

# **A Compendium of State Policy Frameworks Regarding Order of Selection Under Title I of the Rehabilitation Act of 1973, as Amended**

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# TABLE OF CONTENTS

## PART I: INTRODUCTION

I.	PURPOSE OF THE POLICY ANALYSIS .....	1
II.	APPROACH AND METHODOLOGY .....	1
III.	ORGANIZATION OF THE PAPER.....	2

## PART II: OVERVIEW OF FEDERAL POLICY FRAMEWORK

I.	BACKGROUND .....	3
II.	OVERVIEW .....	5
III.	DETERMINING WHETHER TO ESTABLISH AN ORDER OF SELECTION	
	A. In General, Circumstances Under Which Order of Selection is Not Required .....	6
	B. Bases for Determining the Ability of the Designated State Unit to Provide the Full Range of VR Services to All Eligible Individuals .....	7
	C. Reevaluation .....	8
IV.	ESTABLISHMENT, IMPLEMENTATION, AND ADMINISTRATION OF ORDER OF SELECTION	
	A. In General—State Plan Provisions.....	9
	B. Establishment of Order of Selection Policy.....	9
	C. Implementation of Order of Selection Policy .....	12
	D. Administration of Order of Selection Policy .....	13
V.	ROLE OF STATE REHABILITATION COUNCIL .....	16

## PART III: STATE POLICY FRAMEWORKS REGARDING ORDER OF SELECTION

INTRODUCTION .....	17
ALASKA .....	18
ARIZONA .....	28

ARKANSAS .....	35
CALIFORNIA .....	41
COLORADO .....	53
CONNECTICUT .....	62
DELAWARE .....	70
DISTRICT OF COLUMBIA .....	74
FLORIDA .....	77
GEORGIA.....	89
IDAHO.....	100
ILLINOIS.....	114
INDIANA .....	120
IOWA .....	136
KANSAS .....	142
KENTUCKY .....	149
LOUISIANA.....	156
MAINE .....	165
MARYLAND .....	169
MASSACHUSETTS .....	178
MICHIGAN .....	186
MINNESOTA .....	196
MISSISSIPPI .....	223
MISSOURI .....	227
NEBRASKA .....	233

NEVADA.....	239
NEW YORK.....	247
NORTH CAROLINA.....	253
OHIO .....	257
OKLAHOMA .....	265
OREGON.....	271
PENNSYLVANIA.....	291
RHODE ISLAND.....	305
SOUTH DAKOTA .....	310
TENNESSEE .....	327
UTAH .....	336
VERMONT .....	344
VIRGINIA .....	349
WASHINGTON .....	359
WEST VIRGINIA .....	371
WISCONSIN .....	378

## **PART I: INTRODUCTION**

### **I. PURPOSES OF THE POLICY ANALYSIS**

The Office of Special Education and Rehabilitation Services (OSERS), U.S. Department of Education, in announcing the funding opportunity for the Rehabilitation and Research Training Center (RRTC) on vocational rehabilitation, specified that the RRTC must focus on increasing knowledge of the Order of Selection (OOS) provision used for prioritizing and providing services to individuals with the most significant disabilities when the State VR agency cannot serve all eligible individuals with disabilities under Title I of the Rehabilitation Act. The RRTC must contribute to this outcome by conducting research on the administration and implementation of the OOS requirement.

The purpose of this paper is to create a compendium of state OOS policies. The policy analysis can be used by policymakers and other stakeholders to better understand how states are implementing the OOS policy. It is not the purpose of this policy analysis to determine or judge the merits of any particular state policy and thus the descriptions of state policies included in this paper should not be construed as constituting “best practices” among State VR programs.

### **II. APPROACH AND METHODOLOGY**

The approach and methodology used to conduct the policy analysis of the Order of Selection provision included the following components. First, I reviewed the recent Order of Selection Survey conducted by the Council of State Administrators of Vocational Rehabilitation (CSAVR) and the papers prepared and used by the “Future’s Workgroup” on the topic of “Order of Selection” and the definitions of “individual with a significant disability” and “individual with the most significant disability” under Title I of the Rehabilitation Act. Over the past several years, various stakeholder groups, including CSAVR, community rehabilitation providers and representatives of individuals with disabilities have been meeting as part of what is known as the “Future’s Workgroup on the Definition of Most Significant Disability” (Workgroup). The Workgroup’s stated mission is to discuss, among other things, whether and how to modify the Order of Selection policy and whether Congress should prescribe a national definition for persons with the most significant disabilities and if so, what criteria should Congress adopt. The overall intent of the Workgroup is to increase the national VR program Order of Selection consistency and portability of services.

Second, I scheduled regular and frequent communications with representatives from CSAVR and other stakeholders before the policy analysis design was finalized in order to ensure that the analysis would be of maximum utility to stakeholders interested in the issues of “Order of Selection” and the definition of “individual with the most significant disability”.

Third, I researched and described the federal policy framework concerning the establishment, implementation, and administration of Order of Selection, including definitions of the terms “individual with a significant disability” and “individual with the most significant disability”. The analysis included a review of the legislation, regulations, and policy guidance issued by the

U.S. Department of Education in general and the Rehabilitation Services Administration in particular.

Fourth, I researched and described state policy frameworks concerning the establishment, implementation, and administration of Order of Selection, including a description of state policies relating to the definitions of the terms “individual with a significant disability” and “individual with the most significant disability” (state-by-state analysis). The state-by-state descriptions were based on a review of state regulations, policy guidelines, handbooks, manuals, and training materials. Each state description included a review of key policy elements, including elements relevant to the design/establishment, implementation, and administration of Order of Selection.

In October 2008, I completed a paper entitled *A Description and Analysis of the Federal and Selected State Policy Frameworks Regarding Order of Selection under Title I of the Rehabilitation Act* (underline added). The states selected for the October 2008 policy analysis included California, Iowa, Massachusetts, Michigan, Tennessee, Virginia, West Virginia, and Wisconsin. For purposes of this paper, I reviewed policies frameworks in all 40 states plus the District of Columbia (Washington, D.C.) that reported to CSAVR that they have in place an Order of Selection policy. In turn, CSAVR sent that information to me.

It should be noted that I prepared a second paper entitled *A Description and Analysis of State Policy Frameworks Regarding Order of Selection Under Title I of the Rehabilitation Act*. In this paper, I analyzed the key policy elements included in the Order of Selection requirement across the states i.e., identified the key policy elements and then described how the various states addressed each element (thematic analysis). Under each key policy element, I described the applicable federal policy and then described how various states addressed each element and included specific examples of state policies.

### **III. ORGANIZATION OF THE PAPER**

**Part I** of the paper includes the introductory sections of the paper.

**Part II** of the paper includes background information relating to and a description of the federal policy framework governing the Order of Selection provision.

**Part III** of the paper describes the policy framework for the forty states plus the District of Columbia that reported to CSAVR that they have in place an Order of Selection policy.

## **PART II: THE FEDERAL POLICY FRAMEWORK GOVERNING THE ORDER OF SELECTION REQUIREMENT**

Part II of the paper provides the background relating to and a description of the Federal policy framework governing the requirement set out in Title I of the Rehabilitation Act of 1973 (the Act) that each State VR agency must implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all individuals eligible for vocational rehabilitation services.

The first section describes the background of the order of selection provision in the statute. The second section provides an overview of the order of selection policy. The third section describes the standards governing the determination of whether a State VR agency must establish an order of selection. The fourth section describes the standards governing the establishment, implementation, and administration of an order of selection. The final section describes the responsibility of the State VR agency to consult with the State Rehabilitation Council regarding the order or selection requirement.

### **I. BACKGROUND**

The Vocational Rehabilitation (VR) program authorized under Title I of the Rehabilitation Act of 1973, as amended, is a microcosm of the quintessential U.S. social policy dilemma: should resources be devoted to serving those “most in need” or those “most able to benefit”? With respect to the VR program, Congress has made a clear choice—a State VR agency must implement an “order of selection” when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all individuals eligible for vocational rehabilitation services. Under an order of selection, individuals with the most significant disabilities are selected first for the provision of VR services.

Over the years, Congress has refined the order of selection provision, including the definition of the term “person with the most significant disability”. The Rehabilitation Act of 1973 specified that the state plan must contain plans, policies, and methods to be followed in carrying out the state plan and in its administration and supervision, including in the event that vocational rehabilitation services cannot be provided to all eligible handicapped individuals who apply for such services, show the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided and the outcomes and service goals and the time within which they may be achieved for the rehabilitation of such individuals, which order of selection for the provision of vocational rehabilitation services shall be determined on the basis of serving first those individuals with the most severe handicaps and shall be consistent with priorities in such order of selection so determined, and outcome and service goals for serving handicapped individuals, established in regulations prescribed by the Commissioner.

The Rehabilitation Act Amendments of 1986 (P.L. 99-506) included three amendments to strengthen the policy of serving persons with the most significant disabilities and the order of selection provision. First, the 1986 Amendments specified that the state plan must include the results of a comprehensive, state-wide assessment of the rehabilitation needs of all individuals with severe handicaps residing within the state and the state’s response to the assessment.

Second, the 1986 Amendments amended the order of selection provision to direct the state plan to not only “show” the order to be followed but to “show and provide the justification for” the order to be followed. The 1986 Amendments also specified that the state plan must “show” the outcome and services goals and the time within which they will be achieved.

The House bill accompanying the 1986 Amendments (H. Rpt. No. 99-571) explains that the current regulations include a section (34 CFR 361.36(b) (1985) that is inconsistent with the amendment and current law relating to order of selection and therefore should be modified. This section of the regulations states that “the state plan must assure that those groups of individuals with the most severe handicaps are selected for services before any other groups of handicapped individuals.” The report explains, “This section is inconsistent with the Act because it focuses on ‘groups’ rather than individuals.” [Page 20]

The Rehabilitation Act Amendments of 1992 (P.L. 102-569) includes two substantive amendments to the order of selection provision. First, the 1992 Amendments Act adds the requirement that the state plan must include an “explanation of the methods by which the state will provide vocational rehabilitation services to all individuals with disabilities within the state who are eligible for such services”.

Second, the 1992 Amendments Act clarifies that the determination regarding serving first those individuals with the most significant disabilities are to be made “in accordance with criteria established by the state”. The Senate Report accompanying the 1992 Amendments Act makes it clear that “the Committee does not intend for the Commissioner to prescribe criteria in this regard. It is the Committee’s intent that determinations pertaining to ‘order of selection’ and the definition of the term ‘individuals with the most severe disabilities’ will be made by the designated state unit after obtaining input from individuals with disabilities, their families, and organizations advocating on their behalf, particularly input from the newly established State Rehabilitation Advisory Council”. [S. Rpt. No. 102-357 at pages 27-28]

It should be noted that the 1992 Amendments Act directs the Secretary to “promulgate regulations regarding the requirements for the implementation of an order of selection for vocational rehabilitation services under section 105(a)(5)(A) if such services cannot be provided to all eligible individuals with disabilities who apply for such services.” It should also be noted that the 1992 Amendments substitutes the phrase “community rehabilitation providers” for the phrase “rehabilitation facilities”.

Title IV of the Workforce Investment Act of 1998 [P.L. No. 105-220] includes amendments to the Rehabilitation Act in general and the order of selection provision in particular. The short title of Title IV is “the Rehabilitation Act Amendments of 1998”. The 1998 Amendments Act streamlined and modified the state plan provisions and the provisions specifically applicable to order of selection. The primary substantive change was to specify the obligation of State VR agencies to eligible individuals not selected i.e., “provide that eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system...” The Conference Report [H. Rpt. No. 105-659] explains [page 352] that:



“The intent is to alleviate the backlog of eligible individuals who do not receive services from the state vocational rehabilitation program because they do not meet the state’s order of selection criteria. Many of these individuals do not receive services from the state workforce system and are inappropriately referred back to the state vocational rehabilitation program because they have a disability. The Conferees expect that through the changes made throughout the Conference agreement in integrating the state workforce system, states will serve individuals with disabilities throughout the entire state workforce system, not only through the state vocational rehabilitation program.”

The current provision in the Rehabilitation Act, as amended, specifically applicable to order of selection reads as follows:

“In the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the state who apply for the services, the state plan shall—

- (A) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;
- (B) Provide justification for the order of selection;
- (C) Include an assurance that, 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
- (D) Provide that eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system, implemented under paragraph (20).”

Over time, the Rehabilitation Services Administration (RSA) has issued regulations and developed guidelines implementing the order of selection policy consistent with the changes to the statute.

## **II. OVERVIEW**

A State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. [Section 101(a)(5)(A) of the Rehabilitation Act of 1973 (Act) and 34 CFR 361.36(a)(1)] The decision to establish and implement an order of selection must be made prior to the beginning of each fiscal year and reevaluated whenever changed circumstances indicate that the agency’s resources are not sufficient to fully serve all eligible individuals. [34 CFR 361.36(c)]

An order of selection consists of priority categories to which eligible individuals are assigned based on the significance of their disability. [34 CFR 361.36(d)(1)] Under an order of selection, individuals with the most significant disabilities are selected first for the provision of vocational rehabilitation services. [Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)(3)(iv)(A)] An “individual with a significant disability” is defined in Section 7(21)(A) of the Act and 34 CFR 361.5(b)(31) as an individual with a disability –

- Who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- Who has one or more listed physical or mental disabilities or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

An “individual with a most significant disability” is defined by each State VR agency, using criteria consistent with the statutory definition of “individual with a significant disability.” [Section 101(a)(5)(C) and 34 CFR 361.36(a)(3)(iv)(A)] The order of selection must be based on a refinement of the three criteria in the definition of “individual with a significant disability.” [34 CFR 361.36(d)(1)] No other factors, including type of disability, referral source, and income, can be used to determine significance of disability or assignment to a priority category. [34 CFR 361.36(d)(2)]

If a State VR agency establishes an order of selection, but does not implement the order at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. [34 CFR 361.36(c)(3)]

In a state operating under an order of selection, the individualized plan for employment (IPE) will be developed and implemented only for those eligible individuals to whom the State VR agency is able to provide services. Thus, an IPE will not be developed for individuals on waiting lists. [Section 101(a)(9)(A) of the Act and 34 CFR 361.45(a)(1)] Eligible individuals who do not meet the State VR agency’s order of selection criteria, i.e., individuals on waiting lists, must be provided with access to the services available through the agency’s information and referral system. [Section 101(a)(5)(D) of the Act and 34 CFR 361.37]

### **III. DETERMINING WHETHER TO ESTABLISH AN ORDER OF SELECTION**

#### **A. In General—Circumstances Under Which Order of Selection is Not Required.**

The designated state unit is not required to establish an order of selection if it can demonstrate that it is able to provide the full range of vocational rehabilitation services, as appropriate, to all “eligible individuals.” [34 CFR 361.36(a)]

An “eligible individual” means an applicant for vocational rehabilitation services who meets the following eligibility requirements. The designated state unit’s determination of an applicant’s eligibility for vocational rehabilitation services must be based only on the following requirements [34 CFR 361.42(a)]:

1. A determination by qualified personnel that the applicant has a physical or mental impairment.
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.
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, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
4. A presumption that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

**B. Bases for Determining the Ability of the Designated State Unit to Provide the Full Range of VR Services to All Eligible Individuals.**

The determination that an agency does not need to establish an order of selection because it can serve all eligible individuals is made on the basis of an assurance and a determination that the State VR agency's projected fiscal and personnel resources are sufficient to enable the agency to:

- Continue to provide services to all individuals currently receiving services under an individualized plan for employment (IPE) who are expected to continue to need services during the coming fiscal year;
- Provide assessment services to all individuals expected to apply for services during the coming fiscal year;
- Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and
- Meet all other program requirements. *[34 CFR 361.36(a)(2)]*

To support the determination that the State VR agency can fully serve all eligible individuals during the current fiscal year, the agency must have, in fact:

- Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;
- Made referral forms widely available throughout the state;
- Conducted outreach efforts to identify and serve unserved or underserved persons; and
- Not delayed, through waiting lists or other means, determinations of eligibility, the development of IPEs for individuals determined eligible for vocational rehabilitation services or the provision of services for eligible individuals for whom IPEs have been developed. *[34 CFR 361.36(b)(1)]*

An agency determination that it can serve all eligible individuals during this current fiscal year must also have met these requirements during the previous fiscal year *[34 CFR 361.36(b)(1)]* or must meet additional requirements related to changed circumstances. In accordance with *34 CFR 361.36(b)(2)*, an agency that did not meet the applicable requirements during the previous fiscal year, but determines that it can serve all eligible individuals during the current fiscal year, must describe the changed circumstances that support the determination that it can fully serve all individuals.

The description of changed circumstances must include *[34 CFR 361.36(b)(2)(i)]*:

- 1) An estimate of the number of and projected costs of serving, in the next fiscal year, individuals with existing individualized plans for employment;
- 2) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;
- 3) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and
- 4) Projected revenues and projected number of qualified personnel for the program in the next fiscal year.

The determination that the designated state unit is able to provide a full range of services to all eligible individuals in the next fiscal year may also be based on any relevant comparable data from previous years and explanations for increases and decreases in costs and resources; and a determination that, for the current fiscal year, the projected revenues and personnel are adequate to cover the projected costs and to provide the full range of services to all eligible individuals. *[34 CFR 361.36(b)(2)(ii) and (iii)]*

The determination by the designated state unit whether to establish an order of selection must be made prior to the beginning of each fiscal year. *[34 CFR 361.36(c)(1)]*

### **C.     Reevaluation.**

If the designated state unit determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the course of the fiscal year indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals. *[34 CFR 361.36(c)(2)]*

Changed circumstances may include decreases in fiscal or personnel resources or increases in program costs. *[34 CFR 361.36(c)(2)]* Increases in program costs may occur because of increased services costs and/or an increase in the number of individuals referred to the VR program. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 15]*

#### **IV. ESTABLISHMENT, IMPLEMENTATION, AND ADMINISTRATION OF AN ORDER OF SELECTION.**

##### **A. In General—State Plan Provisions.**

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 state plan must—

- Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;
- Provide a justification for the order of selection;
- Identify services and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order and
- Assure that
  - 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
  - Individual who do not meet the order of selection criteria will have access to services provided through the information and referral system. *[34 CFR 361.36(a)(3)]*

The state plan must also include the results of a comprehensive, statewide assessment describing the rehabilitation needs of individuals with disabilities residing within the state, particularly the vocational rehabilitation service needs of individuals with the most significant disabilities, including their need for supported employment services. *[34 CFR 361.29(a)]*

In addition, the state plan must assure that the state will annually submit a report to the Secretary that includes, among other things, estimates of the number of individuals to be served under each priority category within the order if the designated state agency uses an order of selection. *[34 CFR 361.29(b)]*

Furthermore, the state plan must identify the goals and priorities of the state in carrying out the program, including, service and outcome goals for categories in the order of selection. If the designated state agency uses an order of selection, the state plan must identify the state's service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order. *[34 CFR 361.29(c)]*

##### **B. Establishment of Order of Selection Policy.**

Establishing an order of selection for services provides an organized and equitable method for State VR agencies to serve individuals with disabilities if it is anticipated that the agency will not have enough fiscal or personnel resources to serve all eligible persons. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 5]* Under the order of selection requirements, first priority for services is given to individuals with the most significant disabilities. *[Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)]* Individuals are determined to be “individuals with the most significant disabilities”

in accordance with criteria established by the State VR agency. *[Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)(3)]*

The State VR agency's definition for "individuals with the most significant disabilities" and its descriptions of its priority categories must meet the requirements of 34 CFR 361.36(d):

- the order of selection must be based on a refinement of the three criteria in the definition of "individual with a significant disability" and
- no other factors may be used.

An individual with a disability means an individual—

- Who has a physical or mental impairment;
- Whose impairment constitutes or results in substantial impediment to employment; and
- Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. *[34 CFR 361.5(b)(28)]*

The term "substantial impediment to employment" used in the definition of "individual with a disability" means a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with an individual's abilities and capabilities. *[34 CFR 361.5(b)(52)]*

The term "employment outcome" used in the definition of "individual with a disability" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, in the integrated labor market; supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. *[34 CFR 361.5(b)(16)]*

An "individual with a significant disability" means an individual with a disability—

- Who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- Who has one or more listed physical or mental disabilities or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. *[34 CFR 361.5(b)(31)]*

The criteria that may be refined by the State VR agency include the number and degree of functional limitations in terms of an employment outcome (an impairment seriously limits one or

more functional capacities), the number of vocational rehabilitation services needed (whose vocational rehabilitation can be expected to require multiple vocational services), and the amount of time needed for the VR services (over an extended period of time). The purpose of the criteria is to link the nature and depth of the individual's functional limitations with the need for multiple services that require an extended time period for completion. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

An agency may also establish functional capacities in addition to the seven capacity areas listed in the definition of "individual with a significant disability." In addition, the State VR agency may develop definitions for terms such as "severe" physical or mental impairment that "seriously" limits one of more functional capacities." In establishing the additional criteria, the State VR agency must:

- Apply the criteria equitably to all eligible individuals;
- Ensure consistency with the three criteria in the definition of "individual with a significant disability;" and
- Meet all other program requirements. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

An order of selection may not be based on any other factors, including:

- i. Any duration of residency requirement, provided the individual is presently in the state;
- ii. Type of disability;
- iii. Age, gender, race, color, or national origin;
- iv. Source of referral;
- v. Type of expected employment outcome;
- vi. The need for specific services or anticipated cost of services required by an individual; or
- vii. The income level of an individual or the individual's family. *[34 CFR 361.36(d)(2)]*

Individuals who are receiving SSI and SSDI benefits as a result of having been determined by the Social Security Administration to be disabled or blind are considered to be at least "individuals with significant disabilities" *[Section 102(a)(3)(A) of the Act and 34 CFR 361.42(a)(3)]* and should be evaluated to determine whether they meet the state's criteria for "individuals with the most significant disabilities." There is no statutory authority for assigning a special priority category for individuals receiving SSI and SSDI benefits or for selecting these individuals before other individuals with most significant or significant disabilities.

A State VR agency can establish a policy for ranking individuals within a priority category. The policy should be based on use of an equitable and reasonable factor, such as the individual's date of application. This provides a method for selecting individuals from a waiting list for a priority category when the agency has enough resources to serve some, but not all, individuals in that

priority category. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

The VR counselor determines the significance of the individual's disability and the individual's priority for services based on a review of the data developed to make the eligibility determination and an assessment of additional data, to the extent necessary. *[34 CFR 361.42(g)]* Determinations made by officials of other agencies, such as the Social Security Administration and education officials, can be used to assist the VR counselor in determining the extent of the individual's disability and the extent to which an individual meets one or more of the agency's criteria for the various priority categories. *[Section 102(a)(4)(B) of the Act and 34 CFR 361.42(d)]* To assure consistency in applying agency criteria to individuals, the agency may need to develop guidance materials and provide training for VR counselors. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

### **C. Implementation of Order of Selection Policy.**

The order of selection provides a management tool for preventing the depletion of agency resources before the end of the fiscal year, assuring that once an eligible individual begins to receive VR services under an individualized plan for employment (IPE), sufficient resources will be available to continue to serve that individual. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

State VR agencies implementing an order of selection must

- Implement the order of selection on a statewide basis;
- Notify all eligible individuals of the priority categories in a state's order of selection, their assignment to a particular priority category, and their right to appeal this assignment;
- Continue to provide all needed services to any eligible individual who has begun to receive services under an IPE prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and
- Ensure that its funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority are consistent with the order of selection. *[34 CFR 361.36(e)]*

Implementing an order of selection on a statewide basis means that, within the state, the same priority categories are closed in all State VR agency offices. State VR agencies must notify all eligible individuals of their priority category assignment and their right to appeal the assignment. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

State VR agencies have the authority to open and close priority categories as needed, so long as the order of the categories is maintained and continuity of services to all individuals selected for services is assured. In determining whether to open priority categories, an agency should ensure that sufficient resources are available throughout the year to serve individuals in higher priority



categories. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

A State VR agency that establishes an order of selection but does not implement the order by keeping all priority categories open, must continue to be able to provide the full range of services, as appropriate, or it must implement the order of selection by closing one or more priority categories. *[34 CFR 361.36(c)(3)]* In other words, a State agency that is operating on an order of selection with all priority categories open must meet the same requirements as an agency that did not establish an order of selection or must close one or more categories. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 16]*

With respect to funding arrangements, contributions may be earmarked for providing particular services (e.g., rehabilitation technology) serving individuals with certain types of disabilities (e.g., individuals who are blind). The contributions, however, must be used in a manner consistent with the state's order of selection, if applicable. Similarly, contributions may be earmarked to provide services to special groups that state and federal law permits (e.g., students with disabilities who are receiving special education services so long as the contributions are used in a manner consistent with the state's order of selection, if applicable. *[See example following 34 CFR 361.60, 66 Fed. Reg. at page 4414 (January 17, 2001)]* In other words, an agency that receives third-party funding to serve individuals from a particular disability group or referral source may not serve any of those individuals that fall outside of the priority categories being served under the order of selection and must renegotiate any funding arrangements that are not consistent with the order of selection requirements. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

#### **D. Administration of Order of Selection Policy.**

##### **1. Assessment for Determining Eligibility and Priority for Services.**

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the state is operating under an order of selection), the designated state unit must conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice. *[34 CFR 361.42; 34 CFR 361.5(b)(6)]*

If the designated state unit is operating under an order of selection for services, the state unit must base its priority assignments on a review of the data that was developed to make the eligibility determination and an assessment of additional data, to the extent necessary. *[34 CFR 361.42(g)]*

In sum, State VR agencies must use and follow the eligibility process in determining whether an individual is eligible to receive VR services. In accordance with *34 CFR 361.42* an individual is eligible to receive VR services if he or she is "an individual with a disability" i.e., the individual has an impairment that results in a substantial impediment

to employment and can benefit in terms of an employment outcome from VR services. The individual also must require VR services in order to prepare for, secure, retain, or regain employment. *[State Vocational Rehabilitation Services Program; Final Rule 66 Fed. Reg. at page 7255 (January 22, 2001)]* In addition, the Act establishes a clear priority for serving persons with the most significant disabilities (through the order of selection requirements).

