

## ED-2017-OS-0074

### **The National Council of State Agencies for the Blind (NCSAB) submits the following comments and suggestions for the regulatory reform initiative of the U.S. Department of Education:**

ISSUE: RSA's interpretation and guidance regarding the impact of order of selection requirements on students with disabilities needing Pre-Employment Transition Services (Pre-ETS) – 34 CFR 361.36(e)(3)(A)

The regulations at 34 CFR 361.36(e) regarding the administration of a State's order of selection state that the designated State unit must ...

*“(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 service...”*

During various trainings conducted by RSA staff, the following example was given that applies to this new regulation and has significant impact on students with disabilities who need Pre-ETS:

#### **Continuation of Services under an Order of Selection – Example B** Student B:

- Applies and is determined eligible for the VR program before beginning pre-employment transition services;
- Is placed in a closed priority category;
- Can receive group transition services or other available VR services to groups; and
- **Cannot receive pre-employment transition services**, individualized transition services, or other individualized VR services until the student's turn under the State's order of selection. [emphasis added]

NCSAB contends that this is an incorrect interpretation of the legislative meaning and intent of section 113 of the Rehabilitation Act, as amended. It is clear that Congress intended that Pre-ETS be available to all students with disabilities (as defined by law and regulations), and that even students with disabilities who have not applied for and have not been determined eligible for VR services be eligible to receive Pre-ETS. Section 113 of the statute clearly allows the availability of Pre-ETS to students who are “potentially eligible” for VR.

Given the above, RSA's interpretation of the impact of order of selection on students who need Pre-ETS, but had not starting receiving Pre-ETS prior to the application for VR services, seems to be contradictory regarding the availability of Pre-ETS. Based upon section 113 of the Act, eligibility for Pre-ETS is different than eligibility for traditional VR services. The only requirement for receiving Pre-ETS is that the individual meets the statutory/regulatory definitions of "student with a disability." If the individual meets the definitions, than he or she can be provided Pre-ETS either individually or in a group setting. The order of selection requirements under 34 CFR 361.36 do not apply to the availability or provision of Pre-ETS to an individual who meets the definition of "student with a disability."

As you are aware, States are required to set-aside 15% of their federal VR grant dollars for Pre-ETS. Many States are having difficulty spending the full 15% for Pre-ETS due to a variety of reasons, including the very limiting language in the statute. This is especially true for State VR agencies that serve only blind and visually impaired individuals, as their consumers are usually older individuals who would not need Pre-ETS. The current interpretation under 34 CFR 361.36(e)(3)(A) regarding the impact of an order of selection makes spending the 15% even more difficult.

NCSAB recommends that the regulation at 34 CFR 361.36(e)(3)(A) be rescinded and that RSA issue revised guidance regarding the availability of Pre-ETS to those individuals who meet the definition of "student with a disability" even if such individuals have applied for VR services and cannot receive VR services due to the individuals' status under the State's order of selection.