selection of eligible individuals. An order of selection may not be based on any other factors, including—

(i) Any duration of residency requirement, provided the individual is present in the State;

(ii) Type of disability;

(iii) Age, sex, race, color, or national origin;

(iv) Source of referral;

(v) Type of expected employment outcome;

(vi) The need for specific services except those services provided in accordance with 361.36(a)(3)(v), or anticipated cost of services required by an individual; or

(vii) The income level of an individual or an individual's family.” (VR Final Regulations- pg. 805)

H. Order of Selection Optional Exemption

The Oregon Commission for the Blind will plan to use the following optional provision for eligible individuals when in an order of selection:

1. “Final §361.36(a)(3)(v) implements section 101(a)(5) of the Act, as amended by WIOA, by permitting DSUs, at their discretion, to serve eligible individuals who require specific services or equipment to maintain employment, regardless of whether they are receiving VR services under an order of selection. DSUs implementing an order of selection are not required to use this authority; rather, they may choose to do so based on agency policy, or the availability of financial and staff resources. Under final §361.36(a)(3)(v), DSUs implementing an order of selection must state in the VR services portion of the Unified or Combined State plan that they have elected to exercise this discretion, thereby signaling a decision to serve eligible individuals who otherwise might have been placed on a waiting list under the State’s order of selection, and who are at risk of losing their employment.” (VR Final Regulations- pgs. 628-629)

2. “Final §361.36(a)(3)(v), which implements section 101(a)(5)(D) of the Act, applies to those specific services or equipment that an individual needs to maintain current employment. The regulation does not apply to other services an individual may need for other purposes. In other words, if an individual is receiving services and equipment from a DSU under this exemption, the individual is within the order of selection for the purpose of receiving any other vocational rehabilitation services not covered by the exemption. This means that if the individual needs services that are not directly tied to maintaining current employment, the individual’s ability to receive those services from the VR program depends on the individual’s placement in the State’s order of selection.

“As to whether and how the DSU may exercise its authority under final §361.36(a)(3)(v), that section applies to all eligible individuals, not just those with the most significant disabilities. It is possible that individuals with less significant disabilities would receive vocational rehabilitation services before individuals with significant or the most significant disabilities. The Act, as amended by WIOA, gives the DSU the option to provide services and equipment to individuals at immediate risk of losing employment outside the established order, and the DSU should consider doing so if financial and staff resources are sufficient. If the DSU elects to do so-–again, the exercise of the authority is not mandatory--section 101(a)(5)(D) of the Act requires that it indicate this in the VR services portion of the Unified or Combined State Plan.

“The term ‘immediate need’ in the Summary of Proposed Changes section of the NPRM has its common meaning, and it remains the same. The phrase means that the eligible individual would almost certainly lose his or her current job if not provided specific services or equipment in the very near future that would enable him or her to retain that employment.” (VR Final Regulations- Discussion-pgs. 225-227)

3. “For States operating under an order of selection, the DSU must determine eligibility under final §361.42 prior to assigning eligible individuals to any priority category. WIOA did not change this requirement. Therefore, under final §361.42(c)(2)(ii)(D) an applicant’s particular service needs (including those services necessary to maintain current employment) are not considered in determining eligibility. The order of selection exemption in final §361.36(a)(3)(v) applies only after an individual has been determined eligible. Consequently, the eligible individual would be exempt from the order of selection for the purpose of receiving services necessary to maintain employment.” (VR Final Regulations- Discussion-pg. 231)

I. Impact of Order of Selection on Pre-ETS

If a student with a disability was receiving pre-employment transition services prior to being determined eligible and assigned to a priority level, that individual can continue to receive only pre-employment transition services even if placed in a closed priority level. They cannot receive transition or VR services while in a closed priority. If they did not receive pre-employment transition services prior to being found eligible and being placed in a closed priority category, they may not receive Pre-ETS.

“We have revised final §361.36(e)(3) by requiring DSUs implementing an order of selection to continue the provision of pre-employment transition services to students with disabilities who were receiving these services prior to the determination of eligibility and assignment to a priority category. DSUs may use the funds reserved under section 110(d) and final §361.65(a)(3) for the continuation of these services. This change does not permit the DSU to provide any other transition or vocational rehabilitation services for students with disabilities assigned to closed priority categories.” (VR Final Regulations- Discussion-pgs. 380-381)

“We want to make clear that neither the Act nor these final regulations exempt these students with disabilities from the State’s order of selection, if one has been implemented, or VR program requirements once they apply and are determined eligible for services. While under the order of selection regulations at §361.36, the student could continue to receive pre-employment transition services if such services have begun, a student could not begin to receive pre-employment transition services if such services had not begun prior to applying and being determined eligible. To permit such would create an exemption from the order of selection requirements and the statute does not provide such authority. However, we recognize the benefit early services can have for students. Therefore, we want to make clear that these students could receive transition services offered to groups of students and youth with disabilities under §361.49. While not identical to pre-employment transition services, many similar services could be provided under the services to groups authority.” (VR Final Regulations- Discussion-pg. 371)

**VII. Informed Choice**

 Each applicant, eligible individual, recipient of VR services (including students with disabilities receiving Pre-ETS services who have not yet applied for services) must be given the opportunity to make informed choices throughout the vocational rehabilitation process in accordance with the following requirements:

A. Individualized Plan for Employment (IPE) Development & Implementation

1. Clients, or as appropriate, the client’s representatives will be given informed choice with regard to the development and implementation of the IPE in selecting

a) Employment outcome;

b) Specific vocational rehabilitation services needed to achieve the employment outcome;

c) Entity that will provide the services;

d) Employment setting and the settings in which the services will be provided; and

e) Methods available for procuring the services

2. Documentationwill describe the extent to which the client exercised informed choice in making these decisions for the assessment and the development of the IPE.

3. In developing a client's IPE, the counselor will provide the client, or assist the client in acquiring, information necessary to make an informed choice about the specific services, including the providers of those services, that are needed to achieve the individual's vocational goal. This information will include, at a minimum, information relating to the cost, accessibility, and duration of potential services, the consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available, the qualifications of potential service providers, the types of services offered by those providers, and the degree to which services are provided in integrated settings. This information may be provided to the individual by sharing information about service providers available in the agency’s vendor database or having the individual do their own research, as appropriate. Information provided by service providers on the type of services they provide will be made available to clients. Individuals may interview providers and counselors may request that individuals who have used a particular provider share information with other clients on their satisfaction with the provider. Information will be presented in a mode of communication appropriate to the individual client, using qualified interpreters whenever needed.