In light of these criteria, a counselor's decision **not** to serve an individual with a disability on the basis that the individual cannot achieve integrated employment would mean, in effect, that the counselor has concluded that the individual cannot benefit in terms of an employment outcome under the VR program (i.e., integrated work) from VR services. The regulations, however, state that any individual seeking VR services is "presumed [able] to benefit in terms of an employment outcome from VR services. Moreover, for the state agency to overcome this presumption, it must demonstrate by clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome under the VR program due to the severity of the applicant's disability. Finally, in order to establish the requisite "clear and convincing evidence" the agency must explore the individual's abilities, capabilities, and capacity to perform in work situations by affording the individual trial work experiences under 34 CFR 361.42. *[State Vocational Rehabilitation Services Program; Final Rule 66 Fed. Reg. at page 7255 (January 22, 2001)]*

Thus, in the absence of clear and convincing evidence following a trial work assessment of the individual's abilities or as appropriate an extended evaluation, State VR agencies must consider each individual, including those with the most significant disabilities, capable of achieving integrated employment. In other words, the Act establishes the general expectation that individuals with the most significant disabilities, if given necessary services and supports, are able to work in integrated settings. These regulations ensure that every opportunity is afforded so that this expectation is realized. *[State Vocational Rehabilitation Services Program; Final Rule 66 Fed. Reg. at page 7255 (January 22, 2001)]*

## **2. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection.**

The state plan must assure that an IPE is developed and implemented in a timely manner for each individual determined eligible for vocational rehabilitation services, or if the designated state unit is operating under an order of selection, for each eligible individual whom the state unit is able to provide services. *[34 CFR 361.45(a)]*

The designated state unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual, or, if the state is operating under an order of selection, for each eligible individual to whom the state is able to provide services. The purpose of the assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the IPE. *[34 CFR 361.45(b)]*

### **3. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection Criteria.**

Agencies implementing an order of selection must ensure that an eligible individual who does not meet the criteria for the open categories of the order of selection has access to services provided under the information and referral system. *[Section 101(a)(5)(D) of the Act and 34 CFR 361.36(a)(3)(iv)]* Information and referral services include: (a) providing vocational rehabilitation information and guidance to assist individuals in achieving employment; and (b) appropriately referring individuals to other Federal and state programs, including other statewide workforce investment programs, that are best suited to meet the individual's specific employment needs *[Section 101(a)(20)(A) of the Act and 34 CFR 361.37]*.

When making a referral, the agency must provide the individual with:

- A notice of the referral;
- Information about a specific point of contact within the program to which the individual is being referred; and
- Information and advice about the most suitable services for assisting the individual to prepare for, secure, retain, or regain employment. *[Section 101(a)(20)(B)(ii) of the Act and 34 CFR 361.37(b)(2)]*

The individual's service record must include documentation on the nature and scope of information and referral services provided by the State VR agency to the individual and documentation on the referral itself *[34 CFR 361.47(a)(13)]*.

As part of its reporting under section 101(a)(10)(c)(ii)(I) of the Act and 34 CFR 361.37, agencies must report annually on the number of eligible individuals who received information and referral services (not under an IPE) because they did not meet the order of selection criteria.

### **4. Maintenance of Records.**

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. *[34 CFR 361.44]*

The designated State unit must maintain for each applicant and eligible individual a record of services that include, to the extent pertinent, the following documentation:

- Documentation supporting a determination that the individual is eligible;
- Documentation supporting a determination that the individual is ineligible;

- Documentation that describes the justification for closing an applicant's or eligible individual's record of services; and
- Documentation supporting a determination that an individual is an individual with a significant disability or an individual with the most significant disability. [34 CFR 361.47]

## **V. ROLE OF THE STATE REHABILITATION COUNCIL**

The designated state unit must consult with the State Rehabilitation Council regarding the—

- (1) Need to establish an order of selection, including any reevaluations of the need;
  - (2) Priority categories of the particular order of selection;
  - (3) Criteria for determining individuals with the most significant disabilities; and
- Administration of the order of selection. [34 CFR 361.17(h) and 34 CFR 361.36(f)]

## **PART III: STATE POLICY FRAMEWORKS REGARDING ORDER OF SELECTION**

### **INTRODUCTION**

This part of the paper provides a description of the policy adopted by each of the states that reported to me that they have an Order of Selection policy. The description for each state uses a template of key elements set out in the federal policy framework:

- Determination of Whether to Establish an Order of Selection.
- Establishment of Order of Selection, including:
  - Establishment of Priority Categories and Terminology;
  - Acceptable and Unacceptable Factors;
  - Ranking Individuals Within a Priority (Waiting Lists).
- Implementation of Order of Selection, including:
  - Statewide Basis;
  - Authority to Open and Close Priority Categories, as Needed;
  - Continuation of Services; and
  - Funding Arrangements.
- Administration of Order of Selection, including:
  - Assessment for Determining Eligibility and Priority for Services;
  - Notification of Eligible Individuals;
  - Responsibilities to Individuals Who Meet Open Categories Under OOS;
  - Responsibilities to Individuals Who Do Not Meet Open Categories Under OOS;
  - Case Closure and Maintenance of Records;
  - Monitoring and Oversight; and
  - Role of state Rehabilitation Council.

## **ALASKA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Alaska's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. Applicable policies are set out in Department of Labor Policy ADVR Policy CS 17.0 and CS 8.0.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Alaska.

When the Alaska Division of Vocational Rehabilitation's (ADVR) projected fiscal and staff resources are inadequate to provide the full range of VR services, as appropriate, to all eligible individuals, the Director of the Division of Vocational Rehabilitation will implement an Order of Selection (OOS).

By law, the OOS must insure that individuals with the most significant disabilities are given priority for services. The criteria used for determining the ranking of an individual for VR services when in an OOS is the significance of the disability of the individual as defined in *ADVR Policy and Procedures CS 8.0 – Significance of Disability Determination* and the application date of the individual for VR services.

#### **A. Establishment of Priority Categories**

When a VR counselor determines an individual eligible, the counselor also establishes the level of significance of disability based upon the criteria established in *ADVR Policy and Procedures CS 8.0 – Significance of Disability Determination*. The level of significance of the individual's disability is identified with one of the following three priority categories:

1. Individuals with the most significant disabilities
2. Individuals with significant disabilities
3. Individuals with disabilities

Priority Categories: There are three categories used by ADVR to determine the order that eligible individuals will receive VR services if ADVR is operating under an order of selection. All individuals eligible for VR services are assigned to a priority category based upon the significance of their disability.

Priority Category	Name	Criteria
1	Most Significantly Disabled (MSD)	<ol style="list-style-type: none"> <li>Has a severe physical, mental or sensory impairment that seriously limits <u>three or more</u> functional capacities such as mobility, work skills, self-care, interpersonal skills, communication, self-direction, or work tolerance in terms of an employment outcome and</li> <li>Meets the significant disability criteria as defined in Priority Category 2.</li> </ol>
2	Significantly Disabled (SD)	<ol style="list-style-type: none"> <li>Receives Social Security Disability Income or Supplemental Security Income.</li> </ol> <p><i>OR all of the following:</i></p> <ol style="list-style-type: none"> <li>Has a severe physical, mental or sensory impairment that seriously limits <u>one or more</u> functional capacities such as: mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance in terms of an employment outcome and</li> <li>Requires multiple vocational rehabilitation services over an extended period of time.</li> </ol>
3	Disabled	<ol style="list-style-type: none"> <li>Has a physical, mental or sensory impairment;</li> <li>Has a substantial impediment to employment as a result of the impairment; and</li> <li>Requires VR services to prepare for, secure, retain or regain employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.</li> </ol>

## B. Terminology

The following definitions are used for purposes of the (waiting list) order of selection policy.

### 1. Individual with a disability

See the above chart for the definition.

### 2. Individual with a most significant disability

See the above chart for the definition.

### 3. Individual with a significant disability

See the above chart for the definition.

### 4. Serious functional limitations.

As a result of a severe physical, mental or cognitive impairment, a reduction of one's capacity to perform to the degree that the individual requires services or accommodations, not typically provided to others, in order for the individual to work.

See below under functional limitation areas for specific definition of serious functional limitation under each functional capacity area.

### 5. Functional limitation areas include

Functional capacity areas: The functional capacity areas evaluated in relationship to the impact of a disability and an employment outcome are mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, and work skills.

Functional Capacity Areas		
Area	Definition	Serious Functional Limitation
<b>Mobility</b>	The ability to move from place to place inside and outside the home.	Most common life and work activities are impaired or prevented.
<b>Work Tolerance</b>	The capacity to meet the demands of the work place regardless of the work skills already possessed by an individual.	Limited endurance requires job modifications, accommodations, or adaptive technology not typically made for other workers.
<b>Self-Care</b>	The ability to perform activities	Assistance, services or adaptive



<b>Functional Capacity Areas</b>		
<b>Area</b>	<b>Definition</b>	<b>Serious Functional Limitation</b>
	of daily living including eating, toileting, grooming, dressing, cooking, shopping, washing, housekeeping, money management and health and safety.	technology is required to accomplish activities of daily living and/or maintain personal safety.
<b>Work Skills</b>	The ability to demonstrate work skills or work experience necessary to obtain and maintain appropriate employment.	Training, supervision, job modification or adaptive technology not typically needed by other workers is required in order to perform work tasks.
<b>Communication</b>	The ability to exchange information effectively.	Unable to communicate effectively or requires assistance, services, adaptive technology, or other alternative modes or communication.
<b>Self-Direction</b>	The ability to independently plan, initiate, organize, make decisions and carry out daily life activity after self-care needs have been met.	A higher level of supervision is required than is typically needed by other workers to accomplish tasks, monitor one's own behavior, and/or make independent decisions.
<b>Interpersonal Skills</b>	The ability to establish and maintain personal, family or community relationships.	Unable to establish effective relationships or exhibits socially unacceptable behavior.

## **6. Extended Period of Time.**

ADVR has not specifically defined the minimum -number of months constituting “extended period of time”. The VR counselor must consider each person’s circumstances to determine the estimated length of time required to deliver needed services. Six months may be used as a general guideline for an “extended period of time”, but should not be applied as an absolute minimum.

### **C. Acceptable and Unacceptable Factors**

Factors that will not be considered in determining an OOS priority category are:

- Type of Disability
- Duration of residency, provided the individual is present in the state;
- Age, gender, race, color or national origin;
- Source of referral;
- Type of expected employment outcome;
- The need for specific services or anticipated cost of such services; or
- The income level of the individual or individual's family.

Work-related limitations may result from or be compounded by external factors, such as geographic location, poor public transportation or lack of training. These factors do not relate to a disability and are not factors in determining a serious functional limitation. A specific disability diagnosis does not also automatically produce a functional limitation, as each individual's situation is unique.

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

When a VR counselor completes the eligibility process and the determination of the significance of the disability determination, the individual is added to the statewide OOS waitlist in the appropriate category by date of application. The date of application is either the date the application is signed in the presence of the VR counselor or the date the application is 'date stamped' in the office. The case is transferred from the VR counselor's caseload to the office's OOS waitlist.

The Chief of Rehabilitation Services, in consultation with the Administrative Manager and the Field Service Management Counsel (FSMC), determines when resources are available to initiate Individualized Plans for Employment (IPE's) for individuals on the statewide OOS waiting list. When resources are available, the Chief of Rehabilitation Services notifies the VR Managers of the number of individuals to take from the waiting list by priority category, application date(s) and office locations. VR Managers then coordinate with the VR counselors to transfer the corresponding cases from each office's OOS waitlist to a VR counselor's caseload.

An individual on the statewide OOS waiting list may request that their case be transferred from one office to another. The request for transfer is submitted to the VR Manager to coordinate.

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals

of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Continuation of Services**

OOS does not impact or alter the provision of post-employment services. Post employment services are considered an amendment of the IPE, and therefore, an individual who needs post employment services is not required to meet the highest priority category currently being served under an OOS nor is the individuals required to wait for services.

If the VR counselor determines that substantial services are needed a new application is completed subject to OOS.

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

A VR counselor may identify a functional loss based on the counselor's observations or a participant's self-report. Counselor observations alone are not adequate to support the determination of a serious functional loss, but should be used in conjunction with supporting medical information.

If an individual reports a functional loss that is not consistent with or not supported by disability-related documentation, the VR counselor and the individual need to discuss and reach an agreement as to how to obtain the information necessary to verify the functional loss.

The VR counselor synthesizes the medical and assessment information to determine the functional capacity limitations resulting from the disability.

The ultimate purpose for determining the significance of disability is to establish a priority of service to insure that, if ADVSR were to go on an OOS, individuals with the most significant disabilities would be served first.

The Significance of Disability Certificate must be completed at the time an individual is determined eligible for VR services or is moved into trial work or extended evaluation. The same information gathered during the assessment process for eligibility may be used in the significance of disability determination.

An individual is classified in the highest priority category he/she meets. The determination may be re-evaluated at any time during the VR process if either the individual or the VR counselor believes there is a significant change in the individual's disabling condition which could result in a change of priority categories. Under an OOS, a re-evaluation would never result in an individual being moved from an open service category to a closed service category.

If ADVR is not operating under an OOS, the priority classifications are used for planning purposes to ascertain that services can continue to be provided to all who are eligible.

**- Documentation**

1. *Significance of Disability - Functional Limitations Worksheet:*

- Used to identify capacity areas with serious functional loss;
- Most common indicators are listed under each capacity area;
- Use 'Other' when the individual experiences a functional loss equivalent to the indicators listed, counselor must write a detailed description; and
- Check all the indicators that apply in each capacity area.

2. *Significance of Disability Certificate:*

- VR counselor's formal determination of the individual's significance of disability and assignment to a priority of service category;
- Signed by a VR counselor delegated such authority;
- Assigns the individual to the highest category they qualify for; and
- Used in conjunction with the *Significance of Disability - Functional Limitations Worksheet*.

3. **AWARE** – *Eligibility Determination: Section 1 – Determination*

- Select the disability priority, the same as on *Significance of Disability Certificate*;
- Check the appropriate boxes which will support the priority selected, the boxes should correspond to the functional capacity losses as identified on the *Significance of Disability - Functional Limitations Worksheet*; and
- The 'Other' documentation area may be used as needed to support the determination.

## **B. Notification of Eligible Individuals**

The FSMC will determine when it is appropriated to implement procedures to reestablish or maintain contact with individuals while they are on the OOS waitlist. Factors to consider are the length of time an individual has been on the list and the anticipated time before the individual's category will open.

Upon receipt of a case transferred from the OOS waiting list, the VR counselor takes steps to contact the individual within three working days. Telephone contact is acceptable; however, if efforts to contact the individual by telephone are not successful within 2 days, a letter must be sent by the third day, scheduling the individual for an appointment. The appointment is scheduled no later than 10 days from the date the letter is sent.

Counselors need to consider the communication needs of the individual, including the need for information in alternate formats when initiating contact by telephone or letter.

If a individual missed a scheduled appointment or does not respond to an initial letter by the specified date, a certified letter is sent within 3 working days explaining that if the individual does not contact Alaska DVR within 10 days to initiate services, the case service record will be closed. The letter will include information explaining the current status of the waiting list and instructions on how to reapply at a later time.

Reasonable and timely efforts will also be made to verify or find updated telephone numbers and addresses, to contact the referral source, and/or to contact person(s) identified on the application or otherwise in the case service record.

If the date identified in the closure notification letter passes and there is no response from the individual and efforts to locate the individual through other sources have not resulted in contact, the case is closed.

Steps to contact each individual are documented in the case management system narrative and filed in the case service record.

## **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

When operating under OOS, ADVR is required to offer a formal, discreet Information and Referral (I&R) service to individuals who cannot be served and must wait for services because of the OOS.

ADVR must document and retain information about referrals to other federal and state programs that provide employment-related services. The I&R screen of the case management system is used to record the required information.

Federal regulations establish minimum requirements under I&R as follows. ADVR must:

- Provide individuals with accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) to prepare for, get, or keep a job.
- Refer individuals with disabilities to other federal or state programs that are best suited to address their specific employment needs, including partners in the workforce investment system.
  - Initiate a notice of referral identifying: The name of the program to which the individual is referred;
  - A contact person in that program; and
  - Information about the most suitable services to assist the individual prepare for, get or keep a job.

To provide individuals with accurate VR information and guidance, which may include counseling and referral for job placement, a VR counseling staff member talks to the individual about his/her need to prepare for, get or keep a job. The VR counseling staff member provides advice and guidance about how the individual might proceed, explains referral sources available, and offers to initiate a referral to another program, if appropriate. These interactions occur in the course of other activities, such as completing the application, intake and eligibility determination.

For individuals who choose not to apply for ADVR services because of the OOS, a general guideline is to limit I & R services to one appointment. The VR counselor will NOT establish an on-going counseling relationship nor perform follow-up services regarding I&R.

Each office will maintain a list of federal and state programs with which ADVR has established a formal referral relationship. It is expected that the Alaska One-Stop Centers will be used extensively, but not exclusively, for the referral of individuals who either choose not to apply or are on a waiting list to receive ADVR services. Other programs to be used in this capacity, as appropriate, include Tribal VR programs and other community programs. Because of limited resources in some areas and the unique needs of some individuals with disabilities, there will not be an appropriate program available to every person.

VR counseling staff may provide brief counseling for job placement. If the individual intends to engage in independent, self-directed job search or related activities, the VR counseling staff member may provide brief counseling to assist the individual in this effort. Examples of counseling and referral for job placement may include, but are not limited to:

- A counseling session with the individual to discuss what efforts to find a job the individual has already tried and offering other job search strategies and suggestions.
- Reviewing and giving advice on an individual's resume.
- Discussing reasonable accommodation issues and strategies for approaching an employer.

- Discussing and providing the individual with access to the Internet or another resource.
- Sharing information about the local labor market.

#### **D. Maintenance of Records**

All referrals to employment-related programs must be documented, including referrals for individuals who have applied and are waiting for services and referrals for individuals who choose not to apply for services because of the OOS. Each VR Manager, or designee, will identify and maintain the list of regional referral sources that require a formal referral. Each time an individual is referred to one of the listed organizations, the VR counseling staff member documents the referral in the I&R portion of the case management system. Every case will have an entry in the I&R screen prior to transferring the case to the OOS waiting list, or the case service record will document efforts to locate referral sources and the reason(s) a referral was not provided.

If an individual requests a referral, the VR counseling staff member prepares and sends a written referral to the organization. In addition, the VR counseling staff member provides the individual being referred with the following:

- A copy of the written referral notifying the other federal or state program about the referral.
- The name of the person in that organization to be contacted by the individual being referred.
- Information about the most suitable services to prepare for, secure, retain, or regain employment.

VR counselors routinely provide information to applicants and eligible individuals about a wide array of community assistance programs that may offer services or benefits to assist the individual meet a variety of needs (food or clothing banks, medical programs, counseling services, etc.). These types of referrals are considered informal referrals. ADVR staff are encouraged to continue providing individuals with information about other programs that offer services to assist them in meeting a variety of needs. Informal referrals are not documented in the I&R screen.

## **ARIZONA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Arizona's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The Order of Selection (OOS) is an organized, equitable method for serving groups of individuals with disabilities in a priority order if all eligible individuals who apply cannot be served. [Section 6.3A] Order of Selection (OOS) ensures that, if there are not enough resources to serve all those who are eligible for Vocational Rehabilitation services, the eligible clients with the most significant disabilities will receive Vocational Rehabilitation services. [Section 6.3C]

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Arizona.

#### **A. Establishment of Priority Categories**

Every eligible client will be placed into one of three priority categories [Section 6.3D]:

1. **Priority Group I** - Eligible individuals with the most significant disabilities.
2. **Priority Group II** - Individuals with significant disabilities:
3. **Priority Group III** - All other eligible individuals.

If resources are not available to serve all clients who apply and are determined eligible for services, categories within the Order of Selection will be closed in reverse order (3, 2, and 1). [Section 6.3K(2)]

#### **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

##### **1. Individual with a disability**

All individuals who meet the eligibility criteria for the Vocational Rehabilitation program but who are not determined to have a significant or most significant disability.



## **2. Individual with a most significant disability**

An individual with the most significant disability has a severe physical or mental impairment that seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. [Section 6.3D(1)]

## **3. Individual with a significant disability**

An individual with a significant disability has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. [Section 6.3D(2)]

Clients receiving SSI or SSDI based on disability are presumed to be individuals with at least a significant disability and should be assigned accordingly related to the Order of Selection Criteria. Determination of these clients as having "most significant disabilities" must meet the same criteria and standards as all other clients involved with the vocational rehabilitation program. [Section 6.3F]

## **4. Other eligible individuals**

Other eligible individuals with disabilities do not have a disability that seriously limits one or more functional capacities and do not require multiple services over an extended period of time. [Section 6.3D(3)]

## **5. Serious functional limitations.**

Impediments imposed by an individual's disability that present a barrier for the individual in preparing for, entering into, engaging in or retaining employment consistent with the individual's abilities and capabilities.

## **6. Functional limitation areas include**

- Communication
- Interpersonal Skills
- Mobility
- Self-Care and Home Care
- Self Direction
- Work Skills
- Work Tolerance

## **7. Multiple Vocational Rehabilitation Services.**

The term means two or more primary services needed to achieve a successful employment outcome. [Section 6.3B]

## **8. Extended Period of Time.**

The term means needing Vocational Rehabilitation services for duration of six months or more with a 90 day follow up after achieving a successful rehabilitation outcome. [Section 6.3B]

### **C. Acceptable and Unacceptable Factors**

The following non-discrimination policy is in place in relation to all aspects of an individual's interactions within the Arizona Vocational Rehabilitation program:

1. All Vocational Rehabilitation services must be provided without regard to:
  - Type of disability
  - Age
  - Gender
  - Color
  - Ethnicity
  - Cultural practices
  - National origin
2. No person present in Arizona will be denied Vocational Rehabilitation services by AZRSA based on a residence requirement, or duration of residence requirement. [Section 1.4].

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

Individuals within a priority category are ranked based on their date of application.

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Authority to Open and Close Priority Categories, as Needed**

When sufficient funds are available to serve additional or all individuals who apply for and are determined eligible for services, categories within the Order of Selection will be opened in order (1, 2, and 3). Management determines the effective date to open categories. [Section 6.3L(1)]

All signed client applications received on or after the effective date of the termination of an implementation of an Order of Selection and opening of selected categories will have an IPE developed and implemented accordingly unless there has been an inability to make contact with the client as stipulated above. [Section 6.3L(4)]

### **B. Continuation of Services**

All IPE's implemented prior to the effective date of the implementation of an OOS with closed categories, will not be affected by the closure of a category and will continue to receive the planned services. [Section 6.3K(3)]

### **C. Funding Arrangements**

All clients of the Arizona Vocational Rehabilitation program, regardless of funding source, are subject to the restrictions and requirements of the OOS.