4. “If an individual makes an informed choice to pursue uncompensated employment (e.g., homemaker or unpaid family worker outcomes) or any other outcome that does not meet the definition of ‘employment outcome’ under final §361.5(c)(15), he or she may still do so, but not with the assistance of the VR program. In final §361.37, the DSU is required to refer that individual to other Federal, State, or local programs and providers that can meet the individual's needs for related services (e.g., the State Independent Living Services (SILS) program, Independent Living Services for Older Individuals Who Are Blind program (OIB), Centers for Independent Living program (CIL), and programs for the aging).” (VR Final Regulations Discussion- pg.108)

B. Out-of- State Services

Out-of State services may be provided to a client provided they are equivalent in cost to in-state services.

1. For example, a client may choose to attend an out-of- state university, but the agency will only pay up to the amount of tuition for a similar public institution in-state program. The individual must obtain other funds for additional expenses.

2. A client can request to attend an out-of-state orientation center. The individual must make an informed choice, by obtaining information on the services offered by OCB’s Orientation and Career Center as well as other centers and communicate to the counselor the basis on which they have made their decision.

 C. Clarification between "informed choice" and "client choice"

There is no VR federal regulations on "client choice". There are numerous references to "informed choice". Throughout the VR process, clients will be expected to make choices based on information that they have obtained regarding possible services, goals, vendors, etc. The counselor is still responsible for determining if these choices are consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Also, state and federal purchasing rules still need to be followed when making final determinations based on client informed choice.

**VIII. Individualized Plan for Employment (IPE)**

A. Comprehensive Assessment and IPE Preparation

The following data should be used to develop the IPE:

“(1) Preparation without comprehensive assessment. To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's individualized plan for employment must be determined based on the data used for the assessment of eligibility and priority for services under §361.42.

“(2) Preparation based on comprehensive assessment.

(i) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the individualized plan for employment of an eligible individual, the State unit must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual in accordance with the provisions of §361.5(c)(5)(ii).

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the individualized plan for employment, including information—

(A) Available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Provided by the individual and the individual's family; and

(C) Obtained under the assessment for determining the individual's eligibility and vocational rehabilitation needs.” (VR Final Regulations- pgs.842-844)

The purpose of the comprehensive assessment is to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the IPE. “The individualized plan for employment must be designed to achieve a specific employment outcome, as defined in §361.5(c)(15), that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.” (VR Final Regulations- pg.836)

The comprehensive assessment “(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual;

(D) May include, to the degree needed, an appraisal

of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(E) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community and in other integrated community settings.” (VR Final Regulations- pg.680)

B. Timeline for developing the IPE

1. As soon as a determination has been made that an individual is eligible for vocational rehabilitation services, the counselor shall complete an assessment for determining vocational rehabilitation needs. The standard timeline for completing the Individualized Plan for Employment (IPE) should be within 90 days of eligibility whenever possible.

“The individualized plan for employment must be developed as soon as possible, but not later than 90 days after the date of determination of eligibility, unless the State unit and the eligible individual agree to the extension of that deadline to a specific date by which the individualized plan for employment must be completed. “ (VR Final Regulations- pg. 842)

See the agency’s “Standard Operating Procedures” for information on recommended steps to complete the IPE within the 90-day timeframe.

2. For transition students, the agency “must provide for the development and approval of an individualized plan for employment in accordance with §361.45 as early as possible during the transition planning process and not later than the time a student with a disability determined to be eligible for vocational rehabilitation services leaves the school setting or, if the designated State unit is operating under an order of selection, before each eligible student with a disability able to be served under the order leaves the school setting.” (VR Final Regulations- pg. 770)

C. Mandatory Procedures

“The designated State unit must ensure that—

(1) The individualized plan for employment is a written document prepared on forms provided by the State unit;

(2) The individualized plan for employment is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with §361.52, in selecting—

(i) The employment outcome, including the employment setting;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;

(iii) The entity or entities that will provide the vocational rehabilitation services; and

(iv) The methods available for procuring the services;

(3) The individualized plan for employment is—

(i) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and

(ii) Approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit;

(4) A copy of the individualized plan for employment and a copy of any amendments to the individualized plan for employment are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;

(5) The individualized plan for employment is reviewed at least annually by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;

(6) The individualized plan for employment is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the State unit or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;

(7) Amendments to the individualized plan for employment do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the designated State unit;

(8) The individualized plan for employment is amended, as necessary, to include the postemployment services and service providers that are necessary for the individual to maintain, advance in or regain employment, consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(9) An individualized plan for employment for a student with a disability is developed—

(i) In consideration of the student's individualized education program or 504 services, as applicable; and

(ii) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under §361.22.” (VR Final Regulations- pgs.839-842)

(10) Services need to relate to the employment outcome that is identified in the IPE.

(11) Services can be provided directly by VR agency staff, provided by a source outside of the agency (comparable benefits), or can be purchased from a source outside of the agency. When services or products are purchased for a vocational rehabilitation client using VR 110 or Supported Employment money, those purchases will be done through authorizations on the agency’s automated case management system through the direction of the counselor. If the services and products are significant, they need to be added into the client's IPE as a part of the client's plan of services before being authorized. Authorizations $5000 and over are submitted to the Director of Rehabilitation Services for approval.

See “Procedures for Purchases & Payments for Client and Non-Client related Purchases” for more detail.

(12) Services need to be pre-authorized by the vocational rehabilitation counselor.

 (13) Federal, state, and agency administrative rules for providing services will be followed.