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

Clients will be assigned to the appropriate OOS priority group [Section 6.3E]:

- After eligibility has been determined
- After sufficient assessments have been completed to identify the number and level of work impediments resulting from the client's disability and the client's met and unmet rehabilitation needs
- Prior to planning and implementing an IPE.

The tools used for exploring and documenting these determinations are embedded in the electronic case management system LIBERA. [Section 6.3G]

Considerations in determining a priority designation [Section 6.3H]:

- Special attention must be given to possible rehabilitation technology needs and options for the individual.
- Data should come primarily from the client, based on client's history and self-assessment.
- Additional evaluations may be necessary to make the determination.
- Such assessments must be obtained and resulting information entered on the Health Appraisal and Significant Disability Worksheet before it is finalized and signed.

#### **B. Notification of Eligible Individuals**

Contact letters will be sent to individuals in deferred status at least every 180 days. These letters will ask the client to contact the responsible Vocational Rehabilitation counselor to express continued interest in Vocational Rehabilitation services and to provide information about any changes in their disability status. Lack of response to two such contact letters may be cause to initiate normal closure procedures. [Section 6.3J]

All referred individuals will be notified of the existence of an OOS, the status of open/closed priority groups and will be provided the opportunity to apply for services and have an eligibility determination made. [Section 6.3K]

Supervisors are responsible for ensuring that staff notify clients on deferred status whose category has been opened that services are available. Notification is to be made within ten business days after the effective date using official AZRSA letter. If no response to written correspondence is received, the client's contact or emergency contact information is to be used to attempt phone contact. Lack of response to these two forms of contact is considered cause to initiate normal closure procedures. [Section 6.3L(2)]

#### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Eligible clients who meet the criteria for any open priority group will be served without restriction or any other prioritization. [Section 6.3I]

#### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Clients who are determined eligible, but who do not fall into an open priority group within an OOS will be maintained in a "deferred" status until the priority category is opened for services to be provided. These clients will be informed in writing that, although they have been determined eligible, development and implementation of an IPE is deferred. Clients in deferred status will be provided general information and guidance as well as referrals to other appropriate State and Federal programs. [Section 6.3J]

All clients without an implemented IPE after the effective date of the implementation of an OOS will have provision of services contingent upon assignment to a priority group. [Section 6.3K(4)]

IPE development and implementation for clients leaving deferred status will be initiated and completed in a timely manner and according to policy. [Section 6.3L(3)]

#### **E. Maintenance of Records**

All clients who are referred to the Arizona Vocational Rehabilitation program have a record developed and maintained. All client records are maintained within an electronic case file. This record reflects all contacts with the client, all assessments provided, all decisions made in the client's case, and all referrals provided to the client.

#### **F. Role of the State Rehabilitation Council**

The state of Arizona Vocational Rehabilitation program relies on the federal regulation in regards to the required consultation with the State Rehabilitation Council in relation to the Order of Selection. The State Rehabilitation Council is an active participant in the discussions and decision formation regarding the status of the OOS.

## **ARKANSAS ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Arkansas' policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Arkansas.

If ARS is unable to provide the full range of vocational rehabilitation services to all eligible individuals, the Agency will operate under an Order of Selection. ARS will provide services based on an Order of Selection on a statewide basis. The Order of Selection assures that individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services. Under an Order of Selection, ARS will designate which priority categories will be served based on availability of resources.

#### **A. Establishment of Priority Categories**

***PRIORITY CATEGORY I - MOST SIGNIFICANTLY DISABLED***

***PRIORITY CATEGORY II - SIGNIFICANTLY DISABLED***

***PRIORITY CATEGORY III - NON-SIGNIFICANTLY DISABLED NEEDING MULTIPLE SERVICES***

***PRIORITY CATEGORY IV - NON-SIGNIFICANTLY DISABLED***

#### **B. Terminology**

The following definitions are used for purposes of the order of selection policy.

##### **1. Individual with a disability**

A determination that the individual has a physical or mental impairment.

A determination that the individual's physical or mental impairment constitutes or results in a substantial impediment to employment for the individual.

A presumption that the individual can benefit in terms of an employment outcome from the provision of VR services.

A determination that the individual requires VR services to prepare for entrance into, engage in or retain gainful employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities and informed choice.

## **2. Most significantly disabled**

An individual with a most significant disability is defined as one who has a significant physical or mental impairment which:

- 1) seriously limits **two or more functional capabilities** (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of employment outcome;
- 2) whose vocational rehabilitation can be expected to require multiple VR services\* over an extended period of time; and
- 3) Who has one or more physical or mental disabilities as defined below.

## **3. Significantly disabled**

An individual with a significant disability is defined as one who has a significant physical or mental impairment which:

- 1) seriously limits at least one **functional capacity area** (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of employment outcome;
- 2) whose vocational rehabilitation can be expected to require multiple VR services (see below) over an extended period of time (see below); and
- 3) Who has one or more physical or mental disabilities as defined below\*\*\*:

**\*\*\*Definition:** One or more physical or mental disabilities resulting from: amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

29 U.S.C. 705(21)(A)

## **4. Non-significantly disabled needing multiple services requiring**

Means eligible individuals who are non-significantly disabled whose vocational rehabilitation is expected to require multiple VR services (see below).

#### **5. Non-significantly disabled**

Means eligible individuals who are non-significantly disabled who cannot be classified into a higher priority. (Multiple VR services, see below)

#### **6. Functional limitation areas**

Include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

#### **7. Multiple Vocational Rehabilitation Services.**

Means two (2) or more major VR services, i.e. physical or mental restoration, training, counseling and guidance, or placement.

#### **8. Extended Period of Time.**

Means 90 days or more from the date services are initiated.

### **C. Acceptable and Unacceptable Factors**

ARS has the sole responsibility of determining eligibility VR Services. The ARS Commissioner has delegated the responsibility of determination of eligibility to the Counselor.

For all individuals applying for services, ARS will conduct an assessment to determine eligibility and priority for services if the state is operating under an Order of Selection.

34 C.F.R. 361.42 (a)(2)

Eligibility requirements will be applied in compliance with Titles VI and VII of the Civil Rights Act, the Americans with Disabilities Act and without regard to age, religion, disability, sex, race, color or national origin. The eligibility requirements are applicable without regard to a particular service need or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.



### **A. Authority to Open and Close Priority Categories, as Needed**

The Chief of Field Services will notify the Field staff when the category served is raised or lowered. A copy of the notification will be filed under the eligibility tab (9) in the client file for documentation. Changing conditions may cause a category that has already been assigned to be reclassified downward or upward.

If funding becomes available, an IPE will be completed and the case moved to Status 12 and services will be provided without further delay. If funding is not available, any cases remaining in Status 04 at the end of the fiscal year will be closed in Status 38.

### **B. Continuation of Services**

Rehabilitation clients who have an IPE for VR, Trial Work or EE services in place prior to the implementation of the Order of Selection policy will receive services as recorded in their IPE. (ARS Policy and Procedure Manual III-4.)

### **C. Funding Arrangements**

Arkansas does not have any third party funding arrangements.

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

Eligibility (Status 10) must be established **prior** to applying the Order of Selection. Complete the Assessment for Determining Priority Category for Services. (See Appendix E)

In determining priority category, individuals are placed in the highest category for which they qualify. All individuals will be informed of the priority category for which they qualify.

### **B. Notification of Eligible Individuals**

In determining priority category, individuals are placed in the highest category for which they qualify. All individuals will be informed of the priority category for which they qualify.

The individual may appeal the determination of the priority category placement. ARS will provide the individual with information on the appeal process including informal and formal due

process procedures, such as administrative review, mediation and review by an impartial hearing officer.

The consumer will be notified in writing of the priority category using the required form letter. The original will be mailed to the individual and a copy will be placed in the case file. (See Appendix E)

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Rehabilitation clients who have an IPE for VR, Trial Work or EE services in place prior to the implementation of the Order of Selection policy will receive services as recorded in their IPE.

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Individuals who are not served due to the priority under the Order of Selection will be referred by the counselor to Workforce Investment Programs or other agencies for consideration of benefits/services.

If the individual does not meet the level of the priority category necessary to receive services, the individual may choose to be placed in a waiting (list) Status 04, or be referred to other Workforce partners or agencies, or closed in Status 30:

If the individual chooses to be referred to other Workforce partners or agencies referral will be made to the appropriate Workforce partner. The case will be closed in Status 30 by completing RS600-C. Key Status 30 in ARIMIS.

### **E. Maintenance of Records**

The Chief of Field Services will notify the Field staff when the category served is raised or lowered. A copy of the notification will be filed under the eligibility tab (9) in the client file for documentation.

Document the Category placement in the case notes by using the Order of Selection heading.

If the individual chooses to be referred to other Workforce partners or agencies:

- Referral will be made to the appropriate Workforce partner.
- Documentation of the referral will be placed in the case file.

If the individual chooses to be placed on a deferred services list (Status 04):

- Documentation of the action taken will be made in the case notes.
- Complete the Certificate of Eligibility. (See Appendix E)
- Key Status 04 in the ARIMIS system.

## **F. Role of the State Rehabilitation Council**

The State Rehabilitation Council (SRC) partners with ARS by reviewing the VR State Plan and provides input and recommendations. All ARS policies and procedures are reviewed by the Council. Collaboration with the SRC is an essential component of ARS policy and procedure development of OOS policy.

## **CALIFORNIA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes California's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

Prior to the beginning of each fiscal year, the Department shall [California Code of Regulation (CCR) 7052]:

- project the cost of determining eligibility for all applicants for vocational rehabilitation services in the next fiscal year; and
- project the cost of serving, in the next fiscal year, the projected number of individuals with IWRPs in place at the end of the current fiscal year; and
- project the cost of serving, in the next fiscal year, individuals whose IWRPs will be put in place in that year.

The Director shall declare the Department under Order of Selection for Vocational Rehabilitation Services when the budget information available indicates that the projected resources available for vocational rehabilitation services are not adequate to meet all the projected costs.

After the start of a fiscal year, the Director shall declare the Department under Order of Selection for Vocational Rehabilitation Services when the budget information available indicates that the projected resources available for vocational rehabilitation services for the remainder of the fiscal year, are not adequate to meet all projected costs for the remainder of the year.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

The purpose and intent of the order of selection policy is [CCR 7050; *Rehabilitation Administrative Manual Section 30080*]:

1. To provide an organized and equitable method to serve individuals with disabilities, if it is anticipated that all eligible individuals who apply for vocational rehabilitation services cannot be served, by:
  - determining the need for an Order of Selection for Vocational Rehabilitation Services;
  - timing the establishment of an Order of Selection for Vocational Rehabilitation Services;
  - developing priority categories for an Order of Selection for Vocational Rehabilitation Services;

- implementing and monitoring an Order of Selection for Vocational Rehabilitation Services; and
  - determining a priority category for each eligible individual.
2. To manage the resources available for the provision of vocational rehabilitation services for each fiscal year.
  3. To assure that first priority for vocational rehabilitation services is given to individuals with the most significant disabilities as defined herein.
  4. To assure the state wideness of the Order of Selection for Vocational Rehabilitation Services.
  5. To define the circumstances under which the Department will not require an Order of Selection for Vocational Rehabilitation Services.

#### **A. Establishment of Priority Categories.**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

If the number of individuals eligible to receive vocational rehabilitation services must be limited, the following Order of Selection for Vocational Rehabilitation Services shall be implemented [CCR 7053, *Rehabilitation Administrative Manual Section 30081*]:

**PRIORITY CATEGORY 1.** Eligible individuals determined to be most significantly disabled, beginning with the earliest application date.

**PRIORITY CATEGORY 2.** Eligible individuals determined to be significantly disabled beginning with the earliest application date.

**PRIORITY CATEGORY 3.** All other eligible individuals determined to be disabled beginning with the earliest application date.

#### **B. Terminology**

The following definitions are used for purposes of the order of selection policy [7051].

1. “**Accommodation**” for the purpose of evaluating the impact in a functional capacity area means any type of assistance required as a result of an impairment including, but not limited to, work site adaptation, job restructuring, assistive technology devices, personal assistance services, prescribed medication, alternate media, or prosthesis.

2. **“Assess” or “assessment,”** for the purposes of Order of Selection for Vocational Rehabilitation Services only, means quantifying the impact of the limitations presented by an individual's disability considered in a full range of environments. This assessment takes place after an individual has been determined to be eligible for services from the Department of Rehabilitation.
3. **“Extended period of time”** means more than six months.
4. **“Functional Capacity Area”** means communication, interpersonal skills, mobility, self-care, work skills, and work tolerance, which are impacted by an individual's disability.
  - a. **“Communication”** means the ability to use, give and/or receive information.
  - b. **“Interpersonal Skills”** means the ability to establish and/or maintain appropriate interactions with others.
  - c. **“Mobility”** means the ability to move from place to place.
  - d. **“Self-Care”** means the ability to plan and/or perform activities of daily living.
  - e. **“Work Skills”** means the ability to learn and/or perform work functions.
  - f. **“Work Tolerance”** means the ability to sustain the required level of work functions.
5. **“Level of significance of disability”** means one of the following: disabled, significantly disabled, or most significantly disabled as determined by the following criteria:
  - a. **“Disabled”** means an eligible individual:
    - who has no serious limitation in terms of an employment outcome in any functional capacity area; or
    - whose vocational rehabilitation is not expected to require multiple vocational rehabilitation services; or
    - whose vocational rehabilitation is not expected to require an extended period of time.
  - b. **“Significantly disabled”** means an eligible individual:
    - 1) who meets the following criteria:
      - who has a serious limitation in terms of an employment outcome in at least one functional capacity area; and
      - whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services; and
      - whose vocational rehabilitation can be expected to require an extended period of time; and
      - who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, acquired traumatic brain injury, heart disease, hemiplegia, hemophilia, HIV infection, respiratory or pulmonary

dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation; or

- 2) who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.). If the Department is serving only individuals who are the Most Significantly Disabled under Order of Selection, the Department shall complete a form DR 213A, Significance of Disability Instrument (New 06/01), incorporated by reference herein, pursuant to Section 7054, for individuals who have a disability or are blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.) to determine whether they are Most Significantly Disabled.

c. **“Most significantly disabled”** means an eligible individual:

- 1) who meets the following criteria:

- who has a serious limitation in terms of an employment outcome in at least four functional capacity areas; and
- whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services; and
- whose vocational rehabilitation can be expected to require an extended period of time; and
- who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, acquired traumatic brain injury, heart disease, hemiplegia, hemophilia, HIV infection with clinical evidence of immunosuppression, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation; or

- 2) who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.) and

who has a serious limitation in terms of an employment outcome in at least four functional capacity areas.

6. **“Multiple vocational rehabilitation services”** means two or more vocational rehabilitation services, excluding counseling and guidance, services to family members, and transportation.
7. **“Priority Category”** means the order in which individuals will be served. The category shall be established, first, based on their level of significance of disability, and second, their date of application.
8. **“Serious limitation in terms of an employment outcome”** means a reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodations in order for the individual to work or be a fully functioning member of the community.
9. **“Transportation,”** for the purposes of Order of Selection for Vocational Rehabilitation Services only, means the use of public or private modes of travel. The purchase of a vehicle, vehicle modification, repair, and mobility evaluation are not defined as transportation for purposes of determining the need for multiple vocational rehabilitation services.

#### **C. Acceptable and Unacceptable Factors**

Order of Selection for Vocational Rehabilitation Services shall **not** be based on the following [CCR 7050(b)]:

1. Any geographical location of residency within the state;
2. Any duration of residency requirement, provided the individual is present in the state;
3. Type of disability;
4. Sex, race, age, religious creed, color, ancestry, national origin, sexual orientation, or marital status;
5. Source of referral;
6. Type of expected employment outcome;
7. The particular service needs or anticipated cost of services required by an individual; and
8. The income level of an individual or an individual's family.

#### **D. Ranking Individuals Within a Priority (Waiting Lists)**

Eligible individuals within a priority category shall begin with the earliest application date.

When eligible individuals determined to be significantly disabled can be served, all eligible individuals determined to be most significantly disabled shall be served regardless of the date of application. When eligible individuals determined to be disabled can be served, all eligible individuals determined to be significantly disabled shall be served regardless of the date of



application. Individuals who are not included in the priority category (ies) being served shall be placed on a waiting list. [CCR 7053; *Rehabilitation Administrative Manual Section 30081*]

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Statewide Basis**

Upon a determination that an Order of Selection for Vocational Rehabilitation Services must be implemented, the Department shall establish a statewide waiting list of eligible individuals in priority categories. [CCR 7055]

#### **B. Authority to Open and Close Priority Categories, as Needed**

When the Director of the Department has declared the Department in Order of Selection for Vocational Rehabilitation Services, at least a quarterly review will be done to determine whether the projected resources available to serve individuals in priority category/ies currently being served are adequate to meet all projected costs for such individuals for the remainder of the fiscal year. [CCR 7053.5]

If the review indicates that the projected resources are inadequate to serve individuals in priority categories currently being served, the priority categories being served will be reduced accordingly. Individuals in a priority category no longer being served, whose IWRP was written and signed prior to implementation of the reduction shall continue to receive services including additional services subsequently identified as necessary to complete their IWRP. [CCR 7053.5]

If the review indicates that the projected resources are adequate to serve only individuals in priority categories currently being served, no change will be made in the priority categories being served. If the review indicates that the projected resources are adequate to serve individuals in additional priority categories, those categories will be served. [CCR 7053.5]

The Director shall make a declaration of any change in priority categories. [CCR 7053.5]

When the Department determines that the available resources are adequate to fund vocational rehabilitation services to all eligible individuals, it will begin to provide vocational rehabilitation

services to all priority categories. All individuals on the waiting list will be notified, in writing, within thirty (30) days of the determination to end Order of Selection for Vocational Rehabilitation Services, that the Department is no longer under an Order of Selection for Vocational Rehabilitation Services. If the individual chooses, a designated representative may receive notification on his/her behalf. The Department will continue to complete the level of significance of disability determination with each eligible individual and maintain its priority category information. [CCR 7057]

### **C. Continuation of Services**

Upon implementation of the Order of Selection for Vocational Rehabilitation Services [CCR 7053]:

- Individuals whose IWRP was written and signed prior to implementation or an order of selection shall continue to receive services including additional services subsequently identified as necessary to complete their IWRP.
- Individuals who were determined eligible prior to implementation, but for whom the IWRPs have not been written and signed, shall be assigned to a priority category.

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the state Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

In order to determine whether an individual is eligible for vocational rehabilitation services, and the individual's priority under an Order of Selection, the Department must conduct an assessment in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions. [CCR 7062; *Rehabilitation Administrative Manual Section 30084*] When the Department is operating under an Order of Selection, the Department must base its priority category assignments on—

- A review of the data that was developed under (g) and (h) (see below) to make the eligibility determination; and
  - An assessment of additional data, including data developed under (i) (see below) to the extent necessary.
1. Except as provided in (h) and (i) of this section, the Department—
    - a) Must base its determination of each of the basic eligibility requirements in (a) of this section on—
      - i. A review and assessment of existing data, including:

- Counselor observations including, but not limited to, observation of an obvious impairment, as in the case of loss of a limb.
    - Medical records
    - Education records.
    - Information provided by the individual or the individual's family, particularly information used by education officials.
    - Determinations made by officials of other agencies.
  - ii. 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.
- (b) Must base its presumption under (d)(1) of this section that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in (a) of this section on determinations made by the Social Security Administration.
2. Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in an integrated setting due to the severity of the individual's disability, the Department must conduct trial work experience as defined in Section 7029.1 of these regulations to determine whether or not there is clear and convincing evidence to support such a determination.
  3. Under limited circumstances if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the Department is able to determine whether the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome in an integrated setting, or whether there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in an integrated setting due to the severity of the individual's disability, the Department must conduct an extended evaluation as defined in Section 7014 of these regulations.

Assessing the level of significance of disability shall be [CCR 7054]:

- a collaborative effort on the part of departmental staff and the individual with a disability and, as appropriate, his/her family, or advocates, or designated representative; and
- based on information collected from a wide variety of sources; and

- based on a review of the individual's daily life, including community, home, school, and work, considering an individual's ability to participate in major life activities, as they impact an employment outcome; and
- a consideration of the impact of an individual's impairment/s in each of the functional capacity areas (communication, interpersonal skills, mobility, self-care, work skills and work tolerance).

When assessing the functional impact of the disability, departmental staff shall, in collaboration with the individual and/or the individual's representative, complete a form DR 213A, Significance of Disability Instrument (New 06/01), indicating whether any serious limitation in terms of an employment outcome exists in each of the functional capacity areas. [*CCR 7054; Rehabilitation Administrative Manual Section 30082, 30084; Level of Significance of Disability*]

The following factors are to be considered in determining if a serious limitation in terms of an employment outcome exists in each functional capacity area. The factors listed below and on the form DR 213A, Significance of Disability Instrument (New 06/01) for each of the functional capacity areas are not considered to be all-inclusive or fully comprehensive.

A serious limitation in terms of an employment outcome is indicated in the area of **communication** when, as a result of the physical and/or mental impairment the individual requires accommodation to use, give and/or receive verbal/auditory information; or the individual requires accommodation to use, give and/or receive visual information.

A serious limitation in terms of an employment outcome is indicated in the area of **mobility** when, as a result of the physical and/or mental impairment the individual requires accommodation to move from place to place; or the individual is limited in terms of distance and/or terrain that can be traveled.

A serious limitation in terms of an employment outcome is indicated in the area of **interpersonal skills** when, as a result of the physical and/or mental impairment, the individual requires accommodation to establish and/or maintain appropriate interactions with others.

A serious limitation in terms of an employment outcome is indicated in the area of **self-care** when, as a result of the physical and/or mental impairment, the individual requires accommodation to plan and/or perform activities of daily living.

A serious limitation in terms of an employment outcome is indicated in the area of **work skills** when, as a result of the physical and/or mental impairment the individual requires accommodation to learn and/or perform work functions; or the individual requires accommodation to plan, problem solve and/or organize work functions.

A serious limitation in terms of an employment outcome is indicated in the area of **work tolerance** when, as a result of the physical and/or mental impairment the individual requires accommodation to sustain the required level of work function; or the individual is restricted from working in certain work environments which may include, but are not limited to, cold, heat and noise.

Individuals on the waiting list may request a re-evaluation of his/her priority category placement at anytime he/she believes that his/her situation has changed sufficiently to place him/her in a different priority category. The Department shall conduct a re-evaluation and notify individuals of the results within thirty (30) days of the request. If the re-evaluation takes longer than thirty (30) days, the rehabilitation counselor shall inform the client of the reason for the delay, and the estimated date the re-evaluation shall be completed. [*CCR 7055; Rehabilitation Administrative Manual Section 30086*]

## **B. Notification of Eligible Individuals**

All eligible individuals assigned to a priority category, who do not have a signed IWRP, shall be notified, in writing, of the Department's intention to implement Order of Selection for Vocational Rehabilitation Services. If the individual chooses, a designated representative may receive notification on his/her behalf. [*CCR 7053; Rehabilitation Administrative Manual Section 30090*]

The Department, through the local offices, shall notify each individual placed on the waiting list, or his/her designated representative, in writing, of all of the following [*CCR 7055; Rehabilitation Administrative Manual Section 30090*]:

- The priority category to which he/she has been assigned.
- The priority category (ies) that are currently being served.
- His/her appeal rights as specified in Sections 7350 through 7361.
- His/her right to a re-evaluation of his/her priority category placement per Section 7055(f).

Ninety (90) days after an individual is placed on the waiting list and in ninety (90) day increments thereafter, the Department shall contact the individual, in writing, to inform him/her of the priority category to which he/she has been assigned, the priority category (ies) that are currently being served, and his/her waiting list status in order to determine if he/she wishes to remain on the waiting list. [*CCR 7055*]

If an individual does not respond within thirty (30) days of contact to the information contained in the ninety (90) day notice, the individual will be notified that his/her case will be closed if there is no contact with the rehabilitation counselor within the next sixty (60) days. If the individual chooses, a designated representative may receive notification on his/her behalf. If departmental staff is unable to contact the individual, or if the individual declines to remain on

the waiting list, a notice of case closure letter will be sent to the individual or to his/her designated representative. [CCR 7055]

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Eligible individuals with disabilities who meet open categories under the order of selection shall receive vocational rehabilitation services set out in the individual's IPE.