(14) The provision of VR services to assist an individual to advance in employment is not limited to disability needs. (VR Final Regulations- Discussion-pg, 256)

“The extent to which DSUs should assist eligible individuals to advance in their careers by providing vocational rehabilitation services depends upon whether the individual has achieved employment that is consistent with this standard” (of obtaining appropriate employment, given their unique strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.)” (VR Final Regulations- Discussion-pgs. 256-257)

 D. Components of the Individualized Plan for Employment (§361.46)

“(a) Mandatory components. Regardless of the approach in §361.45(c)(1) that an eligible individual selects for purposes of developing the individualized plan for employment, each individualized plan for employment must—

(1) Include a description of the specific employment outcome, as defined in §361.5(c)(15), that is chosen by the eligible individual and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice consistent with the general goal of competitive integrated employment (except that in the case of an eligible individual who is a student or a youth with a disability, the description may be a description of the individual’s projected post-school employment outcome);

 Note: For a student or youth with a disability, the projected post-school employment outcome must be revised to a specific vocational goal once the career development process has been completed. (VR Final Regulations- Discussion- pg. 363)

(2) Include a description under §361.48 of—

(i)These specific rehabilitation services needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

(ii) In the case of a plan for an eligible individual that is a student or youth with a disability, the specific transition services and supports needed to achieve the individual’s employment outcome or projected post-school employment outcome.

(3) Provide for services in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;

(4) Include timelines for the achievement of the employment outcome and for the initiation of services;

(5) Include a description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;

(6) Include a description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(7) Include the terms and conditions of the individualized plan for employment, including, as appropriate, information describing—

(i) The responsibilities of the designated State unit;

(ii) The responsibilities of the eligible individual, including—

(A) The responsibilities the individual will assume in relation to achieving the employment outcome;

(B) If applicable, the extent of the individual's participation in paying for the cost of services; and

(C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in §361.53; and

(iii) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in §361.53.

“(b) Supported employment requirements. An individualized plan for employment for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must—

(1) Specify the supported employment services to be provided by the designated State unit;

(2) Specify the expected extended services needed, which may include natural supports;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the individualized plan for employment by the time of transition to extended services;

(5) Provide for the coordination of services provided under an individualized plan for employment with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

“(c) Post-employment services. The individualized plan for employment for each individual must contain, as determined to be necessary, statements concerning—

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

(3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in §361.53.

“(d) Coordination of services for students with disabilities. The individualized plan for employment for a student with a disability must be coordinated with the individualized education program or 504 services, as applicable, for that individual in terms of the goals, objectives, and services identified in the education program.“ (VR Final Regulations- pgs.844-849)

E. Scope of Vocational Rehabilitation Services for individuals with disabilities (§361.48)

In terms of VR services for individuals who have applied or been determined eligible….“As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's individualized plan for employment, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

(1) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with §361.42.

(2) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with §361.45.

(3) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with §361.52.

 Note: This service also includes personal adjustment to blindness/vision loss.

(4) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce development system, in accordance with §§361.23, 361.24, and 361.37, and to advise those individuals about client assistance programs established under 34 CFR part 370.

(5) In accordance with the definition in §361.5(c)(39), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in §361.5(c)(10)).

 Note: ‘Physical and mental restoration services means—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

Note: Diagnosis and treatment of physical and mental disorders must be provided by individuals qualified in accordance with Oregon licensure and certification laws or equivalent licensure and certification laws governing the provision of medical services in the state of purchase.

(iii) Dentistry;

Note: OCB does not assume responsibility for a program of general dental care.  Ordinarily, dental conditions such as cavities, gum abscess, or tooth extractions do not meet the criteria for provision of dental services.  However, OCB may provide dental services if the evaluation indicates that the condition is disability related or is so severe that it may cause or aggravate problems of speech, personal appearance, or other specified health problems to the extent that they will interfere with the individual’s ability to achieve a successful employment outcome or interfere with their ability to participate in services on their IPE.

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

Note: OCB will only assist with the cost of medication if the medication is expected to correct or modify the physical or mental impediment and allow the individual to achieve their employment goal.  Assistance with medication must be short term and if it is provided on a continual basis throughout the IPE, the individual must show continuous and substantial progress towards the employment goal. As with all other medical restoration services, comparable benefits should first be explored, applied for, and utilized prior to OCB participating in the cost of medication.  This is also a service that can be provided as a diagnostic and evaluative (D &E) service if required for completion of the comprehensive assessment.  In accord with Medicaid, VR does not pay for brand names unless specifically prescribed by the individual’s physician.

(vii) Prosthetic and orthotic devices;

Note: Before OCB will provide this service, medical prescriptions from qualified providers are required for prosthetic devices including eyeglasses and hearing aids; orthotic devices; wheelchairs; physical, occupational, speech and other therapies; drugs and medical supplies.  Prosthetic and other medically prescribed items necessary to implement a physical restoration plan, other than wheelchairs, may be purchased without use of the State bid process.

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel who are qualified in accordance with State licensure laws;

Note: OCB may assist with the cost of eyeglasses, visual services, and the examination necessary for prescription and provision of eyeglasses and vision services. This assumes that the individual’s choice provides a comparable level of restoration in addressing the barrier to employment and that this solution has been agreed to by the counselor, the individual, and the provider in advance of the purchase.  This is also a service that can be provided as a diagnostic and evaluative (D &E) service if required for eligibility determination or completion of the comprehensive assessment.

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical

complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.’ (VR Final Regulations- pgs.708-710)

Note: Physical and mental restoration services will be provided by OCB as necessary for the attainment of an appropriate employment outcome under the following circumstances:

* Service is not covered through comparable benefits
* Service is likely to correct or substantially improve an impairment within a reasonable period (time-limited, not ongoing)
* Service treats an impairment that constitutes a substantial impediment to employment
* Service is necessary to achieve the employment outcome

Physical and mental restoration services are provided when OCB VR staff collaborates with the individual and appropriate providers to determine that they will benefit the client in removing or adjusting barriers to an employment outcome.  Medical or psychological conditions that do not or are not expected to adversely affect the attainment of the employment outcome will not be addressed through the provision of physical or mental restoration services by OCB.

Restoration services provided by OCB must, within a reasonable period of time, be expected to correct, stabilize or significantly modify an impairment which constitutes a substantial impediment to employment.

OCB’s VR program is not a medical-maintenance program and does not provide long term medical rehabilitation services, routine health maintenance needs, routine replacement and repair of medical devices, elective services, elective surgeries, or emergency medical services.  In the event that an emergency medical service is associated with or rises out of the provision of physical and mental restoration services, counselors will consult with the Director of Vocational Rehabilitation Services prior to authorizing OCB payment for those services.

Individuals receiving medical or psychological treatment services (other than diagnostic services) from OCB are expected to first make maximum use of all comparable benefits and resources for which they are eligible (e.g., private insurance, Social Security, Medicare, Medicaid, the Veterans Administration, Military Dependency/CHAMPUS, the United States Public Health Service, or other private or public programs).  Provision of restoration services by OCB will not duplicate those available under other public health programs or private insurance policies.

(6) Vocational and other training services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law, or business); books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(7) Maintenance, in accordance with the definition of that term in §361.5(c)(34).

Note: ‘Maintenance means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.’ (VR Final Regulations- pgs.703-704)

(8) Transportation in connection with the provision of any vocational rehabilitation service and in accordance with the definition of that term in §361.5(c)(57).

Note: ‘Transportation means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.’ (VR Final Regulations- pgs.722-723)

(9) Vocational rehabilitation services to family members, as defined in §361.5(c)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

 Note: ‘Family member, for purposes of receiving vocational rehabilitation services in accordance with §361.48(b)(9), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.’ (VR Final Regulations- pgs. 696-697)

(10) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(12) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(13) Supported employment services in accordance with the definition of that term in §361.5(c)(54).

 Note: ‘Supported employment services means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are—

(i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;

(ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(iii) Provided by the designated State unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(iv) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.’ (VR Final Regulations- pgs.720-721)

(14) Personal assistance services in accordance with the definition of that term in §361.5(c)(39)

Note: ‘Personal assistance services means a range of services, including, among other things, training in managing, supervising, and directing personal assistance services, provided by one or more persons, that are--

(i) Designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability;

(ii) Designed to increase the individual's control in life and ability to perform everyday activities on or off the job;

(iii) Necessary to the achievement of an employment outcome; and

(iv) Provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.’ (VR Final Regulations- pg.708)

(15) Post-employment services in accordance with the definition of that term in §361.5(c)(42)

 Note: ‘Post-employment services means one or more of the services identified in §361.48(b) that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (Authority: Sections 12(c) and 103(a)(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(20))

 ‘Note to paragraph (c)(41): Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Postemployment services are to be provided under an amended individualized plan for employment; thus, a redetermination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual's employment is jeopardized because of conflicts with supervisors or coworkers, and the individual needs mental health services and counseling to maintain the employment, or the individual requires assistive technology to maintain the employment; to regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.’ (VR Final Regulations- pgs.711-713)

(16) Occupational licenses, tools, equipment, initial stocks, and supplies.

(17) Rehabilitation technology in accordance with the definition of that term in §361.5(c)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

 Note: ‘Rehabilitation technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive

 technology devices, and assistive technology services.’ (VR Final Regulations- pg.715)

 ‘Rehabilitation engineering means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.’

 (VR Final Regulations- pg.714)

(18) Transition services for students and youth with disabilities, that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment, or pre-employment transition services for students.

 Note: Any allowable VR service under section 103(a) of the Act and §361.48(b) can be provided as a transition service under an IPE. These include the same VR services listed in this section of the policy manual.

(19) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(20) Customized employment in accordance with the definition of that term in §361.5(c)(11).

 Note: ‘Customized employment means competitive integrated employment, for an individual with a significant disability, that is—

(i) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability;

(ii) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and

(iii) Carried out through flexible strategies, such

as—

(A) Job exploration by the individual; and

(B) Working with an employer to facilitate placement, including—

(1) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(2) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(3) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(4) Providing services and supports at the job

location.’ (VR Final Regulations- pg.688-689)

(21) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.” (VR Final Regulations- pgs.858-862)

F. Comparable Service and Benefits

 “Comparable services and benefits means services and benefits, including accommodations and auxiliary aids and services, that are—

 (A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with §361.53; and

(C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency.

“For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.” (VR Final Regulations- pg.684)

“(a) Determination of availability. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that prior to providing an accommodation or auxiliary aid or service or any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in §361.5(c)(8), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

(1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

(2) An immediate job placement; or

(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

“(b) Exempt services. The following vocational rehabilitation services described in §361.48(b) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

(1) Assessment for determining eligibility and vocational rehabilitation needs.

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce development system, if those services are not available under this part.

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

“(c) Provision of services.

(1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome specified in the individualized plan for employment, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.” (VR Final Regulations- pgs.878-881)

G. Written Policies governing the provision of services (§361.50)

 Written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the client to achieve an employment outcome.

 1. No absolute limits.

 The agency may not place absolute dollar limits on specific service categories or on the total services provided to a client.

 2. Out-of-state services.

“The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.” The agency cannot establish policies which prohibit out-of-state services. (VR Final Regulations- pgs.870-871)

 3. Payment for services.

A fee schedule can be used if it is not so low as to effectively deny an individual a necessary service and not absolute and permits exceptions so that individual needs can be addressed.

 4. Duration of services.

 a) The agency may establish reasonable time periods for the provision of services provided that the time periods are—

 1) Not so short as to effectively deny a client a necessary service; and

 2) Not absolute and permit exceptions so that individual needs can be addressed.

 b) The agency may not establish absolute time limits on the provision of specific services or on the provision of services to a client. The duration of each service needed by a client must be determined on an individual basis and reflected in that client's individualized plan for employment.

H. Options for developing an IPE

 The client has the option of developing the IPE with or without assistance from their vocational rehabilitation counselor in accordance to §361.45 (c)(1).

**IX. Services for Groups of individuals with disabilities (§361.49)**

The Oregon Commission for the Blind will provide services for groups of individuals who are blind or have conditions likely to lead to legal blindness that promote integration into society and competitive employment. The agency will utilize in part, the Comprehensive Needs Assessment as well as Customer Satisfaction Surveys to identify needs and priorities for providing services to groups. Because the agency operates the only Orientation and Career Center in Oregon for adults who experience vision loss, maintaining the resources and equipment in the Orientation and Career Center for the Blind is a primary target for available funds. Services to groups include the following:

A. Type of Services

1. Materials, equipment and supplies for the agency Orientation and Career Center of the Blind (OCCB) that would be used for demonstration and instructional purposes that benefit multiple individuals. Examples include but are not limited to; household equipment used for performing activities of daily living, cooking equipment and tools, food items and other consumables, equipment and devices in areas of low vision, mobility, braille and technology, woodworking/home-maintenance tools and supplies.
2. Sponsoring of a conference or event that would benefit multiple individuals addressing areas including but not limited to; barriers to employment, technology, communication skills, community access and integration, healthy living and lifestyle management.
3. The establishment, development of or improvement of community rehabilitation programs that provide services that promotes community integration and competitive employment.
4. Consultative and technical assistance services to businesses that are seeking to employ individuals who are blind.
5. Special services to provide non visual access to information for individuals who are blind, including the use of telecommunications, Braille, digital recordings or other appropriate media.
6. Other services that have been determined by agency management to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individuals plan for employment of any individual.