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

If the Department determines that an applicant is ineligible for vocational rehabilitation services from the Department or determines that an eligible individual receiving services under an Individualized Plan for Employment (IPE) is no longer eligible for services, the Department must refer the individual to other programs that are part of the One-Stop service delivery system under the Workforce Investment Act of 1998 (29 USC 2841) that can address the individual's training and employment related needs [CCR 7098]

### **E. Case Closure and Maintenance of Records**

The individual shall receive a copy of form DR 213, Significance of Disability Determination (Rev. 07/01) within 30 days of determination of the level of significance of disability. The individual, or the individual's designated representative, and the counselor shall sign the form and it shall be included in the individual's record of services. [CCR 7054]

### **F. Monitoring and Oversight**

The Department shall review at least annually the order of selection for all eligible individuals in priority categories, including those being served and those on the waiting list. This review shall be conducted to assure that [CCR 7056; *Rehabilitation Administrative Manual Section 30091*]:

- services are being provided on a statewide basis; and
- the determination of priority category does not bar or discriminate against any eligible individual based on the factors specified in Section 7050(b) of these regulations.

If the Department's review discloses the Order of Selection for Vocational Rehabilitation Services is barring or discriminating against any eligible individual(s) based on inappropriate factors the Department shall remedy that situation by promulgating emergency regulations within 90 days. [CCR 7056]

### **G. Role of the State Rehabilitation Council**

Section 105(c) of the Rehabilitation Act of 1973, as amended, requires that the SRC review, analyze, and advise the Designated state Unit (DSU) regarding the performance of the responsibilities of the unit under this title, particularly responsibilities relating to eligibility (including Order of Selection).

The SRC was actively involved in the development and review of the Order of Selection Process as well as both the current and previous process to determine level of significance of disability.

## **COLORADO ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Colorado's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Colorado.

#### **A. Establishment of Priority Categories**

If it should become impossible to serve all eligible individuals with disabilities, the DVR Director will invoke, in writing, the implementation of an order of selection to govern the provision of vocational rehabilitation services. [8.1] When DVR cannot serve all eligible individuals, each individual found eligible for vocational rehabilitation services will be classified by placement into one of the three following priority categories based on a determination of severity of his/her disability [8.2]:

1. Eligible individuals with the most significant disabilities;
2. Eligible individuals with significant disabilities; and
3. All other eligible individuals.

An individual shall be classified in the highest priority category for which s/he is determined qualified. If an individual's circumstances change or when it has been determined that an individual has been misclassified, the priority classification shall be changed accordingly, and the individual shall be notified of the change. All eligible individuals within a higher priority category shall be served before any eligible individual in the next lowest priority category is served. [8.2]

In accordance with Section 101(a)(5)(A)(ii) of the Rehabilitation Act of 1973, as amended, DVR has designated that individuals with disabilities will receive vocational rehabilitation services in the following order of priority [ATTACHMENT 4.11 (c)(3); Procedural Guidance]



**FIRST** : Eligible individuals with the most significant disabilities (severe impairment, serious functional capacity loss in 3 or more areas, two or more core services required for at least 5 months)

**SECOND**: Eligible individuals with significant disabilities (severe impairment, serious functional capacity loss in 2 or fewer areas, two or more core services required for at least 5 months)

**THIRD**: Eligible individuals with a disability (all other individuals whose disabilities do not meet the criteria for most significant or significant)

## **B. Terminology**

The following definitions are used for purposes of the order of selection policy.

### **1. Individual with a disability**

An individual is classified as having a disability when he/she meets DVR eligibility criteria but has a disability that does not meet the criteria for most significant or significant disability. [7.4]

### **2. Individual with a significant disability**

An individual is classified as having a significant disability when he/she has a severe physical or mental impairment(s) that seriously limits at least one factor in two or fewer functional capacity areas and who otherwise meets the same criteria as for a most significant disability. An individual who is determined to be eligible for SSI/SSDI on the basis of his or her own disability is presumed to have a significant disability. [7.3]

### **3. Individual with a most significant disability**

An individual is classified as having a most significant disability when he/she has a severe physical or mental impairment that seriously limits at least one factor in three or more functional capacity areas (mobility, motor skills, interpersonal skills, communication, work tolerance, work skills, self-care and self-direction) in terms of an employment outcome; and, whose successful vocational rehabilitation can be expected to require the provision of two or more core vocational rehabilitation services for at least five months. [7.2]

The Division of Vocational Rehabilitation has developed the following criteria to identify an individual with the most significant disability [ATTACHMENT 4.11 (c)(3)]:

- The individual must have an impairment or impairments which, alone or in combination, are severe,
- The individual must be seriously limited from achieving an employment outcome due to serious functional loss in **three or more** of the functional capacities identified

in Section 7(15)(A) of Rehabilitation Act of 1973 (Public Law 93-112) as amended through 1998 (Public Law 102-569),

- The individual must need at least two **core vocational rehabilitation services\*** to address the functional losses imposed by the significant impairment(s) in order to attain an employment outcome, and
- It will take a minimum of **five (5) months** to complete the services. [ATTACHMENT 4.11 (c)(3)]

#### 4. **Serious functional limitations.**

A serious limitation means a reduction in functioning, due to a severe impairment, to the degree that the individual requires goods and services or special working conditions, such as job re-engineering, assistive technology, substantial on-the-job support or intensive supervision, not typically provided for other individuals in order to prepare for, enter, engage in or retain employment in previous jobs, usual line of work and/or occupations usually available to people of equivalent age, education and capacities who do not have disabilities. External factors, such a geographical location, availability of public transportation, lack of financial resources or training, are not considered when determining whether or not a limitation meets the criteria for “serious”. [7.13]

#### 5. **Functional capacity area.**

A functional capacity area is a set of life activities or skills in which the ability to function is significant to successful independence and/or employment. The areas that have been identified for the purpose of determination of severity of disability are mobility, motor skills, interpersonal skills, communication, work tolerance, work skills, self-care and self-direction.

In terms of an employment outcome, the DVR counselor must analyze the impact of serious functional limitations on the individual’s current employment, previous jobs, usual line of work and/or occupations usually available to people of equivalent age, education and capacities who do not have an impairment(s). [7.14]

- a. Mobility – The physical or psychological ability to move from place to place inside and outside the home and workplace including travel for activities of daily living, training or work. This includes limitations in mobility due to risks as a vulnerable individual due to cognitive or psychological factors. It does not include lack of a driver’s license, geographic location or availability of transportation. [7.14.1]
- b. Motor Skills – The capacity for purposeful movement and control of the body, including control and coordination of fine and gross motor movements, to accomplish specific tasks. For employment this considers the capacity to perform work tasks at an acceptable pace. [7.14.1]
- c. Self-Care – The ability to care for self and living environment (i.e. eating, toileting, grooming, dress and money management) to participate in training or work. This includes the management of any special medical and safety needs. Limitations may occur because of physical, cognitive or emotional impairments. [7.14.1]

- d. Self-Direction - The ability to plan, initiate, problem-solve, organize and manage goal-directed activities and behaviors necessary for daily living and work. [7.14.1]
- e. Interpersonal Skills – The ability to establish and maintain personal, family and community relationships as it affects or is likely to affect job performance and security. [7.14.1]
- f. Communication – The ability to give and receive information including hearing or understanding spoken communications and sounds, speaking, seeing printed material or signage and language skills sufficient for written or spoken work-related communication. This does not include language or cultural differences unrelated to disability. [7.14.1]
- g. Work Tolerance- The capacity to meet common or normal physical, psychological and environmental demands of work including endurance, stamina and consistent physical or mental effort. [7.14.1]
- h. Work Skills- The capacity to learn and perform job tasks, remember and concentrate sufficiently to retain performance of tasks and the capacity to learn new or changed tasks. This includes the speed and quality with which job tasks can be performed for reasons other than limitations in motor skills. [7.14.1]

#### **6. Multiple Vocational Rehabilitation Services Over an Extended Period of Time.**

The requirement for multiple vocational rehabilitation services over an extended period of time has been defined by DVR in terms of the number of core vocational rehabilitation services necessary to address the rehabilitation needs arising from the individual's limitations in functioning that are expected to require at least five (5) months of service provision. In identifying the number of core services, the DVR counselor does not count those services which are supportive to another service, such as transportation and maintenance, and would not be provided if not to support a necessary core service. [7.15]

**Core vocational rehabilitation services** includes all vocational rehabilitation services other than supportive services (maintenance, transportation, services to family members, and personal assistance services); services secondary to core vocational rehabilitation services, such as training materials and supplies when training is being provided as a core vocational rehabilitation service; or, generalized counseling, guidance, and placement which are provided during the vocational rehabilitation process in connection with the provision of vocational rehabilitation services but are not identified as a needed vocational rehabilitation service on the IPE. [ATTACHMENT 4.11 (c)(3)]

#### **C. Acceptable and Unacceptable Factors**

External factors, such a geographical location, availability of public transportation, lack of financial resources or training, are not considered when determining whether or not a limitation meets the criteria for “serious”. [7.13]

#### **D. Ranking Individuals Within a Priority (Waiting Lists)**

When it is impossible to serve all eligible individuals within a priority category, the individuals shall be placed on a waiting list and served in chronological order based on the date of application for vocational rehabilitation services. In the event that an order of selection is rescinded or that all eligible individuals can be served while an order of selection is in effect, eligible individuals on waiting lists and in unserved categories will be contacted and served in chronological order based on the dates of their applications in accordance with their priority category (higher category before next lowest category). [8.2]

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Authority to Open and Close Priority Categories, as Needed**

DVR will continue to closely monitor our financial situation and resources. When it is determined that sufficient resources are again available to serve individuals on the waiting list, individuals across the state will be contacted and served in *chronological* order based on the dates of their applications in accordance with their priority category. [Procedural Guidance]

This process of opening waiting lists first to individuals with the most significant disabilities in chronological order by date of application highlights the importance of accurate coding in the 911/GGCC system. It is *critical* that counselors make high quality determinations about an individual's eligibility and severity of disability and then ensure that these decisions are *accurately coded* into our system. . [Procedural Guidance]

#### **B. Continuation of Services**

Diagnostic goods and services necessary to establish eligibility shall continue to be provided during an order of selection. Timeliness of eligibility determination and all eligibility requirements remain applicable under an order of selection. [8.41]

All goods and services, including post-employment services, shall be available to eligible individuals receiving planned vocational rehabilitation services under an order of selection insofar as they are necessary and appropriate to the individual's vocational rehabilitation needs. All requirements for provision of vocational rehabilitation services shall be applicable to eligible individuals receiving planned services under an order of selection. All policies governing the expenditure of vocational rehabilitation funds, the individual's financial participation and the use

of comparable services and benefits are applicable to eligible individuals receiving planned vocational rehabilitation services under an order of selection. [8.41]

Upon a decision that the Division of Vocational Rehabilitation can no longer serve all individuals in a priority category, all individuals who have been determined to be eligible prior to the decision date and who are not on an active waiting list, shall continue to receive vocational rehabilitation services. [8.4; **ATTACHMENT 4.11 (c)(3); Procedural Guidance**]

#### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

##### **A. Assessment for Determining Eligibility and Priority for Services**

The service record must contain evidence to support the determination of severity of disability. The DVR counselor must determine severity of disability at the same time as the determination of eligibility when DVR has a waiting list under an order of selection. When DVR can serve all eligible individuals, determinations of severity of disability must be completed as soon as possible but not later than development of the IPE. The Determination of Severity of Disability form must be completed, signed and dated by the DVR counselor. If information is obtained during the comprehensive assessment that changes the determination of severity of disability, the DVR counselor shall complete a new Determination of Severity of Disability form and the priority classification shall be changed accordingly including appropriate notification of the individual as required under an order of selection. [7.1 Determination of Severity of Disability]

For individuals determined to be presumptively eligible based on SSI/SSDI verification, which also presumes existence of a significant disability, the DVR counselor must review and assess existing data and obtain any additional assessments necessary to determine if a most significant disability exists and to assist the individual in determining an appropriate employment goal and necessary services. The determination that an individual entitled to SSI/SSDI has a most significant disability requires documentation of the number and types of functional capacity losses and number of services required. [7.11 Social Security Determinations]

All diagnostic goods and services *necessary* to establish eligibility *and* determine the severity of the individual's disability will continue to be provided to all applicants. Staff will continue to obtain any existing records to accurately make these determinations before purchasing additional necessary assessments. [Procedural Guidance]

Individuals who are currently in status 06 under a Trial Work Experience or Extended Evaluation plan are still being evaluated for eligibility and should continue to receive services as indicated

on their plans. Once a decision is made that the individual is, in fact, eligible for services, then he/she will be placed on a waiting list in accordance with his/her priority classification.  
[Procedural Guidance]

#### Timing of Determinations [Procedural Guidance]:

In an effort to expedite eligibility, counselors have been directed to gather just enough diagnostic information to determine whether the individual meets the federal criteria for eligibility. After that decision is made, the counselor may continue to gather additional information to accurately determine the severity of the individual's disability. This process changes when there is a waiting list under Order of Selection.

When there are closed categories and an active waiting list under an Order of Selection, these two determinations must occur *at the same time*, prior to moving the case out of status 02 or status 06. With all three priority categories closed, counselors will gather only enough information to determine eligibility *and* the most appropriate level of severity of the individual's disability.

Example 1: If an individual with multiple disabilities and associated functional limitations is determined eligible and placed in a "Most Significant" priority category based on one of the disabilities alone, the counselor would document these determinations and not continue to assess additional impairments and limitations.

Example 2: If a counselor determines an individual to be eligible and appropriate for the "Significant" priority category but has not yet assessed additional known impairments or limitations, the counselor must continue to assess to ensure the severity determination is as accurate and complete as possible.

When both determinations have been made as accurately as possible, the counselor will document them on the "Analysis of Eligibility" and "Determination of Severity of Disability" forms and the individual will then be placed on a waiting list. The counselor will not proceed to gather additional information to determine vocational goal or nature and scope of services.

#### If Someone is Presumptively Eligible [Procedural Guidance]:

- Even though a presumptively eligible individual is presumed to have at least a *significant* disability, the counselor must still gather enough information to determine if disability is *significant* or *most significant* prior to moving the individual out of status 02 and onto a waiting list. When this determination has been accurately made, the counselor should complete the "Certification of Eligibility" (checking the presumptively eligible box) and the "Determination of Severity" forms and place the individual on a waiting list.

After determining an individual's eligibility and significance of disability, the individual will be provided with the **following documentation** and moved into status 04 (waiting list status - since all three priority categories are going to be closed for an indeterminate period of time)  
[Procedural Guidance]:

- The "**OOS Wait Letter**" (instead of the typical OOS No Wait Letter) informing the individual of his/her priority classification and that he/she is being placed on a waiting list for services.

- An additional copy of the “**Appeal Rights**” form as an attachment to the “OOS Wait Letter” which asserts the individual’s right to appeal his/her priority classification.
- The “**Referral for Other Services**” form. Federal regulations require DVR to refer an individual being placed on a waiting list to “Federal or State programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of an individual with a disability”. Best practice would be for each office to customize this form with the contact information for its local Workforce Center and Independent Living Center as well as any other known entities in the area that may be able to assist the individual while he/she is on a DVR waiting list.

Once an individual has been placed on a waiting list (moved to status 04), he or she may present additional information which could affect his/her priority classification. If additional information is presented, the counselor should re-assess the individual’s determination of severity by completing a new “Determination of Severity of Disability” form. The counselor should then ensure the person is re-coded into the appropriate priority category in GGCC and send a second letter (“OOS Wait Letter”) to the individual notifying him/her of the new priority category. [Procedural Guidance]

## **B. Notification of Eligible Individuals**

When there is an order of selection, all applicants for vocational rehabilitation services shall be notified, in writing, of the policies and procedures governing the provision of goods and services under an order of selection. Upon placement into a priority category, the eligible individual shall receive written notification of his/her priority classification and information regarding the policies and procedures governing availability of vocational rehabilitation services, including notification of placement on a waiting list, when applicable. The written notification shall include information about appeal rights and the Client Assistance Program. [8.3]

When an eligible individual is reclassified into a higher or lower priority category, s/he shall be notified, in writing, of the reclassification and provided written information as to how the change will affect the availability of vocational rehabilitation services. The written notification shall include information and contacts about appeal rights and the Client Assistance Program. [8.3]

When providing an applicant the Rights and Responsibilities form and discussing it with him/her to ensure understanding, be sure to address and emphasize the paragraph entitled “Availability of VR Services”. This gives the individual the required information about an Order of Selection waiting list. [Procedural Guidance]

## **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

All services, including post-employment services, shall be available to eligible individuals receiving services under an order of selection. All applicants, including those receiving trial work experiences, shall receive any and all services necessary to determine eligibility for vocational rehabilitation services and order of selection priority classification without regard to the availability of funds or the implementation of the order of selection. Such services shall be provided on a

timely basis in accordance with the provisions of the Rehabilitation Act of 1973, as amended under the Workforce Investment Act of 1998, and the regulations found at 34 CFR Part 361. [ATTACHMENT 4.11 (c)(3)]

#### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

During an order of selection, no vocational rehabilitation funds shall be authorized or expended on any eligible individual on an order of selection waiting list or on any individual subsequently determined eligible when classification puts him or her in a closed priority category, unless the expenditure is necessary to reassess the severity of the individual's disability. [8.6]

All eligible individuals on an order of selection waiting list shall be provided information and guidance about goods or services provided by other components of the statewide workforce investment system and other Federal and State programs which can be of assistance to individuals with disabilities in preparing for, securing, retaining or regaining employment. Eligible individuals on an order of selection waiting list shall be provided written referrals to those programs that are best suited to address their specific employment needs. Written referrals shall identify a specific point of contact and the most suitable services to meet the eligible individual's employment needs. The service record must document DVR information and referral services. [8.5 Information and Referral Services]

#### **E. Maintenance of Records**

The service record shall contain a Determination of Severity of Disability form and evidence to support the priority category classification(s). [8.2]

#### **F. Role of the State Rehabilitation Council**

DVR consults with the State Rehabilitation Council regarding the need to establish an order of selection, priority categories, criteria for determining individuals with the most significant disabilities, and administration of the order of selection.



## **CONNECTICUT ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Connecticut's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The Bureau of Rehabilitation Services (BRS) has operated under an Order of Selection (OOS) Policy since 1991 when it determined that it could not meet the needs of all eligible consumers. The precipitating event in 1991, which led to the implementation of an Order of Selection, was the expenditure at the mid-point in the federal fiscal year of all available funds for Purchase-of-Services and the subsequent stoppage of all services to consumers, regardless of their degree of impairment. This led to the Bureau's development of a four-year model of financial planning. The employment of this model has resulted in the Bureau operating under its current OOS continuously since 1992 without service interruptions. The Bureau's four-year model of financial planning was cited by RSA during a 2008 RSA Monitoring Visit as a "best practice" and featured at the RSA Fiscal and Data Conference in August of 2008. [State Plan Attachment]

In accordance with state regulations, an order of selection shall be invoked in the event that the funding needed by eligible persons exceeds the funding available to the Bureau. A priority selection forecast shall be completed at the discretion of the director based on the cost of current services provided, the budgeted appropriations, grants for the current year, and the projected client population and cost of services. The priority selection forecast shall, if applicable, state a date prospectively in which the priority selection shall be invoked. The forecast may be revoked at the discretion of the director when money from all sources shall meet the cost of current and projected services. [Sec. 17b-653-5.]

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Connecticut.

#### **A. Establishment of Priority Categories**

In accordance with state regulations, clients who are determined eligible for services shall be assigned a priority level, in descending order of priority, as follows:

**FIRST** all individuals determined to have a most significant disability;

**SECOND** all individuals determined to have a significant disability; and

**THIRD** all other individuals i.e., individuals with non-significant disabilities. [Sec. 17b-653-5; State Plan Attachment; Guidance, Section 6]

All individuals shall be placed in the highest priority level for which they are eligible. Every individual within a particular priority level shall be served before individuals in the next highest priority level are served. [Sec. 17b-653-5; Guidance, Section 6]

## **B. Terminology**

The following definitions are used for purposes of the order of selection policy.

1. **Individual with a disability** means an individual who,
  - has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
  - can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. [Sec. 17b-653-2(b)(22)]
2. **Individual with a significant disability** means an individual with a disability who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome, whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time, and who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. [Sec. 17b-653-2(b)(24)]
3. **Individual with a most significant disability** means an individual with a significant disability who:
  - has serious limitations in a total of three or more functional areas (such as mobility, communication, self-care, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; or
  - will require significant ongoing disability-related services on the job in order to maintain employment following case closure with the bureau. [Sec. 17b-653-2(b)(23)]
4. **Serious functional limitations.** A serious functional limitation in a functional area means a reduction, due to a severe physical or mental impairment, to the degree that the

individual requires services or accommodations not typically made for other individuals in order to prepare for, enter, engage in, or retain employment. Accommodations are defined as special working conditions, job re-engineering, rehabilitation technology, or substantial support and/or supervision. [Guidance, Section 6, Appendix A-1]

5. **Functional limitation areas include** mobility, interpersonal skills, communication, self-direction, self-care, work tolerance, and work skills. [Guidance, Appendix A]

- a. **Mobility.** Mobility is defined as the physical and psychological ability to move about from place to place inside and outside the home compared to people with normal mobility. This includes travel to and from usual destinations in the community for activities of daily living, training, or work.

For mobility, a serious limitation indicates

- (1) That most common life and work activities are impaired or prevented and/or the person usually (more than half the time) requires assistance from others to get around in the community. This includes limitations due to significant physical risks or the effects of psychological or cognitive factors.
- (2) The individual's range of travel is severely limited, or
- (3) The individual requires modifications, adaptive technology, and/or accommodations<sup>1</sup> (not typically made for other workers) in order to move around the community.

Examples of mobility limitations include someone who regularly requires modification, adaptive technology, accommodations, or assistance from others to get around in the community; someone whose range of travel is severely limited; someone with a comparable substantial functional limitation present.

- b. **Interpersonal Skills.** Interpersonal Skills are defined as the individual's ability to establish and maintain personal, family and community relationships as it affects (or is likely to affect) job performance and security.

For interpersonal skills, a serious limitation indicates the individual

- (1) Has difficulty establishing and maintaining relationships at all levels (personal, family and community) or
- (2) Exhibits behaviors which significantly detract from the performance of other workers, as well as the individual's performance and employability, and that the individual requires more than normal intervention on the part of a supervisor.

Examples of interpersonal skill limitations include a work history that includes recent negative references, firings, multiple short-term jobs or other evidence of work adjustment problems; serious problems in interpreting and responding appropriately to the behavior and communications of others; being unable to understand acceptable levels and types of personal interaction appropriate to the work site; social isolation/withdrawal or rejection by co-workers; frequent

conflict with co-workers or supervisors; conversation is rambling/halting, weak or pressured and may be illogical, irrelevant or obscure; or a comparable substantial functional limitation is present.

- c. **Communication.** Communication is defined as the ability to effectively exchange (give and receive) information through spoken words or concepts (writing, speaking, listening, sign language, or other adaptive methods). Limitations may occur because of physical, emotional, or cognitive impairments.

For communication, a serious limitation indicates either (1) or (2) below.

- (1) The individual is not able to communicate effectively or is dependent upon a person, service, device, or alternate mode of communicating or augmentation in order to communicate. S/he may not be readily understood by others and/or has significant difficulty understanding others in the training or work environment. The emphasis is on limitations resulting from a disability related communication difficulty, not on a communication problem resulting from a language or cultural difference.
- (2) The individual cannot independently express or receive meaningful communication or does so with extreme difficulty, due to physical, emotional, or cognitive impairments.

Examples of communication limitations are if one can't participate in conversation without speech reading, sign language, or other visual cues (language board, written aids, real time captioning, etc.); can't interpret telephone conversation even with amplification; requires the regular assistance of another person to coach, clarify or validate communication, either received or if expressed; or if a comparable substantial functional limitation is present.

- d. **Self-Direction.** Self-direction is the ability to independently plan, initiate, problem solve, organize, or carry out goal-directed activities related to self-care, socialization, recreation, and work. This does not relate to the worth of an individual's goals or plans, but the capacity to know, plan and act on a course of action based on personal values or goals.

For self-direction, a serious limitation indicates the individual

- (1) Requires intensive supervision and direction on an ongoing or episodic basis in order to begin and carry through on tasks, monitor one's own behavior, and make decisions, or
- (2) Is confused and disoriented and requires constant supervision.