7. Pre-employment transition services may be provided in a group setting to students with disabilities who have not applied or been determined eligible for vocational rehabilitation services, as discussed in the examples in final §361.48(a). Pre-ETS funds can be used. (VR Final Regulations- Discussion-pg. 413)

8. Group transition services are available to students and youth with disabilities and a VR application and IPE are not required. (RSA Regional Training series- “Transition of Students and Youth with Disabilities from School to Postsecondary Education and Employment”-9/2016)

 Note: Individual transition and other VR services are available to eligible individuals and VR application and IPEs are required.

**X. Employment Outcomes**

A. Employment Outcome Definitions

1. “Competitive integrated employment means work that— (i) Is performed on a full-time or part-time basis

(including self-employment) and for which an individual is compensated at a rate that–

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under the applicable State or local minimum wage law for the place of employment;

(B) Is not less than the customary rate paid by the

employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(C) In the case of an individual who is selfemployed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(D) Is eligible for the level of benefits provided to other employees; and

(ii) Is at a location-

(A) Typically found in the community; and

(B) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(iii) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.” (VR Final Regulations- pgs.685-686)

2. “Employment outcome means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment, as defined in §361.5(c)(9) (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in §361.5(c)(53), that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.” (VR Final Regulations- pgs.690-691)

B. Employment Outcome Restrictions

1. “. . . an individual with a disability may pursue any form of employment he or she chooses. However, if the individual wishes to receive vocational rehabilitation services, he or she must intend to achieve an ‘employment outcome,’ which is defined in final §361.5(c)(15) for purposes of the VR program as employment in competitive integrated employment

or supported employment. If the individual chooses to

pursue work that does not satisfy the definition of “employment outcome” for purposes of the VR program, such as sheltered employment, the individual must seek services from another agency or provider.” (VR Final Regulations Discussion- pgs.52-53)

 2. “By contrast, given the pervasive emphasis on achieving competitive integrated employment–-not just integrated employment--throughout the Act, as amended by WIOA, the Secretary has determined that uncompensated employment outcomes, including homemaker and unpaid family worker outcomes, are no longer consistent with the Act. For this reason, the Secretary believes it is no longer an appropriate exercise of the Secretary’s discretion under section 7(11)(C) of the Act to include uncompensated outcomes within employment outcomes in final §361.5(c)(15).” (VR Final Regulations Discussion- pg.104)

C. Wage Rates

 “Section 7(5)(A)(i)(I)(bb) of the Act, as amended by WIOA, and final §361.5(c)(9)(i)(B) require that the individual with the disability be compensated at a rate comparable to the customary rate paid by the employer for the same or similar work performed by individuals without disabilities for the employment to be considered

competitive integrated employment.” (VR Final Regulations Discussion- pg.60)

D. Wage Rates for Selfemployed

“. . .statutory and regulatory definitions recognize that individuals with disabilities, as well as individuals without disabilities, may experience difficulty in generating sufficient income from their self-employment ventures, that will enable them to achieve earnings equal to or exceeding the applicable minimum wage rate, especially in the early stages of the business operations. Thus, final §361.5(c)(9)(i)(C) provides that a selfemployed individual with a disability in the start-up phase of a business venture who is making less than the applicable minimum wage can meet the definition of ‘competitive integrated employment.’” (VR Final Regulations Discussion- pg.63)

E. Wage Rates for Supported Employment

“Under section 7(38) of the Act, as amended by WIOA, and final §361.5(c)(53), supported employment requires that the individual be employed in competitive integrated employment or in an integrated setting in which the individual is working on a short-term basis toward competitive integrated employment. Thus, in limited circumstances, individuals in supported employment may not have achieved employment that satisfies all the criteria of ‘competitive integrated employment’ initially since they will be earning non-competitive wages on a short-term basis. This very narrow exception is the only instance in which the statute permits that all criteria of ‘competitive integrated employment’ need not be satisfied for an individual to achieve an employment outcome. However, even under this narrow exception, the expectation is that, after a short period of time, the individual will achieve competitive integrated employment in supported employment.” (VR Final Regulations- Discussion- pg. 105)

“We have also revised final §363.1(c) by adding a limited circumstance in which an individual can extend the short term basis up to a 12-month period from the achievement of the supported employment outcome to demonstrate progress toward competitive earnings based on information contained in the service record.” (VR Final Regulations- Discussion- pg. 455)

F. Economic Self-Sufficiency

“. . .’economic self-sufficiency’ in section 100(a)(2)(B) of the Act, as amended by WIOA, and in final §361.1(b) does not require the individual to achieve economic selfsufficiency--either as a prerequisite for receipt of services or as an outcome resulting from vocational

rehabilitation services provided.” (VR Final Regulations Discussion- pg.35)

“Economic self-sufficiency is not a component of the definitions of ‘competitive integrated employment’ and ‘employment outcome’ in sections 7(5) and 7(11),

respectively, of the Act, as amended by WIOA.” (VR Final Regulations Discussion- pg.36)

G. Full-Time and Part-Time Employment

“Generally, individuals are considered to be employed full-time if they work 40 hours per week. However, it is not uncommon for full-time employees to work fewer hours, such as 35 hours per week, depending on the terms of employment established by the employer. ‘Part-time’ employment is employment for any number of hours less than that of full-time employment for the particular work performed. Nowhere in the statutory definitions of ‘competitive integrated employment’ or ‘employment outcome,’ or any other provision of the Act, as amended by WIOA, is a minimum number of hours that an individual must work for the employment to be considered full- or part-time specified, and we decline to do so in these final regulations, relying on the terms’ common understanding.” (VR Final Regulations Discussion- pg.57)

H. Temporary and On-call Employment

“Finally, we clarify in this discussion that the definitions of ‘competitive integrated employment’ and ‘employment outcome,’ as set forth in the Act and these final regulations, do not require that the individual’s employment be regularly scheduled.”