Examples of self-direction include one who requires intensive supervision and direction on a frequent or ongoing basis to begin and carry through with goals and plans, job tasks, to monitor own behavior, or make decisions; is confused or disoriented and requires constant supervision and direction or highly distractible/short attention span/severe difficulty concentrating on work; has significant difficulty shifting focus from one activity or task to the next; is

unaware of consequences of behavior; or exhibits comparable substantial functional limitations.

- e. **Self-Care.** Self-care is defined as the ability to manage self or living environment (i.e., eating, toileting, grooming, dressing, and money management), as they affect an individual's ability to participate in training or work-related activities. This includes an individual's management of any special health and safety needs which exist; for example, medication management. Limitations may occur because of physical, cognitive, or emotional impairments, and could extend to all tasks or only specific tasks.

For self-care, a serious limitation indicates the individual is dependent upon devices or the services of others to complete these activities.

Examples of limitations of self-care include one who: requires assistance on the job for personal needs; places self at risk due to poor decision-making/reasoning; requires assistance on the job for personal needs, judgment and requires extra attention or monitoring; is unable to manage money; or one with a comparable substantial functional limitation present.

- f. **Work Tolerance.** Work tolerance is defined as the capacity to effectively and efficiently sustain physical, cognitive and/or psychological demands of a job. Limitations may be due to physical disability, stamina/fatigue, effects of medication, or psychological factors.

For work tolerance, a serious limitation exists if the individual:

- (1) Is unable to perform work activity because of physical or mental functional limitations or
- (2) Requires modification, adaptive technology, and/or accommodations (not typically made for other workers) in terms of capacity or endurance.

Examples of limitations of work tolerance include one who requires modification, adaptive technology and/or accommodations not typically made for others in terms of capacity or endurance (e.g., extra rest periods, adjustments in starting or ending time, shorter work day or week) or a comparable substantial functional limitation is present.

- g. **Work Skills.** Work skills are defined as the ability to do specific tasks required to carry out job functions as well as the capacity to benefit from training in the necessary skills.

For work skills, a serious limitation exists if the individual, due to their disability, has markedly limited or absent work skills; markedly limited capacity to learn working skills or an inability to use present work skills.

Examples of limitations of work skills include the individual who: because of the disabilities, is unable to obtain or maintain employment usually available to

persons of equivalent age and education and has no skills which could readily be used on a job which exists in the economy; can only learn tasks which are routine and repetitive; requires accommodations or rehabilitation technology to participate in training to develop work skills; performs basic employment tasks at a significantly reduced rate; serious limitations in the ability to recall instructions or the appropriate task sequence; requires more training and supervision than other trainees; or a comparable substantial functional limitation is present.

#### **6. Multiple Vocational Rehabilitation Services.**

The term means one or more vocational rehabilitation services (in addition to guidance and counseling) that are required to achieve an employment outcome.

#### **7. Extended Period of Time.**

The term means a period of six months or more, either for the duration of the provision of a required service or for the duration of the use of a provided good.

### **C. Acceptable and Unacceptable Factors**

While serious functional limitations may result from or be compounded by external factors, such as geographical location, poor public transportation, or lack of training, these factors should not be the basis of the limitation for purposes of defining a serious limitation. [Guidance, Section 6, Appendix A-1]

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

In the event that all individuals within the same priority level cannot be served, individuals in that priority category shall be served chronologically based on the date of eligibility determination. [Sec. 17b-653-5; Guidance, Section 6]

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Authority to Open and Close Priority Categories, as Needed**

The priority selection forecast shall, if applicable, state a date prospectively in which the priority selection shall be invoked. The forecast may be revoked at the discretion of the

director when money from all sources shall meet the cost of current and projected services. [Sec. 17b-653-5.]

## **B. Continuation of Services**

All eligible consumers receiving services under an IPE as of the end of business on June 30, 1994, regardless of priority status, continued to receive services as necessary until the attainment of their vocational goals and/or closure of their cases. For individuals who began receiving services under an IPE after June 30, 1994, the Bureau has been able to serve all individuals in Priority Categories I and II since November 1994. The Bureau will continue to serve all individuals in Priority Categories I and II to the extent that resources are available. The Bureau will continue to carefully assess this situation. [State Plan Attachment]

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

Defining serious functional limitations in the specified functional areas relies on the professional rehabilitation counselor's interpretation of the effect of the disability on the individual as well as on medical or diagnostic/evaluative information. [Guidance, Section 6, Appendix A-1]

Applicants shall receive services necessary to determine their eligibility for VR services without regarding to the order of selection and to the extent that funds are available. [State Plan Attachment] All priority categories will have a determination of eligibility within 60 days unless there are mutually agreed upon extensions. [State Plan Attachment]

### **B. Notification of Eligible Individuals**

At least 30 days prior to invoking priority selection, all individuals shall be notified in writing of their priority level and their right to appeal. [Sec. 17b-653-5.]

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

For those not on the waiting list (Priority Group III), employment plans will be developed and, on average, individuals will be in service within 90 days of eligibility. Delays for legitimate planning purposes will be well documented. Since the Bureau is serving both Priority I and

Priority II and no change is anticipated, this projection holds for both groups. [State Plan Attachment]

#### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Individuals who do not meet the order of selection criteria for the priority/priorities currently being served must have access to information and referral services through the Bureau. This includes vocational rehabilitation information and guidance and referral to other appropriate federal and state programs (including the state workforce investment system). The consumer must be provided notice of the referral to the state or federal program, information about the specific point of contact within that agency, and information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment. [Guidance, Section 6]

#### **E. Role of the State Rehabilitation Council**

BRS consults with the State Rehabilitation Council regarding the need to establish an order of selection, priority categories, criteria for determining individuals with the most significant disabilities, and administration of the order of selection.



## **DELAWARE ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Delaware's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Delaware.

The Rehabilitation Act places emphasis on vocational rehabilitation services for persons with the most significant disabilities and assigns priority to meeting the needs of that group. This requirement is to assure that, in the event that vocational rehabilitation services cannot be promptly provided to all eligible persons, the needs of those with the most significant disabilities will be given priority. This policy defines the process to follow in selecting persons with disabilities to be provided rehabilitation services when an Order of Selection is invoked. [Section 11.2]

#### **A. Establishment of Priority Categories [11.3]**

##### **Priority Category I, Individuals with the Most Significant Disabilities (MSD)**

Eligible individuals with impairments that result in serious limitations of three or more functional capacities that require multiple vocational rehabilitation services over an extended period of time, six months or more.

##### **Priority Category II, Individuals with Significant Disabilities (SD)**

Eligible individuals with impairments that result in serious limitations in one or two functional capacities requiring multiple vocational rehabilitation services over an extended period of time, six months or more. An allowed SSDI beneficiary or SSI recipient is automatically considered to be, *at least*, an individual with a significant disability, and should be reviewed for possible Priority 1 status.

##### **Priority Category III, Individuals with Non-Significant Disabilities**

Eligible individuals with a disability who do not meet the definition for MSD or SD.

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

### **1. Individual with a disability**

See definition above.

### **2. Individual with a most significant disability**

See definition above.

### **3. Individual with a significant disability**

See definition above.

### **4. Multiple Vocational Rehabilitation Services** means at least one additional primary service (e.g., training, physical restoration, assistive technology) required as part of an individualized plan for employment in addition to vocational rehabilitation counseling, guidance, and placement. These services may be provided by DVR or as a comparable benefit

### **5. Extended Period of Time** means six months or longer.

## **C. Ranking Individuals Within a Priority (Waiting Lists)**

**“Application date”** means the date that a person signs the DVR application for services *and* meets with the assigned counselor. This date is used to determine the order in which individuals within a priority category will receive services.

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Authority to Open and Close Priority Categories, as Needed [11.9]**

The DVR Director shall, at least quarterly, determine which Priority Categories shall be closed, and when individuals in a closed category are eligible to receive vocational rehabilitation services. Such determinations shall be based upon funds available to provide services.

These determinations are made by the DVR Director, and are not subject to due process review.

Whenever it is determined by the Director that resources are available to serve additional individuals in a closed category, the individuals shall be identified first according to priority level and then, within the category being served, according to their date of application. When individuals are released from a closed category, the counselor shall immediately begin to conduct an assessment to determine the individual's vocational rehabilitation needs, and develop an individual plan for employment.

### **B. Continuation of Services**

If an individual is currently receiving services under a signed Individualized Plan for Employment when the Order of Selection is invoked, the Order of Selection will not affect the individual's current or subsequent plans so long as the current case is active.[11.5]

Persons requesting post-employment services and for whom post-employment services are appropriate and necessary to maintain employment may be served in post-employment status without regard to OSS Priority Categories. [11.4]

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services [11.4]**

All eligible persons shall, at the time eligibility is determined, be classified by Priority Category. The OSS will have no effect upon the eligibility of the persons but only upon the order in which such persons may receive vocational rehabilitation services. Individuals identified for priority categories that are not closed will move forward into services (status 10), while individuals determined to be in a closed category move into the waiting status (status 04) until such time as funds are available to serve them.

Invocation of an Order of Selection does not affect the required diagnostic and evaluation services which are provided for all DVR applicants to determine eligibility and level of disability.

The counselor shall document the determination of the individual's priority category. To support a determination of Priority Category I or II, the counselor should clearly identify the factors, including functional limitation(s), which support the determination. In determining the Priority Category, persons are to be placed in the highest category for which they are eligible.

Although a person's circumstances may change so that s/he is no longer eligible for a particular Priority Category, the person will remain in that category unless the change favors him/her. This will not apply to misclassification; a misclassified person, if moved to a less favorable Priority Category, will be advised of the change in writing and provided with appeal rights and information on the Client Assistance Program and the Disability Law Program.

#### **B. Notification of Eligible Individuals [11.6, 11.8]**

If an applicant is placed in a Closed Category, s/he must be notified in writing of:

- a. Eligibility for services;
- b. The Priority Category in which he or she has been placed; and
- c. The Priority Categories within the OSS which are open for services.
- d. Such written notification shall include information on the procedures to appeal a Priority Category classification, the Client Assistance Program and Disability Law Program, and, if applicable, written referral to other possible resources (see 11.7).

A determination of an individual's priority category is subject to due process review, including mediation, administrative review, and fair hearing, just as any other counselor determination is subject to review.

If a request for mediation, an administrative review, or fair hearing is made, priority classification shall not be changed pending completion of the appeals process.

#### **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection [11.7]**

Eligible Individuals placed in a closed category will be provided accurate vocational rehabilitation information and guidance, and information about comparable services and benefits that are available to assist them in preparing for, securing, retaining, or regaining employment, and such individuals will be appropriately referred to other Federal and State programs including the statewide workforce investment system in the State. The referral information should include contact information for agencies that are included in the referral, including a specific contact name and phone number, including the contact information for the Disability Program Navigator.

## **DISTRICT OF COLUMBIA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Washington D.C.'s policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by The District of Columbia.

#### **A. Establishment of Priority Categories**

The DDS/RSA established order of selection priority categories follow. Depending upon agency resources, the categories are closed for services in order beginning with Priority Category IV, then III, then II and, finally Priority Category I.

**Priority Category I:** An individual with a most significant disability

**Priority Category II:** An individual with a significant disability that results in serious functional limitations in two functional capacities.

**Priority III:** An individual with a significant disability that results in a serious functional limitation in one functional capacity.

**Priority IV:** All other individuals determined eligible for the Vocational Rehabilitation program.

#### **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **Individual with a disability.**  
DC uses the federal definition.
2. **Individual with a significant disability**

An individual with a significant disability means an individual with a disability:

- who has a severe physical or mental impairment which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time (6 months); and
- who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, visually impaired, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disabilities, mental illness, multiple sclerosis, muscular dystrophy, muscular-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

### **3. Individual with a most significant disability**

An individual with a most significant disability is an individual with a significant disability that seriously limits three or more functional capacities.

### **4. Functional limitation areas include**

mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

### **5. Multiple Vocational Rehabilitation Services.**

Two or more services needed to achieve a successful rehabilitation.

### **6. Extended Period of Time.**

Needs services for the duration of six months or more.

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Continuation of Services**

This policy does not affect consumers who have begun to receive services under an Individualized Plan for Employment prior to the implementation date of the Order of Selection, or those in need of Post-Employment services.

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

After a consumer is found eligible for VR services, an Order of Selection determination is completed. Additional evaluations or assessments to make the eligibility determination may be provided. The VR counselor, in collaboration with the consumer, determines the consumer's priority category by evaluating the consumer's serious functional limitations, anticipated services needed and the duration of those services.

### **B. Notification of Eligible Individuals**

All consumers must be officially notified of their individual order of selection determination. Consumers in closed categories are provided with referral services to the One-Stop Centers or other appropriate sources, and are placed on a waiting list for 12 months, unless the category is opened prior to the conclusion of the 12 month period. Annually, consumers in a closed Category are contacted to determine if they wish to remain on the waiting list or have their case(s) closed. Consumers in closed Categories may request a review of their Priority Category assignment by submitting evidence that their disability has become more severe.

## **FLORIDA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Florida's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Florida.

In the event that the Division will be unable to serve all eligible individuals, the DVR Director shall make a determination as to the categories that will be served. The determination will be based on staffing patterns, available funds, projected referrals, number of eligible individuals, and caseloads. The DVR Director shall have sole authority for implementation of an Order of Selection. [7.07]

#### **A. Establishment of Priority Categories [7.0701]**

Priority Categories in the Order of Selection - Upon the completion of the assessment of the eligible individual, the counselor shall make a determination as to the significance of the disability and the appropriate priority category. The priority categories are:

Category I. Individuals with the most significant disabilities [See 7.02]

Category II. Individuals with a significant disability [See 7.03]

Category III. All other individuals with a disability [See 7.04]

#### **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

##### **1. Individual with a disability [7.04] which**

- does not seriously limit functional capacity in terms of work and/or
- services are expected to last less than 6 months.

Disability must be a result of one or more physical or mental impairment(s) resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic



fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities as listed on the Certification of Eligibility to cause comparable substantial functional limitation.[7.01]

## **2. Individual with a most significant disability [7.02]**

An individual with a disability which...

- seriously limits three (3) or more functional capacities in terms of work,
- requires three (3) or more primary services, and
- services must be provided over an extended period of time (at least 12 months) and
- is not likely to be corrected through surgical intervention and/or other treatment modes.

## **3. Individual with a significant disability [7.03] which**

- seriously limits one or two functional capacities in terms of work,
- requires two or more primary services, and
- services must be provided over an extended period of time (at least 6 months).

**Or**

the individual is a recipient of Social Security Disability Benefits (SSDI) or Supplemental Security Income (SSI) as a result of disability or blindness.

## **4. Serious functional limitations.**

## **5. Functional limitation areas include [7.06]**

The limitations listed are used to determine the level of significance of disability.

**Mobility** means an individual's physical access to his or her environment, either through his or her own ability (actions) or with the assistance of others. Mobility also includes significant limitations in transportation to and from worksite based on learning or cognitive impairments. To meet this criteria, the individual:

- a. Due to disability, has no independent mobility and must use a mobility device (wheelchair, walker, scooter) or requires a personal care assistant
- b. Due to physical, cognitive or mental disability, is unable to independently drive, arrange or use public transportation
- c. Due to disability, has limitation(s) in balance and gross motor coordination (clumsiness or accident proneness)

- d. Due to disability, is unable to climb one flight of stairs or walk 100 yards without a pause
- e. Due to disability, is unable to lift, reach, carry, grasp objects, push or pull
- f. Due to disability, requires rehabilitation engineering for home, vehicle, or work modifications

**Communication** means the individual's ability to express himself or herself through speech and/or the ability to receive and process communication. To meet this criteria, the individual:

- Due to disability, cannot communicate without hearing aids(s) and/or adaptive equipment, interpreter, e-mail, or relay services
- Due to disability, cannot speak or spoken language is unintelligible
- Due to disability, is unable to control inappropriate communication due to cognitive dysfunction or mental illness (may say bizarre things, hear voices, repeat self incessantly, and/or inappropriate comments)
- Due to disability, cannot focus, concentrate, or understand what is being communicated

**Self-Care** means the ability to conduct the essential activities of daily living unassisted by another individual. To meet this criteria, the individual:

- a. Due to disability, requires personal assistance with dressing, bathing, eating, toileting, grooming, preparing meals, transferring from bed to chair
- b. Due to disability, requires supervision or personal assistance services with money management (banking, balancing a checkbook, or making change)

**Self-Direction** means the capacity to organize structure and manage activities required to obtain and maintain employment. To meet this criteria, the individual:

- a. Due to cognitive dysfunction or mental illness, requires ongoing prompts or assistance to understand and remember instructions
- b. Due to cognitive dysfunction or mental illness, requires ongoing prompts or assistance in the area of concentration and persistence to stay on task
- c. Due to cognitive dysfunction or mental illness, requires customized technology to accommodate the lack of concentration, to remember instructions, or to understand instructions

**Interpersonal Skills** mean the individual's ability to interact in a socially acceptable manner at work with coworkers, supervisors, peers and the general public. To meet this criteria, the individual:

- a. Due to disability, does not accept instructions and does not respond appropriately to feedback from supervisors
- b. Due to disability, does not get along with coworkers or peers
- c. Due to disability, does not maintain socially appropriate behavior at work based upon what would be normally accepted in a work environment

**Work Tolerance** means the ability to carry out tasks in an efficient and effective manner over a sustained period of time. To meet this criteria, the individual:

- a. Due to disability, is unable to carry out work tasks without the intervention of job coaching or natural supports to perform work activities
- b. Due to disability, is unable to sustain mental, cognitive or physical activities in a work environment without the use of individualized accommodation or customized rehabilitation technology
- c. Due to disability, unable to work around certain substances or certain environments

**Work Skills** means the specific job skill required to learn and carry out work functions. To meet this criteria, the individual:

- a. Due to disability, is limited or unable to retain new information or new learning without assistance
- b. Due to disability, can only learn work skills through constant repetition

## **6. Multiple Vocational Rehabilitation Services.**

**Primary Services:** Major services which are necessary to prepare the eligible individual for employment. Primary services include counseling and guidance, training, treatment and job placement. Primary services must be both appropriate and reasonable.

Primary services do not include assessment services cited in the IPE. Each service, if provided alone, could reasonably be expected to directly benefit the individual in terms of an employment outcome. ([\*See List of Primary and Support Services\*](#))

**Support Services:** Services which support a primary service. Support services are never provided alone, but are provided in conjunction with a primary service. Support services must be both appropriate and reasonable.

<b>PRIMARY SERVICES</b>	<b>SUPPORT SERVICES</b>
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<b>PRIMARY SERVICES</b>	<b>SUPPORT SERVICES</b>
<ul style="list-style-type: none"> <li>• Counseling and guidance (when provided by VR counselor)</li> </ul>	<ul style="list-style-type: none"> <li>• Maintenance (uniforms, rent, cash, etc.)</li> </ul>
<ul style="list-style-type: none"> <li>• Physical restoration</li> </ul>	<ul style="list-style-type: none"> <li>• Hospitalization, physical therapy, occupational therapy, speech language pathology, hearing aid fitting fees</li> </ul>
<ul style="list-style-type: none"> <li>• Mental restoration</li> </ul>	<ul style="list-style-type: none"> <li>• Prescriptions</li> </ul>
<ul style="list-style-type: none"> <li>• Supported employment (single primary rate contract service)</li> </ul>	<ul style="list-style-type: none"> <li>• X rays, hospital or medical tests, lab</li> </ul>
<ul style="list-style-type: none"> <li>• Extended services for supported employment</li> </ul>	<ul style="list-style-type: none"> <li>• Transportation, car repair, bus pass</li> </ul>
<ul style="list-style-type: none"> <li>• Job services (search, job coach, placement, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>• Personal assistance service (personal care)</li> </ul>
<ul style="list-style-type: none"> <li>• Training (vocational, college, university, on the job training ...)</li> </ul>	<ul style="list-style-type: none"> <li>• Books, health fees, parking fees, etc.</li> </ul>
<ul style="list-style-type: none"> <li>• Occupational licenses, tools, equipment and initial stock and supplies (computers, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>• Service to family members</li> </ul>
<ul style="list-style-type: none"> <li>• Prosthetics, orthotics, including hearing aids</li> </ul>	<ul style="list-style-type: none"> <li>• Childcare</li> </ul>
<ul style="list-style-type: none"> <li>• Rehab technology – vehicle</li> </ul>	<ul style="list-style-type: none"> <li>• Independent living skills</li> </ul>
<ul style="list-style-type: none"> <li>• Rehab technology - home</li> </ul>	<ul style="list-style-type: none"> <li>• Other goods and services</li> </ul>

<b>PRIMARY SERVICES</b>	<b>SUPPORT SERVICES</b>
<ul style="list-style-type: none"> <li>• Rehab technology - job site</li> </ul>	
<ul style="list-style-type: none"> <li>• Rehab technology – assistive technology devices</li> </ul>	
<ul style="list-style-type: none"> <li>• Interpreter services</li> </ul>	
<ul style="list-style-type: none"> <li>• Self employment</li> </ul>	
<ul style="list-style-type: none"> <li>• Community based work experience</li> </ul>	

7. **Extended Period of Time** means at least 6 months.

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Continuation of Services**

The Division shall continue to provide all necessary services to individuals who have begun to receive services under an IPE prior to the effective date of the order of selection, irrespective of the severity.

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state

must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services [7.01]**

After eligibility determination, there must be an assessment and documentation in the case record of significance of disability. [Reference Section 7.06]

The Counselor will identify:

- severe impairments which seriously limit one or more functional capacities,
- the vocational rehabilitation services needed to address those impairments, and
- an estimate of the time that services will be provided to reach an employment outcome.

This will provide the information needed to determine the level of significance of the individual's disability.

The limitations listed are used to determine the level of significance of disability. These limitations must be imposed by the impairments listed on the Certification of Eligibility. [Reference Chapter 6, Section 6.06] ([See Functional Capacity Assessment Guide for Counselors](#))

The Order of Selection permits immediate reclassification into a higher priority category when there is a change resulting in additional functional limitations that require additional primary services and/or length of time.

The Order of Selection shall not regulate the provision or authorization of diagnostic, trial work and extended evaluation services.

#### **B. Notification of Eligible Individuals**

Individuals placed in a category not receiving services shall have all options fully explained in writing at the time of designation. The written explanation shall include the individual's rights of appeal and information regarding referral to other programs or agencies that may assist them.

The counselor and individual will discuss the options available to those who have been placed on the waiting list. Options include:

- a. case closure - order of selection closure;
- b. placement on a waiting list, and if not processed from the waiting list follow up after one year.

#### **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Individuals placed in a category not receiving services shall have all options fully explained in writing at the time of designation. The written explanation shall include the individual's rights of appeal and information regarding referral to other programs or agencies that may assist them.

#### **D. Maintenance of Records**

Documentation that supports the priority category assignment must be contained in the case record.

## Order of Selection

### Functional Capacity Assessment Guide for Counselors

The key point in determination of “eligibility” is to assess whether an individual requires VR services because of a disability. You need to assess the impact of the disability on the individuals past and/or future work life.

### Order of Selection Categories

To make the order of selection category placement determination, you need to consider the impact of the disability on the individual’s history and his/her future vocational potential based on the functional capacity areas below.

### What Are the Functional Capacities Areas Under Each Category And How Does It Work?

Limitations in these areas must derive directly from the impairment (disability) and the impediment (limitation) to employment.