“DSUs may assist individuals to obtain temporary or on-call employment so long as all the criteria of the definitions are satisfied.” (VR Final Regulations Discussion- pgs.57-58)

I. Work Unit

“As used in the definition, ‘work unit’ may refer to all employees in a particular job category or to a group of employees working together to accomplish tasks, depending on the employer’s organizational structure.”

(VR Final Regulations Discussion- pgs.88-89)

“Department has long maintained that the interaction required between employees with disabilities and employees without disabilities is not dependent on the number of individuals in the work unit and that the criterion must be applied consistently to work units of any size. The Department also has long-held that the interaction between employees with and without disabilities need not be face to face. Nor do we interpret the criterion as necessarily excluding employment settings in which individuals work alone, such as telecommuting, temporary employment, and work in mobile or scattered locations, from the scope of the definition of ‘competitive integrated employment,’ so long as the employee with the disability interacts with employees of the employer in similar positions and interacts with other persons without disabilities to the same extent that employees without

disabilities interact with others.” (VR Final Regulations Discussion- pg.89)

**XI. Supported Employment**

 A. Definitions

 1. Supported employment

 “(i) Supported employment means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

 (A) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after the transition from support provided by the designated State unit, in order to perform this work.

(ii) For purposes of this part, an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in paragraph (c)(9) of this section is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment—

(A) Within six months of achieving a supported employment outcome; or

(B) In limited circumstances, within a period not to exceed 12 months from the achievement of the supported employment outcome, if a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.” (VR Final Regulations- pgs.718-720)

2. “Supported employment services means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are—

(i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;

 (ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(iii) Provided by the designated State unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(iv) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.” (VR Final Regulations- pgs.720-721)

3. “Integrated setting means-

(i) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals; and

(ii) With respect to an employment outcome, means a setting—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.” (VR Final Regulations- pgs.702-703)

“. . . businesses established by community rehabilitation programs or any other entity for the primary purpose of employing individuals with disabilities do not satisfy this criterion, and, therefore, are not considered integrated settings, because these settings are not within the competitive labor market.” (VR Final Regulations- Discussion- pg. 82)

“The factors that generally would result in a business being considered “not typically found in the community,” include:

(1) the funding of positions through Javits-Wagner-O’Day Act (JWOD) contracts;

(2) allowances under the FLSA for compensatory subminimum wages; and

(3) compliance with a mandated direct labor-hour ratio of persons with disabilities. It is the responsibility of the DSU to take these factors into account when determining if a position in a particular work location is an integrated setting.” (VR Final Regulations- Discussion- pg. 83)

“Since ‘integrated setting’ was first defined in VR program regulations, we have considered how best to capture the intent of Congress and long-standing Department policy in its criteria. In doing so, we considered whether to establish a numerical ratio and have rejected this as impractical and unworkable. Given the many and varied types of employment settings in today’s economy, we cannot determine a single ratio that could be used to satisfactorily determine the level of interaction required to meet the intent underlying the definition. Rather than using a numerical standard, we believe that an ‘integrated setting’ is best viewed in light of the quality of the interaction among employees with disabilities and persons without disabilities when compared to that of employees without disabilities in similar positions, and have not added a numerical ratio to final §361.5(c)(9).” (VR Final Regulations- Discussion- pgs. 85-86)

“Secretary believes the focus of whether the setting is integrated should be on the interaction between employees with and without disabilities, and not solely on the interaction of employees with disabilities with people outside of the work unit. For example, the interaction of individuals with disabilities employed in a customer service center with other persons over the telephone, regardless of whether these persons have disabilities, would be insufficient by itself to satisfy the definition. Instead, the interaction of primary consideration should be that between the employee with the disability and his or her colleagues without disabilities in similar positions.” (VR Final Regulations- Discussion- pg.86)

“. . . individuals with disabilities hired by community rehabilitation programs to perform work under service contracts, either alone, in mobile work crews, or in other group settings (e.g., landscaping or janitorial crews), whose interaction with persons without disabilities (other than their supervisors and service providers), while performing job responsibilities, is with persons working in or visiting the work locations (and not with employees of the community rehabilitation programs without disabilities in similar positions) would not be performing work in an integrated setting. The Secretary believes that, even if such group employment in a community rehabilitation program provides for competitively paid wages, this fact does not change the non-integrated nature of the employment and may result in a less desirable level of integration (e.g., interaction with non-disabled co-workers) than individual employment, which supports the autonomy and selfsufficiency of individuals with disabilities. In summary, the DSU must determine, on a case-by-case basis, that a work location is in an integrated setting, meaning it is typically found in the community, and it is one in which the employee with the disability interacts with employees and other persons, as appropriate to the position, who do not have disabilities to the same extent that employees without disabilities interact with these persons. Finally, the DSU is to consider the interaction between the employee with the disabilities and these other persons that takes place for the purpose of performing his or her job duties, not mere casual and social interaction.” (VR Final Regulations- Discussion- pgs. 92-93)

4. “Ongoing support services, as used in the definition of supported employment, means services that—

(i) Are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment;

(ii) Are identified based on a determination by the designated State unit of the individual's need as specified in an individualized plan for employment;

(iii) Are furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement;

(iv) Include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or (B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(v) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (c)(5)(ii) of this section;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the

individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in §361.48(b); or

(I) Any service similar to the foregoing services.” (VR Final Regulations- pgs.705-707)

5. “Extended services means ongoing support services and other appropriate services that are—

(i) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment;

(ii) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment;

(iii) Based on the needs of an eligible individual, as specified in an individualized plan for employment;

(iv) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and

(v) Provided to a youth with a most significant disability by the designated State unit in accordance with requirements set forth in this part and part 363 for a period not to exceed four years, or at such time that a youth reaches age 25 and no longer meets the definition of a youth with a disability under 34 CFR 361.5(c)(58), whichever occurs first. The designated State unit may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.” (VR Final Regulations- pgs.694-695)

6. Employment Outcome for Supported Employment §363.54

“An individual with a most significant disability, including a youth with a most significant disability, who is employed in competitive integrated employment or who is employed in an integrated setting working on a short-term basis to achieve competitive integrated employment will be considered to have achieved an employment outcome, including customized employment, in supported employment when—

(a) The individual has completed supported employment services provided under this part and 34 CFR part 361, except for any other vocational rehabilitation services listed on the individualized plan for employment provided to individuals who are working on a short-term basis toward the achievement of competitive integrated employment in supported employment. An individual has completed supported employment services when—

(1) The individual has received up to 24 months of supported employment services; or

(2) The counselor and individual have determined that an extension of time to provide supported employment services beyond 24 months is necessary to support and maintain the individual in supported employment before the individual transitions to extended services and that extension of time has concluded; and

(b) The individual has transitioned to extended services provided by either the designated State unit for youth with the most significant disabilities, or another provider, consistent with the provisions of §§363.4(a)(2) and 363.22; and

(c) The individual has maintained employment and achieved stability in the work setting for at least 90 days after transitioning to extended services; and

(d) The employment is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individual.” (VR Final Regulations- pgs.946-947)

A client may be moved into employed status when job stability has occurred and the agency has completed its portion of planned supported employment services. A client will generally stay in employed status for the 90 days required or longer prior to closure. As a part of the requirements listed above, the counselor should document that long term extended services, at least twice monthly, is available and who is providing that long term support. This can even include natural supports provided by the employer. If the client is not earning at least minimum wage, then a statement should be included indicating that the client is working toward a competitive level of employment. A description should also be provided of how the employment site is considered to be integrated.

**XII. Sub-minimum Wage**

A. Agency Responsibilities

“§397.40 What are the responsibilities of a designated State unit for individuals with disabilities, regardless of age, who are employed at a subminimum wage?

Note: The “Federal minimum wage” is used in §397 to determine if an individual is working at a sub-minimum wage level. (VR Final Regulations- pg. 960). This is different from the rate used to define competitive integrated employment which looks at the “rate required under the applicable State or local minimum wage law for the place of employment”. (VR Final Regulations- pg. 685)

(a) Counseling and information services.

(1) A designated State unit must provide career counseling and information and referral services, as described in §397.20(a)(3), to individuals with disabilities, regardless of age, or the individual’s representative as appropriate, who are known by the designated State unit to be employed by an entity, as defined in §397.5(d), at a subminimum wage level.

(2) A designated State unit may know of an individual with a disability described in this paragraph through the vocational rehabilitation process, self-referral, or by referral from the client assistance program, another agency, or an entity, as defined in §397.5(d).

(3) The career counseling and information and referral services must be provided in a manner that–

(i) Is understandable to the individual with a disability; and

(ii) Facilitates independent decision-making and informed choice as the individual makes decisions regarding opportunities for competitive integrated employment and career advancement, particularly with respect to supported employment, including customized employment.

(4) The career counseling and information and referral services provided under this section may include benefits counseling, particularly with regard to the interplay between earned income and income-based financial, medical, and other benefits.

(b) Other services.

(1) Upon a referral by an entity, as defined in 397.5(d), that has fewer than 15 employees, of an individual with a disability who is employed at a subminimum wage by that entity, a designated State unit must also inform the individual within 30 calendar days of the referral by the entity, of selfadvocacy, self-determination, and peer mentoring training opportunities available in the community.

(2) The services described in paragraph (b)(1) of this section must not be provided by an entity as defined in §397.5(d).

(c) Required intervals.

(1) For individuals hired at subminimum wage on or after July 22, 2016, the services required by this section must be carried out once every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of such employment.

(2) For individuals already employed at subminimum wage prior to July 22, 2016, the services required by this section must be carried out once by July 22, 2017, and annually thereafter for the duration of such employment.

(3)(i) With regard to the intervals required by paragraphs (c)(1) and (2) of this section for purposes of the designated State unit’s responsibilities to provide certain services to individuals employed at subminimum wage, the applicable intervals will be calculated based upon the date the individual becomes known to the designated State unit.

(ii) An individual with a disability may become “known” to the designated State unit through selfidentification by the individual with a disability, referral by a third-party (including an entity as defined in §397.5(d)), through the individual’s involvement with the vocational rehabilitation process, or any other method.

(d) Documentation.

(1)(i) The designated State unit must provide documentation to the individual as soon as possible, but no later than–

(A) 45 calendar days after completion of the activities required under this section; or

(B) 90 calendar days, if additional time is necessary due to extenuating circumstances, after the completion of the required actions in this section. Extenuating circumstances should be interpreted narrowly to include circumstances such as the unexpected lengthy absence of the designated State unit personnel, due to illness or other family emergency, who is responsible for producing or transmitting the documentation to the individual with a disability, or a natural disaster.

(ii) Documentation required by paragraph (d)(3) of this section, when an individual has refused to participate in an activity required by this section, must be provided to the individual within 10 calendar days of the individual’s refusal to participate.

(2) Such documentation must, at a minimum, contain

the—

(i) Name of the individual;

(ii) Description of the service or activity completed;

(iii) Name of the provider of the required service or

activity;

(iv) Date required service or activity completed;

(v) Signature of individual documenting completion of the required service or activity;

(vi) Date of signature described in paragraph (d)(2)(v) of this section;

(vii) Signature of designated State unit personnel (if different from that in paragraph (d)(2)(v) of this section) transmitting documentation to the individual with a disability; and

(viii) Date and method (e.g., hand-delivered, faxed, mailed, e-mailed, etc.) by which document was transmitted to the individual.

(3) In the event an individual with a disability or, as applicable, the individual’s representative, refuses, through informed choice, to participate in the activities required by this section, such documentation must, at a minimum, contain the –

(i) Name of the individual;

(ii) Description of the refusal and the reason for such refusal;

(iii) Signature of the individual or, as applicable, the individual’s representative;

(iv) Signature of the designated State unit personnel documenting the individual’s refusal;

(v) Date of signatures; and

(vi) Date and method (e.g., hand-delivered, faxed, mailed, e-mailed, etc.) by which documentation was transmitted to the individual.

(4) The designated State unit must retain a copy of all documentation required by this part in a manner consistent with the designated State unit’s case management system and the requirements of 2 CFR 200.333.