CATEGORY	DEFINITION	EXAMPLES OF SIGNIFICANT LIMITATIONS	EXAMPLES THAT ARE <i>NOT</i> LIMITATIONS
<b>Mobility</b>	Mobility means an individual's physical access to his or her environment, either through his or her ability (actions) or with the assistance of others. Mobility also includes significant limitations in transportation to and from worksite based on learning or cognitive impairments	<ul style="list-style-type: none"> <li>Individual with mental illness who has sufficient anxiety when in public that he/she cannot utilize public transportation effectively.</li> <li>Individual in a wheelchair who does not have the upper body strength to move around easily in a work environment due to uneven surfaces.</li> <li>Individual with mobility limitations who is unable to arrange for transportation or transport themselves independently to work.</li> <li>Individual who has traumatic brain injury and who cannot consistently independently take the bus to work because he/she becomes disoriented when anything unpredictable occurs in routine.</li> <li>Individual with a significant learning disability who cannot read a bus schedule or road maps.</li> </ul>	<ul style="list-style-type: none"> <li>Not having a driver's license or not knowing how to drive is not a limitation unless the reason is disability-related.</li> <li>Having a DUI is not a limitation unless the reason is disability-related.</li> <li>Not having access to public transportation or choosing not to use public transportation does not present a limitation in this area.</li> <li>Not driving a car because they do not have funds to pay car insurance or buy gas.</li> </ul>
CATEGORY	DEFINITION	EXAMPLES OF SIGNIFICANT LIMITATIONS	EXAMPLES THAT ARE <i>NOT</i> LIMITATIONS
<b>Communication</b>	Communication means the individual's ability to express himself or herself through speech and/or the ability to	<ul style="list-style-type: none"> <li>Individual with hearing impairment who cannot communicate effectively with hearing co-workers.</li> </ul>	<ul style="list-style-type: none"> <li>Not being able to speak English is not a limitation in this area.</li> <li>Individual who mumbles or</li> </ul>



	receive and process communication	<ul style="list-style-type: none"> <li>Individual with learning disability who cannot read instructions from supervisor and translate them into expected work activities.</li> <li>Individual with speech impediment who cannot be understood by co-workers or supervisors.</li> <li>Individual who is unable to complete job task due to being distracted by internal communications (hearing voices).</li> <li>Individual who is unable to attend to job task due to cognitive dysfunction or mental illness.</li> </ul>	<ul style="list-style-type: none"> <li>has a strong accent.</li> <li>Individual who has hearing impairment, but hearing aids are functional.</li> <li>Individual who is shy or has a bad attitude.</li> </ul>
<b>Self-Care</b>	Self-care means the ability to conduct the essential activities of daily living unassisted by another individual.	<ul style="list-style-type: none"> <li>Individual with quadriplegia who cannot take care of own toileting needs at work</li> <li>Requires assistance or supervision for eating, dressing, or personal hygiene.</li> <li>Individual with brain injury who cannot remember morning grooming procedures without prompting by an attendant – the attendant does not arrive in time to allow this individual to get to work before 10 a.m.</li> <li>An individual with a developmental disability who cannot manage money because he/she does not understand the concept of money or has severe mathematical limitations.</li> </ul>	<ul style="list-style-type: none"> <li>Money management. Not having a good credit rating is not a limitation unless the reason is disability-related.</li> <li>Choosing not to perform personal hygiene activities or being unable to afford personal hygiene items does not indicate a limitation in this area.</li> </ul>
<b>CATEGORY</b>	<b>DEFINITION</b>	<b>EXAMPLES OF SIGNIFICANT LIMITATIONS</b>	<b>EXAMPLES THAT ARE NOT LIMITATIONS</b>
<b>Self-Direction</b>	Self-direction means the capacity to organize, structure and manage activities required to obtain and maintain employment.	<ul style="list-style-type: none"> <li>Requires a tape recorder or organizational tool to stay on task.</li> <li>Individual with history of depression who cannot self-motivate to apply for promotions because of depression and medication related lethargy.</li> <li>Individual with a brain injury who requires frequent prompts to follow directions.</li> <li>Individual with learning disability who cannot fill out job applications or personnel papers as</li> </ul>	<ul style="list-style-type: none"> <li>Individual who is employed but is bored or unhappy in their present job.</li> <li>Individual with a lengthy criminal history that precludes employment in a particular field.</li> <li>Individual who chooses not to work due to fear of losing benefits.</li> </ul>

		<ul style="list-style-type: none"> <li>• expected of new employees. Individual with learning disability who cannot independently read job leads, complete job applications or other work related documents to find or keep a job.</li> </ul>	
<b>Interpersonal Skills</b>	Interpersonal skills mean the individual's ability to interact in a socially acceptable manner with coworkers, supervisors, peers and the general public.	<ul style="list-style-type: none"> <li>• Individual with personality disorder who makes co-workers frightened and uncomfortable.</li> <li>• Individual with depression who is socially isolated and unable to participate in a team project, therefore causing problems with co-workers.</li> <li>• Individual who is "low-functioning" and has severe hearing loss could exhibit certain behaviors (i.e. table-pounding) or sounds (i.e. grunting) that may disturb co-workers.</li> </ul>	<ul style="list-style-type: none"> <li>• Individual who has unrealistic expectations or a sense of elevated importance unless disability related.</li> <li>• Individual who is introverted and prefers to work on tasks and project alone.</li> <li>• Individual who is immature because of age and behaves badly in the work place.</li> </ul>
<b>CATEGORY</b>	<b>DEFINITION</b>	<b>EXAMPLES OF SIGNIFICANT LIMITATIONS</b>	<b>EXAMPLES THAT ARE <i>NOT</i> LIMITATIONS</b>
<b>Work Tolerance</b>	Work tolerance means the ability to carry out work tasks in an efficient and effective manner over a sustained period of time.	<ul style="list-style-type: none"> <li>• Individual with anxiety disorder who cannot work when panic attacks occur. Requires very flexible scheduling to accommodate unexpected anxiety.</li> <li>• Individual with a back injury who can only perform light lifting, limited standing and walking required on the job because of pain.</li> <li>• Individual with carpal tunnel syndrome who cannot manipulate with hand and finger dexterity consistently to complete job activities.</li> </ul>	<ul style="list-style-type: none"> <li>• Individual whose personal preference it is to avoid certain work tasks.</li> <li>• Individual who chooses not to work certain work schedules due to child's school schedule or preferred shift.</li> <li>• Individual with limited energy for work due to partying the night before.</li> <li>• Individual who cannot work on a specific day of the week or hours because of religious reasons.</li> </ul>
<b>Work Skills</b>	Work skills mean the specific job skills required to carry out work functions.	<ul style="list-style-type: none"> <li>• Individual with 3<sup>rd</sup> grade academic level who has lifting restriction of 5 pounds because of back injury. Cannot perform unskilled labor.</li> <li>• Individual with brain injury who does not know how to sequence tasks to</li> </ul>	<ul style="list-style-type: none"> <li>• Desire for specialized work skills such as those learned through on-the-job training or academic program.</li> <li>• Limited or no work history does not indicate a limitation in this area.</li> <li>• Individual who lacks computer skills.</li> </ul>

		complete job duties.	<ul style="list-style-type: none"> <li>• Individual who chose to drop out of high school prior to graduation that is not disability related does not have a limitation in this area.</li> <li>• Individual who decides to improve skills or improve wages.</li> <li>• Individual with limited proficiency in English.</li> </ul>
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## **GEORGIA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Georgia's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The order of selection shall be imposed when it has been determined by the VR Program director that services cannot be provided to all persons who apply and who are determined to be eligible for services. [306.1.01]

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Georgia.

#### **A. Establishment of Priority Categories**

Order of Selection Categories [306.1.10]:

##### **Priority Category A:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 2 or more functional capacities in terms of an employment outcome; and
3. Which requires 2 or more primary services with at least 2 of these services requiring provision over an extended period of time.

NOTE: Priority Category A meets the program's criteria for Most Significant Disability. Refer to [306.1.06A](#) and Glossary: [Person with a Most Significant Disability](#).

##### **Priority Category B:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 2 or more functional capacity in terms of an employment outcome;
3. Which requires 2 or more primary services, with 1 of these services requiring provision over an extended period of time.

NOTE: Priority Category B meets the program's criteria for Most Significant Disability. Refer to [306.1.06A](#) and Glossary: [Person with a Most Significant Disability](#).

#### **Priority Category C:**

An eligible client shall be classified in this category if he/she has been determined by the VR program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 1 functional capacity in terms of an employment outcome; and
3. Which requires 2 or more primary services;
4. With at least 2 of these services requiring provision over an extended period of time.

NOTE: Priority Category C meets the criteria for Significant Disability. Refer to [306.1.06B](#) and Glossary: [Person with a Significant Disability](#).

#### **Priority Category D:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 1 functional capacity in terms of an employment outcome; and
3. Which requires 2 or more primary services;
4. With one of these services requiring provision over an extended period of time; or
5. Is a recipient of Social Security Disability Benefits (SSDI) or Supplemental Security Income (SSI).

NOTE: Priority Category D meets the criteria for Significant Disability. Refer to [306.1.06B](#) and Glossary: [Person with a Significant Disability](#).

#### **Priority Category E:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 1 functional capacity in terms of an employment outcome; and
3. Which requires 2 or more primary services;
4. None of which require provision over an extended period of time.

### **Priority Category F:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 1 functional capacity in terms of an employment outcome; and
3. Which requires only 1 primary service;
4. With this services requiring provision over an extended period of time.

### **Priority Category G:**

An eligible client who does not meet the criteria for classification in the above categories shall be classified in this priority category.

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

### **1. Individual with a disability**

A physical or mental impairment that constitutes or results in a substantial impediment to employment.

The basic eligibility criteria are [210.1.03]:

A. The applicant meets the definition of an individual with a disability, in that:

1. The applicant has a physical or mental impairment which materially limits or, if untreated, must be expected to materially limit physical or mental functioning.
  - a. The impairment must be stable or slowly progressive.
  - b. The impairment cannot be acute or of an emergency nature.
  - c. The impairment must be documented in the case file as indicated by the guidelines in section [208.0.00](#) and [600.0.00](#).
2. The impairment must, for the applicant, constitute or result in a substantial impediment to employment. The following conditions are not considered by the VR Program to constitute a substantial impediment to employment unless they meet specific criteria. Those conditions are hearing loss, low vision, obesity, and mental retardation.
3. The applicant can benefit from vocational rehabilitation services in terms of an employment outcome.

- B. The individual with a disability requires vocational rehabilitation services to prepare for secure, retain, or regain employment.

## **2. Individual with a most significant disability**

Individuals with a significant, permanent physical or mental impairment(s) which seriously limits 2 or more functional capacities in terms of an employment outcome who require multiple primary services for their rehabilitation with at least one of these services requiring provision over an extended period of time shall be categorized as a person with a most significant disability. Refer to [306.1.10A](#), [306.1.10B](#), and Glossary: [Person with a Most Significant Disability](#)

[NOTE: Priority category A and priority category B meet program criteria for Most Significant Disability.]

## **3. Individual with a significant disability**

Individuals with a significant, permanent physical or mental impairment(s) which seriously limits at least 1 functional capacity in terms of an employment outcome who require multiple primary services for their rehabilitation with at least one of these services requiring provision over an extended period of time shall be categorized as a person with a significant disability. Refer to 306.1.10C, 306.1.10D, and Glossary: Person with a Significant Disability.

[NOTE: Priority Category C and D meet the criteria for Significant Disability.] 306.1.06]

## **4. Permanent physical or mental impairment**

Permanent Impairment means any physical or mental condition which, for an individual, seriously limits functional capacity(ies), i.e. ambulation, communication, speech, upper/lower extremity functioning, vision, etc., in terms of employability and which can be expected to impose a lasting reduction in function regardless of medical or psychological intervention. [306.2.01]

## **5. Serious functional capacity limitations [Georgia VR Program Forms]**

Georgia does not include a specific definition for the term. However, in the Georgia VR Program forms (see appendix), the state does include a checklist of characteristics under each of the 14 functional capacity areas (see below). For example, under endurance/work tolerance—physical or emotional ability to perform sustained work, the following characteristics are identified:

- Unable to sustain an 8 hour work day
- Unable to meet industrial standards for production quantity
- Unable to perform at consistent pace without unreasonable rest stops
- Unable to maintain work week without interruptions
- Unable to meet physical demands of occupations

- Unable to tolerate or adapt to erratic work schedule
- Emotionally unable to tolerate stress of competitive employment.

**6. Functional capacity areas include** [Georgia VR Program Forms]

- Ambulation—physical ability to access one’s environment
- Breathing—ability to inhale or exhale in an unimpaired fashion
- Cognition—ability to focus, perceive, comprehend, process or retain information
- Communication—ability to receive and/or process communication
- Endurance/work tolerance—physical or emotional ability to perform sustained work
- Hearing—ability to hear without amplification
- Interpersonal skills—ability to interact with others in a socially acceptable manner
- Mobility—mental or sensory ability to access one’s environment
- Self-care—ability to perform activities of daily living
- Self-direction—ability to organize, structure or manage activities
- Speech—verbal ability to make oneself understood by others
- Upper-lower extremity functioning—ability to perform tasks requiring manual or pedal dexterity, excluding ambulation
- Vision—ability to see with best correction
- Work skills—ability to prepare for, enter, engage in or retain gainful employment.

**7. Primary vocational rehabilitation services**

A primary service is a major service necessary to prepare the eligible individual for employment. A supportive service is provided in support of and in conjunction with a primary service.

**8. Extended Period of Time.**

Extended period of time means at least 6 months. [306.2.02]

**C. Ranking Individuals within a priority (Waiting Lists)**

Persons who are the most significantly disabled shall be placed in the highest priority categories. [306.1.06] An individual shall be classified in the highest priority category for which he/she is determined qualified. [306.1.09B]

**Waiting List.** An individual’s case shall be placed in status 04 from status 02, 06, or 10 when the individual has been determined eligible for vocational rehabilitation services and assigned to a priority category that is closed for services and the individual chooses to be placed on a waiting list. [130.1.03]



The case shall remain in status 04 until the individual requests that his/her case be closed or until the Order of Selection priority category for which the individual is classified is opened. No authorization or expenditure shall be made in this status. If it is determined that the case should be closed from status 04, it shall be closed status 38 [130.1.03]

**Reclassification.** If an eligible individual's circumstances change after having been classified in a priority category or when the VR Program has determined that an individual has been misclassified, the individual shall be reclassified and placed in the correct higher or lower priority category. In any case whereby reclassification into another priority category under the order of selection alters in any way the services being proposed or provided, the vocational rehabilitation counselor shall notify the individual using the VR program's Notice of Change form. Refer to 306.0.00 [104.1.08E]

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Authority to Open and Close Priority Categories, As Needed**

The order of selection shall be imposed when it is determined by the VR Program Director that services cannot be provided to all persons who apply and who are determined to be eligible for services. [306.1.01] Upon a decision that the VR Program shall not serve a priority category, all future clients who are classified in the category shall be notified in conformance with the requirements of due process. Refer to 104.0.00 (Revised April 1, 2003) [306.1.12 B]

#### **B. Continuation of Services**

Services being authorized or provided to any individual whose case is in status 12 (work program completed) or above under the terms and conditions of a work plan shall not be disrupted as a result of the closing of a priority category. [306.1.04]

Priority category classification under the order of selection during the work plan, unless shown to be in error, shall apply to the authorization or provision of a post-employment service(s) since these services are a continuation of the original plan [306.1.13]

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be

developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

The order of selection priority category placement is the second step in the two-step process of qualifying individuals for services. Refer to [210.0.00](#) [306.1.02]

The order of selection permits reclassification into either a higher or lower priority category under justifiable circumstances. Refer to 104.1.09 [306.1.02]

The order of selection shall in no way regulate the provision or authorization of diagnostic and evaluation services. [306.1.07]

Any client of the VR program shall, following determination of eligibility and completion of a comprehensive needs assessment, be classified by placement in a priority category. [306.1.09]

An individual shall be classified in the highest priority category for which he/she is determined qualified. [306.1.09]

#### **B. Notification of Eligible Individuals**

The client shall be issued the VR Program's Notice of Change form when he/she is initially assigned a priority category or is reclassified into a higher or lower priority category. Refer to [104.0.00](#) (Revised 1/1/2000) [306.1.09]

If an eligible individual's circumstances change after having been classified in a priority category or when the VR Program has determined that an individual has been misclassified, the individual shall be reclassified and placed in the correct higher or lower priority category. If reclassification occurs, the individual shall receive written notice of such change. Refer to 104.1.09 [306.1.11]

Upon assignment of a priority category under the program's order of selection, a notice of Change form shall be issued to the client stating the assigned priority category and specifying whether the client shall be provided services under an open category. Refer to [104.1.08B2](#) (Revised April 1, 2003) [306.1.12]

Upon a decision that the VR Program shall not serve a priority category, all future clients who are classified in the category shall be notified in conformance with the requirements of due process. Refer to [104.0.00](#) (Revised April 1, 2003) [306.1.12]

The individual should be informed of whether or not a closed category is likely to be opened for services in order that the individual may make an informed choice regarding being placed on a waiting list or seeking services elsewhere.

An individual who is on a waiting list should be contacted every six months in order to determine his/her wish to remain on the list. Procedures for contacting clients regarding remaining on a waiting list are outlined in Appendix B and should be carefully followed. [130.1.03]

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Funds shall be authorized and expended on any case that is in an open priority category.

Priority classification under the order of selection during the work plan shall apply to the authorization or provision of a post-employment service(s) since these services are a continuation of the original plan. [306.1.13]

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

No VR Program funds shall be authorized or expended on any case that moves into status 12 or above following the effective closing date of a priority category when the classification of the case puts it in a closed priority category. [306.1.03]

Whenever an individual is determined to be in a closed priority category, the individual must be provided information and referral services. [306.1.08]

### **E. Maintenance of Records**

The priority classification and the rationale for the priority classification must appear under the caption "Priority Category" in the case notes. The rationale shall name the functional capacities affected and the primary services with their expected durations.[306.1.09]

The priority category placement and rationale shall be consistent with the case file documentation. [306.1.09]

### **F. Role of State Rehabilitation Council [please include policy if one exists. See example in state description which is attached]**

The VR program consults with the State Rehabilitation Council regarding the need to establish an order of selection, priority categories, criteria for determining individuals with the most significant disabilities, and administration of the order of selection.

## Appendix [Georgia VR Program Forms]

### FUNCTIONAL CAPACITIES

- 1 **Ambulation – PHYSICAL ABILITY TO ACCESS ONE’S ENVIRONMENT** *NOTE:* The environment cannot be the handicapping (inaccessible) condition.
  - ☐ Unable to walk
  - ☐ Unable to climb stairs
  - ☐ Unsteady gait
  - ☐ Limited coordination due to spasticity
  - ☐ Limited walking, stooping, kneeling, standing or climbing
- 2 **Breathing – ABILITY TO INHALE OR EXHALE IN AN UNIMPAIRED FASHION**
  - ☐ Unable to breathe without an assistive device
  - ☐ Limited ability for physical exertion
  - ☐ Sensitivity to allergens
- 3 **Cognition – ABILITY TO FOCUS, PERCEIVE, COMPREHEND, PROCESS OR RETAIN INFORMATION**
  - ☐ Unable to be taught to travel alone
  - ☐ Unable to learn to read or write
  - ☐ Unable to understand or remember instructions
  - ☐ Unable to concentrate; short attention span; easily distracted
  - ☐ Unable to match shapes, symbols or put parts together
  - ☐ Unable to understand and accept own disability
  - ☐ Lacks functional reading skills sufficient to follow written directions at work or to read job applications
  - ☐ Learning deficits require extra time or assistance in order to master new job skills
  - ☐ No longer able to read or write
  - ☐ Impairment onset before school age resulted in limited educational skills
  - ☐ Limited to use of single words or simple concepts
- 4 **Communication – ABILITY TO RECEIVE AND/OR PROCESS COMMUNICATION – *Note:* Not cultural or language barriers**
  - ☐ Difficulty with expressive communication; difficulty expressing ideas clearly
  - ☐ Difficulty in accurate reception of spoken communication; difficulty understanding words, sentences or spoken messages
  - ☐ Difficulty understanding and processing verbal communication needed to successfully prepare for, enter, engage in, or retain employment
  - ☐ Difficulty with verbal communication needed to successfully interview or perform vocational activities
  - ☐ Difficulty assimilating information (written, spoken, received expressive)
  - ☐ Unable to communicate with others without assistive technology or alternative formats
  - ☐ Substitutes one sound for another, substitutes words inappropriately or omits sounds; fails to form speech sounds correctly
- 5 **Endurance/Work Tolerance – PHYSICAL OR EMOTIONAL ABILITY TO PERFORM SUSTAINED WORK**
  - ☐ Unable to sustain an 8 hour work day
  - ☐ Unable to meet industrial standards for production quantity
  - ☐ Unable to perform at consistent pace without unreasonable rest stops

- ☐ Unable to maintain work week without interruptions
- ☐ Unable to meet physical demands of occupations
- ☐ Unable to tolerate or adapt to erratic work schedule
- ☐ Emotionally unable to tolerate stress of competitive employment

6 Hearing – ABILITY TO HEAR WITHOUT AMPLIFICATION

- ☐ Unable to hear or understand speech
- ☐ Unable to follow conversations unless facing speaker
- ☐ Can no longer hear

7 Interpersonal Skills – ABILITY TO INTERACT WITH OTHERS IN A SOCIALLY ACCEPTED MANNER

- ☐ Unable to accept instructions or criticism
- ☐ Unable to get along with peers, co-workers or supervisors
- ☐ Unable to present self positively to others
- ☐ Unaware of consequences of behavior
- ☐ On-going anti-social behavior, social isolation, withdrawal or rejection
- ☐ Impatient or impulsive
- ☐ Inappropriate expression of anger and other feelings
- ☐ Inappropriate affect
- ☐ Talks excessively, interrupts, intrudes or withdraws
- ☐ Habitually lies, exaggerates or engages in harmful gossip

8 Mobility – MENTAL OR SENSORY ABILITY TO ACCESS ONE'S ENVIRONMENT

- ☐ Unable to see well enough to travel independently
- ☐ Unable to walk safely
- ☐ Unable to drive a vehicle

9 Self-Care – ABILITY TO PERFORM ACTIVITIES OF DAILY LIVING

- ☐ Unable to comply with requirements of medications, treatment or program
- ☐ Unable to perform activities of daily living and/or personal hygiene functions
- ☐ Unable to select appropriate clothing
- ☐ Unable to operate household appliances
- ☐ Unable to perform household chores

10 Self-Direction – ABILITY TO ORGANIZE, STRUCTURE OR MANAGE ACTIVITIES

- ☐ Unable to complete tasks
- ☐ Unable to perform activities within a schedule or sustain an ordinary routine
- ☐ Unable to set realistic goals, make decisions or make plans
- ☐ Unable to work independently or with minimal supervision
- ☐ Unable to manage money
- ☐ Unable to adjust to changes in daily routine, adapt or be flexible

11 Speech – VERBAL ABILITY TO MAKE ONESELF UNDERSTOOD BY OTHERS *NOTE: Not foreign language barriers*

- ☐ Can no longer speak
- ☐ Speech unintelligible to non-family
- ☐ Speech difficult to understand

12 Upper/Lower Extremity Functioning – ABILITY TO PERFORM TASKS REQUIRING MANUAL OR PEDAL DEXTERITY, EXCLUDING AMBULATION

- ☐ Limited fine or gross motor functions
- ☐ Limited neuro-motor function
- ☐ Limited manual dexterity
- ☐ Limited pedal dexterity
- ☐ Limited ability to push or pull
- ☐ Diminished grip

13 Vision – ABILITY TO SEE WITH BEST CORRECTION

- ☐ Unable to see well enough to read or write
- ☐ Unable to see to monitor environment
- ☐ Unable to visually locate materials or distinguish colors
- ☐ Eye muscle involvement interferes with vision

14 Work Skills – ABILITY TO PREPARE FOR, ENTER, ENGAGE IN OR RETAIN GAINFUL EMPLOYMENT

- ☐ Unable to meet industrial standards in work habits, attitudes or behaviors
- ☐ Unable to meet industrial standards for production quality
- ☐ Unable to locate employment due to disability related erratic work history

# **IDAHO ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Idaho's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

## **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

In the event that the projected fiscal and personnel resources of IDVR become inadequate to provide the full range of services, as appropriate, to all eligible individuals, the Administrator will implement the Division's order of selection procedure. By law, this procedure must insure that individuals with the most significant disabilities are served first. The criteria used for determining the order of selection for services is the category of significance of the disability as defined in Policy Section 6.2 and the application date for VR services.

## **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Idaho.

### **A. Establishment of Priority Categories**

When VR services cannot be provided to all eligible individuals because of financial exigency, the agency will enter an order of selection process that will assure that first priority is given to individuals with most significant disabilities.

1. Individuals with most significant disabilities
2. Individuals with significant disabilities
3. Individuals with no significant disabilities

### **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **Individual with a disability**  
The state uses the federal definition.
2. **Individual with a most significant disability**
  - Meets the criteria established for an individual with a significant disability;

and

- Experiences a severe physical and/or mental impairment that seriously limits three or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome.
- Requires multiple vocational rehabilitation services over an extended period of time.

**Note:** Individuals who are beneficiaries of Social Security Disability Benefits (SSDIB) or recipients of Supplemental Security Income are automatically classified as either SD or MSD depending upon the extent of their functional category limitations.

### **3. Individual with a significant disability**

- Meets the criteria for an individual with a disability.
- Experiences a severe physical and/or mental impairment that seriously limits one or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome;
- Requires multiple vocational rehabilitation services over an extended period of time.

### **4. Individual with no significant disability**

- Who has a physical or mental impairment;
- Whose impairment constitutes or results in a substantial impediment to employment; and
- Who can benefit in terms of an employment outcome from provision of vocational rehabilitation services.

### **5. Serious functional limitations.**

A serious limitation in a major functional area means a reduction in capacity of the individual to the degree that the person requires services or accommodations not typically made for other individuals in order to prepare for, get, or keep a job. While limitations may result from or be compounded by external factors, such as geographic location, poor public transportation or lack of training, these factors should not be the basis of the limitation for the purpose of defining serious restriction.

### **6. Functional limitation areas include**

Functional loss categories include mobility, work tolerance, communication, self-care, interpersonal skills, self-direction, and work skills.



## **7. Multiple Vocational Rehabilitation Services.**

No specific definition is included

## **8. Extended Period of Time.**

No specific time frame for “extended period of time” is defined in statute or regulation. The VR counselor must consider each participant’s unique circumstances to determine whether the needed services can reasonably be expected to require an extended period of time. For this purpose, six months may be used as a general benchmark, but not applied as an absolute limit, since each individual’s circumstances must be uniquely considered.

## **C. Acceptable and Unacceptable Factors**

Factors that will not be considered in determining an order of selection priority category include:

- A. Type of Disability
- B. Duration of residency, provided the individual is present in the state;
- C. Age, gender, race, color or national origin;
- D. Source of referral;
- E. Type of expected employment outcome;
- F. The need for specific services or anticipated cost of such services; or
- G. The income level of the individual or individual’s family.

Work-related limitations may result from or be compounded by external factors, such as geographic location, poor public transportation or lack of training. These factors do not relate to a disability and are not factors in determining a serious functional loss.

## **D. Ranking Individuals Within a Priority (Waiting Lists)**

When a VR counselor completes the eligibility process and the determination of the significance of the disability determination, the individual is added to the statewide order of selection waiting list in the appropriate category by date of application. The date of application is either the date the application is signed in the presence of the VR counselor or the date the application is ‘date stamped’ in the office. The case is transferred from the VR counselor caseload to the office order of selection waiting list.

# **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals

of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Statewide; Authority to Open and Close Priority Categories, as Needed**

The Chief, Field Services, in consultation with the Administrator and the Field Service Managers, who collectively compose a Field Services Management Counsel (FSMC), determines when resources are available to initiate Individualized Plans for Employment (IPE) for individual(s) on the statewide order of selection waiting list. When resources are available, the Chief, Field Services notifies the Regional Managers of the number of participants to take from the waiting list by priority category, application date(s) and office locations. Regional Managers then coordinate with the VR counselors to transfer the corresponding cases from the order of selection waiting list in respective offices to VR counselor's caseloads.

A participant on the statewide order of selection waiting list may request that his/her case be transferred from one office to another. The request for transfer is submitted to the Regional Manager to coordinate.

A separate order of selection waiting list is established for each office to track those eligible individuals on the statewide order of selection waiting list who would typically receive services from that office. The Regional Manager for the office is designated to manage the office waiting list and to transfer cases from the order of selection waiting list to a VR counselor when notified that resources are available to initiate services for individuals on the order of selection waiting list.

The Regional Manager is responsible within his/her region for ensuring appropriate priority categories are being served, for maintaining the office order of selection waiting list and for verifying Information and Referral (I&R) is occurring. Cases will be transferred from a VR counselor's caseload to the office order of selection waiting list within 10 working days of the eligibility date. Cases needing to be transferred to the office order of selection waiting list will be listed on a report generated every Monday by the Regional Manager or designee.

The Regional Manager will verify a referral has been entered in the Information and Referral portion of the case management system or the case service record contains a case note explaining efforts to locate information and referral sources and the reason(s) a referral was not provided. Upon verification, the Regional Manager will transfer the case from the VR counselor's caseload to the office order of selection waitlist.

Upon notification to initiate services for cases on the order of selection waiting list for the specified priority category and application dates, the Regional Manager must transfer cases from the order of selection office waiting list to a VR counselor within 5 workdays. The counselor is notified of the case transfer and is authorized to initiate services.

If a case is closed from the office order of selection waiting list, the case is automatically removed from the statewide order of selection list.

## **B. Funding Arrangements**

IDVR must ensure that its funding arrangements for providing services under the State Plan, including third-party arrangements and awards, such as cooperative funding agreements with school districts, other state agencies or contractual arrangements, are consistent with the order of selection. If any funding arrangements are inconsistent, the agency must renegotiate these funding arrangements so that they are consistent with the order of selection.

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

At the time an individual is determined eligible for VR services, a VR counselor will determine the significance of the disability and, based upon the determination, will assign the individual to a priority category. If the agency is not under an order of selection, the prioritization will be used (1) for planning purposes to ascertain services that can continue to be provided to all who are eligible and (2) to provide a structure for an easy transition to an order of selection if required. If the agency is under an order of selection (see section 15.0), the priority categories are used to determine the order in which individuals receive services.

A VR counselor determines the level of severity of an individual's disability based on a review of the information gathered to determine eligibility. If additional information is necessary to make the determination, a VR counselor may obtain the information from the individual, individual's family, an outside professional and/or another public agency. If adequate information is not available to describe or document current functioning, a VR counselor may purchase diagnostics from a qualified service provider. A VR counselor reviews the data to determine:

A. The number of serious functional losses present as a result of a disability;

AND

B. Whether an individual is likely to need multiple VR services to prepare for, obtain, or maintain a job;

AND

C. Whether services are likely to be needed for an extended period of time. (No specific time frame for “extended period of time” is defined. The VR counselor must consider each person’s unique circumstances to determine whether the needed services can reasonably be expected to require an extended period of time. For this purpose, 6 months may be used as a general benchmark but may not be applied as an absolute limit since each individual’s circumstances must be uniquely considered.)

Functional loss categories include mobility, work tolerance, communication, self-care, interpersonal skills, self-direction, and work skills. To identify a functional loss, a VR counselor reviews and assesses data provided by the individual or individual’s family, observed by the VR counselor, or reported by another qualified professional to determine whether:

A. A functional loss resulting from a disability is present;

AND

B. The function loss represents an impediment to employment;

AND

C. The functional loss meets the definition of a “serious functional loss.” A serious functional loss means a reduction in capacity of the individual to the degree that the person requires services or accommodations not typically provided to other individuals in order to prepare for, secure, or maintain a job. A specific disability diagnosis does not automatically infer the presence of one or more functional losses. Although certain functional losses are commonly associated with specific disability diagnoses, the presence and seriousness of these functional losses are unique for each person. Therefore, a VR counselor must complete a thorough evaluation of functional losses for each individual.

A VR counselor may identify a functional loss based on a participant’s self-report, reports from the family, school representative or others, or based on counselor observations. For example, while interviewing an applicant who is hard of hearing, a VR counselor observes that the individual is not able to effectively communicate verbally. Medical records clearly establish a hearing impairment, but do not address verbal limitations. Because a functional loss in verbal communication is consistent with and commonly associated with a hearing loss, the VR counselor may determine, based on his or her observations, that a serious functional loss is present. To ensure the case service record explains and supports the determination, the VR counselor enters case narrative explaining that a loss in the area of communication was observed, a summary of the observations, and how the functional loss affects the applicant. If an individual reports a functional loss that is neither consistent with nor supported by disability-related documentation, the VR counselor and individual need to discuss and reach agreement on how to get the information necessary to verify the functional loss.

## **SD/MSD Checklist**

Once the VR counselor determines a disability-related functional loss is present, he or she considers whether the functional loss meets the definition of a “serious functional loss” contained in the SD/MSD Checklist functional loss definitions. If the functional loss meets the definitions of a “serious functional loss” the counselor checks the appropriate indicator on the Checklist. If the individual experiences a functional loss that is not described on the SD/MSD Checklist, the VR counselor may write a description of the functional loss in the space provided. Only one indicator within a category (mobility, work, tolerance, communication, selfcare, interpersonal skills, self-direction, and work skills) is needed to determine that a serious functional loss is present in that category.

### **Documentation of a Functional Loss**

The VR counselor documents the functional loss in the Gemini Eligibility Determination, “Section 3 - Impediment to Employment.”

The VR counselor is responsible for adequately describing:

A. The nature of each functional loss (mobility, work tolerance, communication, self-care, interpersonal skills, self-direction, or work skills);

AND

B. The basis for making the determination, i.e. a description of what was observed, a summary of what was reported and who reported the information, or whether the determination is based on documentation contained in medical or other information in the case service record;

AND

C. The specific limitations experienced by the individual. After determining the number of functional losses present, the VR counselor determines whether the individual is likely to require multiple services over an extended period of time. The VR counselor also considers the number of serious functional losses and impediments to employment.

**Note:** *No specific time frame for “extended period of time” is defined in statute or regulation. The VR counselor must consider each participant’s unique circumstances to determine whether the needed services can reasonably be expected to require an extended period of time. For this purpose, six months may be used as a general benchmark, but not applied as an absolute limit, since each individual’s circumstances must be uniquely considered.*

When the VR counselor has sufficient data to determine eligibility and significance of disability, the VR counselor completes the required documentation.

## **Determination of Significance of Disability Documentation**

Again it is important to emphasize that in addition to case file documentation and supporting medical records, the required eligibility/significance of disability documentation must include the SD/MSD Checklist.

**Remember:** *The SD/MSD Checklist is a form used to support the determination; however, and is not sufficient enough documentation to adequately describe the individual's limitations by itself.*

The VR counselor completes the SD/MSD Checklist for each individual as soon as sufficient information is available, but no later than sixty days from the date of application (unless an extension has been agreed upon). IDVR will then send a letter advising the individual of the eligibility decision.

### **B. Notification of Eligible Individuals**

The FSMC will determine when it is appropriated to implement procedures to reestablish or maintain contact with individuals while they are on the order of selection waiting list. Factors to consider are the length of time an individual has been on the list and the anticipated time before the individual's category will open. Upon receipt of a case transferred from the order of selection waiting list, the VR counselor takes steps to contact the individual within three working days. Telephone contact is acceptable; however, if efforts to contact the individual by telephone are not successful within 2 days, a letter must be sent by the third day, scheduling the individual for an appointment. The appointment is scheduled no later than 10 days from the date the letter is sent.

Counselors need to consider the communication needs of the participant, including the need for information in alternate formats when initiating contact by telephone or letter.

If a participant missed a scheduled appointment or does not respond to an initial letter by the specified date, a certified letter is sent within 3 working days explaining that if the individual does not contact IDVR within 10 days to initiate services, the case service record will be closed. The letter will include information explaining the current status of the waiting list and instructions on how to reapply at a later time.

Reasonable and timely efforts will also be made to verify or find updated telephone numbers and addresses, to contact the referral source, and/or to contact person(s) identified on the application or otherwise in the case service record.

If the date identified in the closure notification letter passes and there is no response from the participant and efforts to locate the individual through other sources have not resulted in contact, the case is closed.

Steps to contact each individual are documented in the case management system narrative and filed in the case service record.

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Order of selection does not impact or alter the provision of post-employment services. Post employment services are considered an amendment of the IPE, and therefore, an individual who needs post employment services is not required to meet the highest priority category currently being served under an order of selection nor is the individuals required to wait for services.

If the VR counselor determines that substantial services are needed a new application is completed subject to order of selection.

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

When operating under order of selection, IDVR is required to offer a formal, discreet Information and Referral (I&R) service to individuals who cannot be served and must wait for services because of the order of selection.

IDVR must document and retain information about referrals to other federal and state programs that provide employment-related services. The I&R screen of the case management system is used to record the required information.

Federal regulations establish minimum requirements under I&R as follows. IDVR must:

- A. Provide individuals with accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) to prepare for, get, or keep a job.
- B. Refer individuals with disabilities to other federal or state programs that are best suited to address their specific employment needs, including partners in the workforce investment system.
- C. Initiate a notice of referral identifying:
  - a. The name of the program to which the individual is referred;
  - b. A contact person in that program; and
  - c. Information about the most suitable services to assist the individual prepares for, get or keep a job.

To provide individuals with accurate VR information and guidance, which may include counseling and referral for job placement, a VR counseling staff member talks to the individual about his/her need to prepare for, get or keep a job. The VR counseling staff member provides advice and guidance about how the individual might proceed, explains referral sources available, and offers to initiate a referral to another program, if appropriate. These interactions occur in the course of other activities, such as completing the application, intake and eligibility determination.

For individuals who choose not to apply for IDVR services because of the order of selection, a general guideline is to limit I & R services to one appointment. The VR counselor will NOT establish an on-going counseling relationship nor perform follow-up services regarding I&R.

Each office will maintain a list of federal and state programs with which IDVR has established a formal referral relationship. It is expected that the Idaho Department of Labor One-Stop Centers will be used extensively, but not exclusively, for the referral of individuals who either choose not to apply or are on a waiting list to receive IDVR services. Other programs to be used in this capacity, as appropriate, include Tribal VR programs and other community programs. Because of limited resources in some areas and the unique needs of some individuals with disabilities, there will not be an appropriate program available to every person.

VR counseling staff may provide brief counseling for job placement. If the individual intends to engage in independent, self-directed job search or related activities, the VR counseling staff member may provide brief counseling to assist the individual in this effort. Examples of counseling and referral for job placement may include, but are not limited to:

- A. A counseling session with the individual to discuss what efforts to find a job the individual has already tried and offering other job search strategies and suggestions.
- B. Reviewing and giving advice on an individual's resume.
- C. Discussing reasonable accommodation issues and strategies for approaching an employer.
- D. Discussing and providing the individual with access to the Internet or another resource.
- E. Sharing information about the local labor market.

All referrals to employment-related programs must be documented, including referrals for individuals who have applied and are waiting for services and referrals for individuals who choose not to apply for services because of the order of selection. Each Regional Manager, or designee, will identify and maintain the list of regional referral sources that require a formal referral. Each time an individual is referred to one of the listed organizations, the VR counseling staff member documents the referral in the I&R portion of the case management system. Every case will have an entry in the I&R screen prior to transferring the case to the order of selection waiting list, or the case service record will document efforts to locate referral sources and the reason(s) a referral was not provided.

If an individual requests a referral, the VR counseling staff member prepares and sends a written referral to the organization. In addition, the VR counseling staff member provides the individual being referred with the following:



- A. A copy of the written referral notifying the other federal or state program about the referral.
- B. The name of the person in that organization to be contacted by the individual being referred.
- C. Information about the most suitable services to prepare for, secure, retain, or regain employment.

VR counselors routinely provide information to applicants and eligible individuals about a wide array of community assistance programs that may offer services or benefits to assist the individual meet a variety of needs (food or clothing banks, medical programs, counseling services, etc.). These types of referrals are considered informal referrals. IDVR staff are encouraged to continue providing individuals with information about other programs that offer services to assist them in meeting a variety of needs. Informal referrals are not documented in the I&R screen.

#### **E. Maintenance of Records**

See above.

## **Function Loss Definition Chart (SD/MSD Checklist):**

### **AREA:**

#### **COMMUNICATION**

Effective exchange ideas and information through written or spoken words.

1. Cannot hear or understand the content of ordinary spoken conversation or;
2. Cannot be readily understood by others on first contact; or
3. Cannot print or write short notes such as: Out of Order, Don't Walk; or other
4. required survival skill messages;
5. Cannot read signs or short notes from others; or
6. Requires an interpreter for the hearing impaired, hearing aids, augmentative
7. communication device, or other accommodation not typical to communicate in
8. work, training or living environments.

#### **INTERPERSONAL SKILLS**

Effective exchange of ideas and information through written or spoken words or establish and maintain personal working relations with others.

1. Cannot establish and maintain working relationships with co-workers, fellow students, or family members, or
2. Exhibits destructive behaviors such as: hitting, yelling, tantrums, sexual/racial harassment, which interfere with the performance of the individual or others in training or work settings;
3. Individual avoided or rejected by co-workers or fellow students because of serious scarring, disfigurement, uncontrolled drooling, or uncontrolled motion.

#### **MOBILITY**

Move about from place to place and move the body into various positions.

1. Unable to move safely around within common training, home, or work environments without the help of others or the use of assistive devices such as: wheelchair, prosthesis, crutches, cane, or walker; or is
2. Significantly restricted or limited in the distance he/she can safely move within common training, home, or work environments; or
3. Takes significantly longer to move about within common training, home or work environments than the average person; or
4. Cannot safely change body positions without the help of others or the use of assistive devices; or
5. Requires assistive technology, modifications, adaptations, or accommodations not typical in order to move around within common training, home, or work environments.

## **SELF-CARE**

Perform basic personal care and independent living activities

1. Requires personal assistance to perform most self-care activities; or
2. Requires personal assistance to perform most independent living activities; or
3. Is unable to obtain a driver's license due to a disability; or
4. Requires a special modified vehicle for travel within the community; or
5. Requires independent living, training, or rehabilitation technology services to perform self-care and/or independent living activities.

## **SELF-DIRECTION**

Manage and take control of one's personal, social and work life.

1. Requires ongoing personal assistance such as: prompts, cues, or physical guidance to start, finish, or stop tasks, follow schedules or decide what to do next; or
2. Has recurring episodes during which personal assistance is required to start, finish, stop, or complete tasks, or follow schedules; or
3. Requires intensive individualized supervision or personal assistance beyond that which is typical when entering a new training or work setting; or
4. Requires constant monitoring by others because of confusion or disorientation;
5. Requires assistive technology, compensations, adaptations, or accommodations such as: detailed calendars, appointment books, alarms, not typical for others in order to start, finish, or complete tasks, follow schedules or decide what to do next within common training or work environments.

## **WORK SKILLS**

Possess skills needed to perform jobs which exist in the economy (regardless of demand).

1. Is unable to perform the work skills essential to maintaining employment in the previous job or line of work and does not have other work skills which could be used to enter and maintain a job comparable in skill (not wages) which is readily available locally, or in an economy to which the individual is willing to relocate; or
2. Has not learned the work skills usually possessed by the average person of comparable age, education, or experience which could be used in a work environment which is readily available locally or in an economy to which the individual is willing to relocate; or
3. Has symptoms of hallucinations, delusions, depression, obsession ruminations, time consuming obsessive/compulsive routines or medication side effects which interfere with the ability to concentrate on or complete common work, home, or school tasks at a pace comparable to that of the average person in the general population; or
4. Requires specialized instructional methods, extended learning periods, assistive technology, or accommodations and adaptations not typical for others students or trainees to learn work skills; or

5. Requires continual monitoring, skill training, behavior management, support, assistive technology or accommodations and adaptations not typical for other employees to maintain work skills and stable job performance.

## **WORK TOLERANCE**

Perform under the levels of physical, environmental, or psychological demands commonly found in work settings.

1. Individual is unable to lift and carry a sack of groceries, 12 pack of soda pop, pail of water, or objects weighing up to 20 lbs; or
2. Individual is unable to sustain a continued or prolonged paced movement of the arms, hands, or fingers over the course of a typical 8 hour work day; or
3. Individual is unable to sustain a continued or prolonged standing or sitting position of the body required to perform the previous job or line of work over the course of a typical 8 hour day; or
4. Individual is unable to sustain consistent physical or mental work effort over the course of a typical 8 hour day, 5 day work week, 52 week year; or
5. Individual is unable to tolerate the common environmental conditions found in the typical work environment; or
6. Individual is unable to tolerate the common psychological stresses found in the typical work environments; or
7. Requires assistive technology, modifications, or accommodations not typical to meet essential strength, stamina and endurance requirements or to deal with environmental or psychological demands.

\*Other causes include poverty, lack of education, environmental restrictions and age, sex, race or cultural factors.

## ILLINOIS ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Illinois' policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. The policies described below are found primarily in Part 553 of Title 89 of the Illinois Administrative Code.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Illinois.

#### A. Establishment of Priority Categories

Pursuant to the provisions of the Rehabilitation Act of 1973, as amended (29 USC 701 et seq.), DHS-DRS has established the following Order of Selection priority for the provision of services to eligible individuals, which counselors must follow when serving customers [553.130(a)]:

1. those individuals determined to have the **most significant disabilities**;
2. those individuals determined to have **very significant disabilities**;
3. individuals determined to have **significant disabilities**; and
4. individuals determined to **have disabilities**.

#### B. Terminology

The following definitions are used for purposes of the (waiting list) order of selection policy.

##### 1. Individual with a disability

Prior to determining the significance of an individual's disability, it must be determined that he or she [553.140(a)]:

- 1) has a disability, or a combination of disabilities, that causes a substantial physical or mental impairment that is similar, but not limited to, the following list of disabilities:

- a. amputation,
  - b. arthritis,
  - c. autism
  - d. blindness,
  - e. burn injury,
  - f. cancer,
  - g. cerebral palsy,
  - h. cystic fibrosis,
  - i. deafness,
  - j. head injury,
  - k. heart disease,
  - l. hemiplegia,
  - m. hemophilia,
  - n. respiratory or pulmonary dysfunction,
  - o. mental retardation,
  - p. mental illness,
  - q. multiple sclerosis,
  - r. muscular dystrophy,
  - s. musculo-skeletal disorders,
  - t. neurological disorders (including stroke and epilepsy),
  - u. paraplegia,
  - v. quadriplegia (and other spinal cord conditions),
  - w. sickle cell anemia,
  - x. specific learning disabilities, or
  - y. end stage renal failure disease;
- 2) has a disability, or a combination of disabilities, that seriously limits his or her functional capacities, as listed in Section 553.150 of this Part; and
  - 3) requires VR services over an extended period of time at least six months or longer.

## **2. Individual with a most significant disability**

To be considered an individual with a most significant disability, he or she must be an individual who has a disability that seriously limits three or more of his or her functional capacities and who requires two or more substantial VR services, in addition to the routine services of counseling and guidance, and information and referral to ensure a successful employment outcome. [553.140(b)(1)]:

## **3. Individual with a very significant disability**

To be considered an individual with a very significant disability, he or she must have a disability that seriously limits two of his or her functional capacities, and must require one or more substantial VR services, in addition to the routine services of counseling and guidance, and information and referral to ensure a successful employment outcome. [553.140(b)(2)]

#### **4. Individual with a significant disability.**

To be considered an individual with a significant disability, he or she must have a disability that seriously limits one of his or her functional capacities and must require one or more substantial VR services, in addition to the routine services of counseling and guidance, and information and referral to ensure a successful employment outcome. [553.140(b)(3)]

#### **5. Serious functional limitations.**

A serious limitation to a functional capacity shall exist when it is determined by the rehabilitation counselor or instructor that the customer, because of his or her disability, has functional limitations in performing the major components of the activity or activities listed below under functional capacity areas or needs accommodation to perform the activity. [553.150(b)]

The rehabilitation counselor or instructor shall use the criteria of consistency and substantiality when evaluating the degree of limitation to functional capacity. Consistency means that the individual's disability always or almost always limits the individual's functioning. Substantiality means the individual's disability has a major, significant impact on functioning and that the individual cannot perform the activity or finds it very difficult to perform the activity. [553.150(c)]

#### **6. Functional capacity areas include**

- a. For the purpose of determination of the degree of significance of disability , functional capacities shall include [553.150(a)]:
- b. mobility – the physical ability of an individual to move from place to place and move the body into certain positions. This includes such activities as: walking, climbing, kneeling, stooping, sitting, standing, and similar activities;
- c. self-care – the ability of an individual to perform activities related to his or her health and hygiene. This includes such activities as: grooming, bathing, eating, housekeeping, medical management, and money management;
- d. self-direction – the ability of an individual to organize, control and regulate his or her own personal, social, and work life. This includes such activities as: maintaining schedules and routines, following directions and established rules, organizing activities for oneself, and adjusting to changing circumstances;
- e. work skills – the ability of an individual to demonstrate skills necessary to perform jobs that exist in the current employment market, regardless of demand for the particular occupation or the individual's prior work experience. This includes such activities as: learning and maintaining work skills, cooperating with others in a work setting, using adequate decision making and problem solving skills, and using academic skills commonly required in the workplace;

- f. work tolerance – the ability of an individual to consistently and adequately perform a job based on the physical, emotional, environmental, and psychological demands of a specific work environment. This includes such activities as: maintaining performance on the job regardless of changes in environment such as cold and heat, demonstrating the strength and endurance to perform the job in question, and working the schedule typical of other employees in the same job;
- g. interpersonal skills – the ability of an individual to establish and maintain appropriate relationships with other individuals in the work place. This includes such activities as: engaging in necessary work-related communications, demonstrating behavior that is appropriate and acceptable in the work environment, cooperating with others in a team setting, and showing understanding and tact in dealing with others; and
- h. communication – the ability to convey and receive information efficiently and effectively. This includes such activities as: hearing and understanding ordinary spoken language; making one's self understood in ordinary conversation; writing or printing short notes and communications; and reading and correctly interpreting short notes, signs, and instructions.