(e) Provision of services. Nothing in this section will be construed as requiring a designated State unit to provide the services required by this section directly. A designated State unit may contract with other entities, i.e., other public and private service providers, as appropriate, to fulfill the requirements of this section. The contractor providing the services on behalf of the designated State unit may not be an entity holding a special wage certificate under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) as defined in 397.5(d).” (VR Final Regulations- pgs. 974-980)

**XIII. Requirements for Successful Case Closure (Employment)**

A. §361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome

“The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

(a) Employment outcome achieved. The individual has achieved the employment outcome that is described in the individual's individualized plan for employment in accordance with §361.46(a)(1) and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) Employment outcome maintained. The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(c) Satisfactory outcome. At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) Post-employment services. The individual is informed through appropriate modes of communication of the availability of post-employment services.” (VR Final Regulations- pgs. 890-892)

B. §363.55 Closing the service record of an individual who achieved an employment outcome in supported employment

“(a) The service record of an individual with a most significant disability, including a youth with a most significant disability, who has achieved an employment outcome in supported employment in competitive integrated employment will be closed concurrently with the achievement of the employment outcome in supported employment when the individual—

(1) Satisfies requirements for case closure, as set

forth in 34 CFR 361.56; and

(2) Is not receiving extended services or any other vocational rehabilitation service provided by the designated State unit with funds under this part or 34 CFR part 361.

“(b) The service record of an individual with a most significant disability, including a youth with a most significant disability who is working toward competitive integrated employment on a short-term basis and is receiving extended services from funds other than those allotted under this part and 34 CFR part 361 will be closed when the individual—

(1) Achieves competitive integrated employment within

the short-term basis period established pursuant to §363.1(c); and the individual—

(i) Satisfies requirements for case closure, as set forth in 34 CFR 361.56; and

(ii) Is no longer receiving vocational rehabilitation services provided by the designated State unit with funds under 34 CFR part 361; or

(2) Does not achieve competitive integrated employment within the short-term basis period established pursuant to §363.1(c).

“(c) The service record of a youth with a most significant disability who is receiving extended services provided by the designated State unit from funds under this part or 34 CFR part 361 will be closed when—

(1) The youth with a most significant disability achieves an employment outcome in supported employment in competitive integrated employment without entering the short-term basis period; and

(i) Is no longer eligible to receive extended services provided by the designated State unit with funds allotted under this part and 34 CFR part 361 because the individual—

(A) No longer meets age requirements established in the definition of a youth with a disability pursuant to 34 CFR 361.5(c)(58); or

(B) Has received extended services for a period of four years; or

(C) Has transitioned to extended services provided with funds other than those allotted under this part or part 361 prior to meeting the age or time restrictions established under paragraphs (A) and (B) of this section, respectively; and

(ii) Satisfies requirements for case closure, as set

forth in 34 CFR 361.56; and

(iii) The individual is no longer receiving any other vocational rehabilitation service from the designated State unit provided with funds under 34 CFR part 361; or

(2) The youth with a most significant disability who is working toward competitive integrated employment on a short-term basis—

(i) Achieves competitive integrated employment within the short-term basis period established pursuant to §363.1(c);

(ii) Is no longer eligible to receive extended services provided by the designated State unit with funds allotted under this part and 34 CFR part 361 because the individual—

(A) No longer meets age requirements established in the definition of a youth with a disability pursuant to 34 CFR 361.5(c)(58); or

(B) Has received extended services for a period of four years; or

(C) Has transitioned to extended services provided with funds other than those allotted under this part or 34 CFR part 361 prior to meeting the age or time restrictions established under paragraphs (A) and (B) of this section, respectively; and

(iii) Satisfies requirements for case closure, as set

forth in 34 CFR 361.56; or (3) The youth with a most significant disability working toward competitive integrated employment on a short-term basis does not achieve competitive integrated employment within the short-term basis period established pursuant to §363.1(c).” (VR Final Regulations- pgs. 948-952)

**XIV. Record of Service**

“§361.47 Record of services. (a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(1) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements under §361.42.

(2) If an applicant or eligible individual receiving services under an individualized plan for employment has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under §361.43.

(3) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in §361.44.

(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.

(5) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration and documentation regarding the periodic assessments carried out during the trial work experiences in accordance with the requirements under §361.42(e).

(6) The individualized plan for employment, and any amendments to the individualized plan for employment, consistent with the requirements under §361.46.

(7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the individualized plan for employment with respect to the selection of the specific employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services.

(8) In the event that an individual's individualized plan for employment provides for vocational rehabilitation services in a non-integrated setting, a justification to support the need for the non-integrated setting.

(9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with §361.5(c)(9)(i).

(10) In the event an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act or the designated State unit closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with §361.5(c)(15) or that an eligible individual through informed choice chooses to remain in extended employment, documentation of the results of the semi-annual and annual reviews required under §361.55, of the individual's input into those reviews, and of the individual's or, if appropriate, the individual's representative's acknowledgment that those reviews were conducted.

(11) Documentation concerning any action or decision resulting from a request by an individual under §361.57 for a review of determinations made by designated State unit personnel.

(12) In the event that an applicant or eligible individual requests under §361.38(c)(4) that documentation in the record of services be amended and the documentation is not amended, documentation of the request.

(13) In the event an individual is referred to another program through the State unit's information and referral system under §361.37, including other components of the statewide workforce development system, documentation on the nature and scope of services provided by the designated State unit to the individual and on the referral itself, consistent with the requirements of §361.37.

(14) In the event an individual's record of service is closed under §361.56, documentation that demonstrates the services provided under the individual's individualized plan for employment contributed to the achievement of the employment outcome.

(15) In the event an individual's record of service is closed under §361.56, documentation verifying that the provisions of §361.56 have been satisfied. (b) The State unit, in consultation with the State Rehabilitation Council if the State has a Council, must determine the type of documentation that the State unit must maintain for each applicant and eligible individual in order to meet the requirements in paragraph (a) of this section.” (VR Final Regulations- pgs. 849-854)

 **XV . Protection, use, and release of personal information- Sec. 361.38**

(a) The agency seeks to safeguard the confidentiality of all personal information, including photographs and lists of names. Client records are in secure locations overseen by agency personnel. All personal information in the possession of the agency will be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program.

“(b) State program use. All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

“(c) Release to applicants and recipients of services.

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or recipient of services, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

Note: With the client's written permission, OCB can re-release information (ex: send eye or medical information to a third party) as long as the original document is not stamped or marked by the originating source prohibiting the re-release of the information.

(4) An applicant or recipient of services who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services, consistent with §361.47(a)(12).

“(d) Release for audit, evaluation, and research. Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and recipients of services and only if, in accordance with a written agreement, the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

“(e) Release to other programs or authorities.

(1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization, in accordance with a written agreement, for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit must release personal information if required by Federal law or regulations.

(4) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless 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.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.” (VR Final Regulations- pgs. 811-817)

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