## **7. Multiple Vocational Rehabilitation Services.**

As explained above, to be considered an individual with a significant disability, very significant disability or most significant disability he or she must have a disability that seriously limits a specified number of functional capacities and must require a specified number of substantial VR services, **in addition to** the routine services of counseling and guidance, and information and referral to ensure a successful employment outcome. [553.140(b)(1), (2) and (3)]

## **8. Extended Period of Time.**

Means requires VR services over an extended period of time at least six months or longer. [553.140(a)(3)]

# **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.



### **A. Authority to Open and Close Priority Categories, as Needed**

For the purposes of administering services under the Order of Selection, the Director of DHS-DRS will determine at the beginning of each fiscal year, or more often as necessary, which of the categories will be open for service. [553.130(b)]

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

Prior to the end of the eligibility determination period (i.e., 60 days), one of the following must occur [553.50]:

- a) The customer has been determined to be eligible to receive VR services and has a disability that will allow services to be provided under the Order of Selection and has an employment outcome consistent with the customer's strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice. At this time a Certification of Eligibility shall be completed. The customer will then undergo an Assessment pursuant to Section 553.100 of this Part;
- b) The customer is determined eligible but not to have a disability that allows services to be provided under the Order of Selection (Section 553.130). The customer will be offered the option to have his or her name placed on a waiting list to wait until services can be provided to the priority category established under the Order of Selection or to have his or her case closed. The customer shall be referred to other agencies that can provide services, i.e. a comprehensive one-stop center, a private rehabilitation agency, a community rehabilitation program, a Center for Independent Living, etc.;
- c) A trial work period is determined to be necessary. The Written Trial Work Plan shall be completed and the trial work shall begin;
- d) The customer does not meet the required eligibility criteria (see Section 553.20). A Certification of Ineligibility shall be completed and the individual's case closed; or
- e) The customer's case is closed for reasons other than ineligibility (e.g., the customer has refused services or further services from DHS-DRS, the customer cannot be located).

Prior to determining the significance of an individual's disability, it must be determined

## **B. Notification of Eligible Individuals**

Prior to the end of the eligibility determination period, the customer is determined eligible but not to have a disability that allows services to be provided under Order of Selection. The customer will be offered the option to have his or her name placed on a waiting list or wait until services can be provided to the priority category established under the Order of Selection or to have his or her case closed. [553.50(b)]

## **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Eligible individuals in a closed category under subsection (a) may choose to be placed on a waiting list for services. [See Section 553.50(b); 553.130(c)]

The customer is determined eligible but not to have a disability that allows services to be provided under the Order of Selection (Section 553.130). The customer will be offered the option to have his or her name placed on a waiting list to wait until services can be provided to the priority category established under the Order of Selection or to have his or her case closed. The customer shall be referred to other agencies that can provide services, i.e. a comprehensive one-stop center, a private rehabilitation agency, a community rehabilitation program, a Center for Independent Living, etc. [See Section 553.50(b)]

## **D. Maintenance of Records**

Documentation of the determination that an individual has a most significant disability, a very significant disability, or a significant disability must be in the individual's VR case file, as well as documentation concerning the evaluation of his or her rehabilitation potential. [553.140]

## **INDIANA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Indiana's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The Vocational Rehabilitation Program must monitor on an ongoing basis and assess at least annually, in advance of each federal fiscal year (and more frequently, if necessary), the number of individuals it is serving and expects to serve during the coming year, the anticipated cost of serving those individuals, and the current and projected resources that are expected to be available to provide the full range of vocational rehabilitation services needed to serve all program participants. The Vocational Rehabilitation Program is required to implement an order of selection if the program determines that its projected fiscal or personnel resources will not be sufficient to:

- A. continue to process all referrals and applications it has received and expects to receive;
- B. provide all of the services required to conduct and complete an assessment for determining eligibility and priority for services for every individual who has applied and is expected to apply;
- C. provide the full range of appropriate and necessary vocational rehabilitation services to every eligible individual who has and is expected to have a signed Individualized Plan for Employment (IPE); and
- D. meet all other program requirements and obligations.

The program will reserve sufficient resources to meet these requirements throughout the period of time during which it is operating under an order of selection procedure.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Indiana.

## **A. Establishment of Priority Categories**

Each priority category assignment will be made to the highest priority category for which the individual qualifies at the time the assignment or reassignment is made, and will be to one of the following four priority for services categories.

(1) Priority category 0 (*lowest priority*). Eligible individuals determined to be individuals with disabilities ("not SD"), as described in PPM chapter 422.06(1)(A), who do not satisfy the requirements for any of priority categories 1, 2, or 3.

(2) Priority category 1 (*next higher priority, after priority category 0*). Eligible individuals determined to be individuals with significant disabilities ("SD"), as described in PPM chapter 422.06(1)(B): (1) whose disabilities result in *a serious limitation of one functional capacity*; (2) whose vocational rehabilitation is expected to require *multiple (two or more) vocational rehabilitation services*; and (3) for whom the vocational rehabilitation services identified as necessary must be provided *over an extended period of time (9 months or longer)*.

(3) Priority category 2 (*next higher priority, after priority category 1*). Eligible individuals determined to be individuals with significant disabilities ("SD"), as described in PPM chapter 422.06(1)(B): (1) whose disabilities result in *a serious limitation of two functional capacities*; (2) whose vocational rehabilitation is expected to require *multiple (two or more) vocational rehabilitation services*; and (3) for whom the vocational rehabilitation services identified as necessary must be provided *over an extended period of time (9 months or longer)*.

(4) Priority category 3 (*highest priority*). Eligible individuals determined to be individuals with most significant disabilities ("MSD"), as described in PPM chapter 422.06(1)(C): (1) whose disabilities result in *a serious limitation of three or more functional capacities*; (2) whose vocational rehabilitation is expected to require *multiple (two or more) vocational rehabilitation services*; and (3) for whom the vocational rehabilitation services identified as necessary must be provided *over an extended period of time (9 months or longer)*.

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

### **1. Individual with a disability**

Individual with a disability ("not SD"), meaning an individual—

- (1) who has a physical or mental impairment,
- (2) whose impairment constitutes or results for the individual in a substantial impediment to employment, and
- (3) who is presumed to be able to benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

## **2. Individual with a most significant disability**

Individual with a most significant disability ("MSD"), meaning an individual with a disability, as described in paragraph (1)(A) of this section—

- (1) who has a severe physical or mental impairment that seriously limits three or more functional capacities (cognitive and learning skills, communication, interpersonal skills, mobility, motor skills, self care, self direction, work skills, and work tolerance) in terms of an employment outcome,
- (2) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time, and
- (3) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and priority for services or a comprehensive assessment of vocational rehabilitation needs to cause comparable substantial functional limitation.

## **3. Individual with a significant disability**

Individual with a significant disability ("SD"), meaning an individual with a disability, as described in paragraph (1)(A) of this section—

- (1) who has a severe physical or mental impairment that seriously limits one or two functional capacities (cognitive and learning skills, communication, interpersonal skills, mobility, motor skills, self care, self direction, work skills, and work tolerance) in terms of an employment outcome,
- (2) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time, and
- (3) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and priority for services or a comprehensive assessment of vocational rehabilitation needs to cause comparable substantial functional limitation

Consistent with the requirements of PPM 422.08, an eligible individual who is an allowed Social Security Disability Insurance (SSDI) beneficiary and/or a blind/disabled Supplemental Security Income (SSI) recipient must be presumed to be an individual with at least a significant disability. Each such individual will, therefore, be assigned to priority category 2 or priority category 3, based on the initial and amended severity information entered into IRIS in accordance with PPM chapter 422.

**4. Serious functional limitations.** Defined below under each functional capacity area

**5. Functional limitation.**

The following criteria must be employed to determine whether or not the individual has a serious limitation of functional capacity in the **nine** functional capacity areas considered for the severity determination (cognitive and learning skills, communication, interpersonal skills, mobility, motor skills, self care, self direction, work skills, and work tolerance).

**(1) COGNITIVE AND LEARNING SKILLS**

An individual will be determined to have a serious limitation of cognitive and learning skills if (due to a physical or mental impairment) his or her thought processes are currently limited to a degree that the individual consistently requires specialized learning methods, repetition, reinforcements, prompts, or other assistance from one or more other individuals, or assistive technology devices or services, to acquire, process, comprehend, retain, recall, and apply learned information and skills in situations necessary to prepare for, enter or reenter, or maintain employment in an integrated setting.

**(2) COMMUNICATION**

An individual will be determined to have a serious limitation of communication if (due to a physical or mental impairment) his or her expressive or receptive communication is currently limited to the extent that the individual consistently requires the assistance of one or more other individuals, or assistive technology devices or services, to exchange information in situations necessary to prepare for, enter or reenter, or maintain employment in an integrated setting.

**(3) INTERPERSONAL SKILLS**

An individual will be determined to have a serious limitation of interpersonal skills if (due to the physical or mental impairment) he or she is currently unable to form and maintain positive and productive relationships (including relationships with family members, care givers and other service providers, supervisors and managers, peers including coworkers, and the community) in a manner appropriate to age, setting, and circumstances, as necessary to prepare for, enter or reenter, or maintain employment in an integrated setting.

#### (4) MOBILITY

An individual will be determined to have a serious limitation of mobility if (due to a physical or mental impairment) his or her mobility is currently limited to the extent that he or she consistently requires the assistance of one or more other individuals, or assistive technology devices or services, to meet transfer, safety supervision, or other mobility needs in situations necessary to prepare for, enter or reenter, or maintain employment in an integrated setting.

#### (5) MOTOR SKILLS

An individual will be determined to have a serious limitation of motor skills if (due to a physical or mental impairment) his or her gross or fine motor function is currently limited to the extent that the individual consistently requires the assistance of one or more other individuals, or assistive technology devices or services, to hold, manipulate, operate, or otherwise utilize objects in his or her environment (such as zippers and buttons on clothing, scissors, paperclips, writing utensils, work tools, equipment, or materials) necessary to prepare for, enter or reenter, or maintain employment in an integrated setting.

#### (6) SELF CARE

An individual will be determined to have a serious limitation of self-care skills if (due to a physical or mental impairment) his or her daily living capacities are currently limited to the extent that he or she consistently requires the assistance of one or more other individuals, or assistive technology devices or services, to:

(A) eat, and/or

(B) toilet, and/or

(C) meet his or her bathing, grooming and hygiene, and dressing/ undressing needs (all three), as necessary to prepare for, enter or reenter, or maintain employment in an integrated setting.

#### (7) SELF DIRECTION

An individual will be determined to have a serious limitation of self-direction skills if (due to a physical or mental impairment) the individual's ability to manage his or her own affairs is currently limited to the extent that he or she consistently requires the assistance of one or more other individuals, or assistive technology devices or services, to plan, initiate, complete, evaluate, or (as may be appropriate) modify his or her own decisions, behaviors, and actions in situations necessary to prepare for, enter or reenter, or maintain employment in an integrated setting.

#### (8) WORK SKILLS

An individual will be determined to have a serious limitation of work skills if the individual's work history reveals chronic unemployment or underemployment and (due to a physical or mental impairment) the individual:

(A) currently lacks the training, knowledge, experience, skills, or other job qualifications necessary to obtain and retain an employment outcome of his or her informed choice in an integrated setting that is consistent with his or her

- vocational strengths, resources, priorities, concerns, abilities, capabilities, and career interests; and,
- (B) currently has significantly limited capacity to acquire the necessary training, knowledge, experience, skills, or other job qualifications; and
- (C) will require multiple vocational rehabilitation services of a substantial nature to prepare for, enter or reenter, or maintain employment in an integrated setting.

(9) WORK TOLERANCE

An individual will be determined to have a serious limitation of work tolerance if (due to a physical or mental impairment causing a limitation of concentration, strength, or stamina) his or her ability to sustain work over the course of a full work day or a full work week is currently limited to the extent that the individual consistently requires long-term accommodations of job duties, work schedules, break schedules, work environment, job supervision, peer supports, or job performance and retention expectations to prepare for, enter or reenter, or maintain employment in an integrated setting.

**6. Multiple Vocational Rehabilitation Services** means 2 or more vocational rehabilitation services.

In order to determine that the vocational rehabilitation of the individual is expected to require multiple vocational rehabilitation services, the Vocational Rehabilitation Counselor must ascertain that the individual requires the provision of services from any two or more of the following service categories.

(1) Vocational counseling and guidance, if the anticipated counseling and guidance will require significant interaction between the Vocational Rehabilitation Counselor and the individual over the course of the individual's participation in his or her vocational rehabilitation program and is required for, and is expected to contribute substantially to, the individual's achievement of an integrated employment outcome;

(2) Physical and mental restoration services (except physical and mental restoration services provided for the purpose of an assessment for determining eligibility and priority for services or an assessment for determining vocational rehabilitation needs), if the anticipated physical and mental restoration services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome;

(3) Rehabilitation technology services, consisting of rehabilitation engineering, assistive technology devices, and/or assistive technology services, if the anticipated rehabilitation technology services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome;

(4) Training services, consisting of postsecondary training, on-the-job training, Randolph-Sheppard vending facility training, rehabilitation teaching or orientation and mobility training for individuals who are blind, or other training (except training provided for an assessment for determining eligibility and priority for services, trial work experiences, an extended evaluation, or supported employment), if the anticipated



training services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome;

(5) Job-related services, consisting of job search, job development, job placement assistance, job retention services, and follow-up and follow-along services (except when such services are provided for an assessment for determining eligibility and priority for services, trial work experiences, an extended evaluation, or supported employment services), if the anticipated services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome;

(6) Supported employment services (including supported employment job development, job placement, job coaching, job retention, transitional employment, and extended services), if the anticipated services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated supported employment outcome; or

(7) Consultation and technical assistance to conduct market analyses, develop business plans, and secure operating capital, and the provision of other goods and services (including licenses and permits, tools and equipment, and initial stocks and supplies) to assist individuals who are establishing a small business enterprise or other self-employment business operation as an employment outcome, if the anticipated services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome.

*[REQUIRED PRACTICE. Services which cannot be counted toward meeting the multiple services requirement include: (1) the assessment for determining eligibility and priority for services, or any service provided for purposes of completing the assessment (including services provided during trial work experiences or an extended evaluation); (2) the assessment for determining vocational rehabilitation needs, or any service provided for purposes of completing the assessment; (3) any counseling and guidance which is limited to types of counseling and guidance which must be provided universally, to all program participants (such as the provision of information to assist an individual in exercising his or her informed choice); (4) information and referral services; (5) any supporting service, including Vocational Rehabilitation Program maintenance or transportation, services to family members, or personal assistance services (attendant, interpreting, note taking, or reading services); (6) job-related follow-up and follow-along limited to the 90-day closure requirement for rehabilitation (60 days for supported employment closures), unless substantive interventions are provided to assure job maintenance and stabilization; or (7) routine case management activities, such as the processing of required fiscal documents.]*

**7. Extended Period of Time** means 9 months or longer.

The individual will be deemed to require services over an extended period of time if it is anticipated that the services identified in accordance with section 422.11 will be provided over a period of nine months or longer, from the date on which the individual's IPE is signed until the date of successful rehabilitation and closure of the record of services.

### **C. Acceptable and Unacceptable Factors**

The selection criteria utilized to determine the priority order in which each eligible individual is served—

- (1)include, in some priority order, all individuals who apply and are found to be eligible,
- (2)are based solely on those factors which, by federal definition, distinguish an individual with significant disabilities from an individual with disabilities (the number of functional capacities that are seriously limited in terms of employment by reason of the individual's disability, the number of vocational rehabilitation services expected to be required for the individual to achieve an employment outcome, and the anticipated duration of the services expected to be required), and
- (3)ensure that all eligible individuals determined to be individuals with most significant disabilities are assigned to the highest priority category under the order of selection procedure, and will be selected first to receive vocational rehabilitation services, before any individuals with less significant disabilities;

The priority order in which eligible individuals are served under the order of selection is not based on any consideration of—

- (1)the age, gender, race, color, creed, or national origin of the individual, or the type of his or her disability, in accordance with PPM 110.01,
- (2)any duration of residency requirement, and
- (3) any other factor prohibited by PPM 421.11.

All severity determinations must be made without regard to the individual's age, gender, race, color, creed, national origin, or type of disability, in accordance with the nondiscrimination policy of the program, as described in PPM 110.01.

The Vocational Rehabilitation Program will impose no duration of residency requirement as a condition of eligibility for any applicant who is present in the state, as described in PPM 110.02.

*[REQUIRED PRACTICE.]*

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

Individuals placed on the deferred services waiting list will be prioritized on the waiting list by priority category assignment and, within each priority category, by date of application for vocational rehabilitation services; and will remain on the list until:

- program resources become available to open the priority category to which the individual has been assigned and IPE development and service provision can proceed;
- the order of selection is suspended or terminated;

- reassignment of the individual from an unserved to a served priority category, based on a revision of the significance of the individual's disability by the Vocational Rehabilitation Counselor; or
- removal from the deferred services waiting list on the basis that the individual or the individual's representative has requested removal from the list (and the individual exits the Vocational Rehabilitation Program by choice) or the Vocational Rehabilitation Counselor has demonstrated that the individual is no longer available for services (as, for example, a determination that the individual is deceased, has moved out of state, can no longer be located, has been institutionalized, or the individual's medical condition has become rapidly progressive or terminal).

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Statewide Basis**

If it is determined that the order of selection must be implemented, the Vocational Rehabilitation Program must assure that the order of selection will be implemented and administered on a statewide basis, in all geographic areas of the state.

If it is determined that the order of selection must be implemented, the Vocational Rehabilitation Program must assure that irrespective of the order of selection, the program will continue its efforts to expand and improve services to individuals with the most significant disabilities, and identify and serve eligible individuals with disabilities who are minorities and other individuals who have been unserved or underserved by the program; the program will continue to make its referral and application forms widely available throughout the state; and the program will continue to process all referrals and applications received in an equitable and timely manner, and will continue to provide an assessment of the eligibility or ineligibility of each individual who applies (including, as appropriate and necessary, the trial work experiences and/or an extended evaluation).

#### **B. Authority to Open and Close Priority Categories, as Needed**

The Director of the Division of Disability and Rehabilitative Services (DDRS) has sole authority to determine, in consultation with the Deputy Director of the Bureau of Vocational Rehabilitation Services and the Commission on Rehabilitation Services:

- (1)when the order of selection will be initiated and, subsequently, whether or not it must be continued, in order to satisfy all federal and state requirements;
- (2)which priority category or categories can be served and which priority category or categories cannot be served at any given time, based on available resources;
- (3)the methods by which the deferred services waiting list for those eligible individuals who cannot currently be served will be administered; and
- (4)when, as permitted by applicable federal requirements, the order of selection will be suspended or terminated.

If the Director determines, in accordance with section 430.04 of this chapter, that the resources available for service provision are sufficient to serve some, but not all, of the individuals assigned to a particular priority category, the priority category will be opened for service provision, and as many individuals as possible will be served from the priority category on a first-come, first-served basis, according to the date of application for each eligible individual.

When the Vocational Rehabilitation Program opens a priority category for services that has previously been closed, individuals already on the deferred services waiting list for that category will be given priority over all new applicants, by date of application.

### **C. Continuation of Services**

If it is determined that the order of selection must be implemented, the Vocational Rehabilitation Program must assure that once an eligible individual is receiving services under an Individualized Plan for Employment (IPE) that has been developed, agreed to, and signed, continuity of services will be maintained and services will be provided subject to the plan and all subsequent plan amendments, and will not be reduced or terminated as a consequence of the order of selection, and, in accordance with the continuity of services assurance—

- (1)any individual whose IPE was signed prior to the implementation date of the order of selection will be unaffected by the order, and will continue to receive services in accordance with the plan and all subsequent plan amendments,
- (2)any individual selected for services under an order of selection procedure that has been implemented and who has a signed IPE will continue to receive services, even if the priority category from which the individual was selected is later closed to additional individuals, and
- (3)the continuity of services protection will be applied to all vocationally relevant and necessary services specified in an individual's IPE and all subsequent plan amendments, including post-employment services plans;

## **D. Funding Arrangements**

If it is determined that the order of selection must be implemented, the Vocational Rehabilitation Program must assure that all sub-contracts and other third-party funding agreements for providing services are consistent with the order of selection.

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

Upon completion of the assessment for determining eligibility and priority for services, the Vocational Rehabilitation Counselor must make, based on the assessment:

- a determination of whether the individual is eligible or ineligible for vocational rehabilitation services, as described in PPM chapter 421; and
- a determination of the severity of the individual's disability, and whether he or she is an individual with a disability, an individual with a significant disability, or an individual with a most significant disability, as described in PPM chapter 422.

Each initial priority category assignment, and each subsequent priority category reassignment, described in section 430.07 of this chapter must be based solely upon the significance of the individual's disability, as determined in accordance with PPM chapter 422.

Irrespective of the order of selection, the Vocational Rehabilitation Counselor must continue to accept and process all referrals and applications received in an equitable and timely manner, in accordance with the requirements of section 430.03(1)(D) of this chapter and PPM chapter 410, including all timeliness requirements.

Under the order of selection, the Vocational Rehabilitation Counselor must continue to conduct and complete an assessment for determining eligibility and priority for services for each applicant (including, as appropriate and necessary for each individual, the provision of trial work experiences and/or an extended evaluation), in accordance with the requirements of section 430.03(1)(D) of this chapter and PPM chapter 420, including all timeliness requirements.

The completed assessment for determining eligibility and priority for services conducted in accordance with PPM chapter 420 must result in a determination regarding the significance (severity) of each individual's disability—whether the individual is an individual with a disability

(not SD), an individual with a significant disability (SD), or an individual with a most significant disability (MSD)—as described in this chapter.

A severity determination is required:

- (1) in order for the Vocational Rehabilitation Program to meet federal reporting requirements;
- (2) as a prerequisite to the provision of trial work experiences, an extended evaluation, or supported employment services (all of which are limited to individuals with the most significant disabilities); and
- (3) as the basis for the individual's assignment to a priority for services category, if the Vocational Rehabilitation Program is operating under an order of selection, as described in PPM chapter 430.

The determination regarding the severity of the individual's disability must be completed as soon as possible for each individual who has applied, but not more than 10 business days following the Counselor's receipt of the information and documentation needed to complete the severity determination. In all instances, the determination must be completed (and the documentation contained in each individual's record of services must accurately reflect the determination made) prior to, and as a prerequisite for:

- (1) entry of the record of services into status 04 and the provision of any trial work experiences;
- (2) entry of the record of services into status 06 and the provision of any extended evaluation;
- (3) the provision of any supported employment (SE) services;
- (4) entry of the record of services into program status 12 and the approval of any Individualized Plan for Employment (IPE) for any individual certified to be eligible for vocational rehabilitation services; and
- (5) closure of the record of services to any of statuses 30, 28, or 26 (and closure to status 08 from status 02, if sufficient information has been obtained to determine his or her severity level.

*[REQUIRED PRACTICE. (1) With respect to paragraphs (1), (2), and (3) of this section, the individual must be determined to be an individual with a most significant disability (MSD) prior to movement of the record of services to any of statuses 04 or 06, or the provision of any trial work experiences, extended evaluation, or supported employment services.*

*(2) In regard to paragraph (5) of this section and closures to status 08, if the record of services contains sufficient severity-relevant information to make a severity determination, the Vocational Rehabilitation Counselor is required to document the level of severity for each individual exiting the program from status 02 to status 08 as not SD, SD, or MSD, as applicable, but may leave the severity determination field of the IRIS severity screen blank if the individual is exiting the program from application status 02 prior to completing the assessment for determining eligibility and priority for services and before sufficient severity-relevant information has been obtained to make a severity determination. The Counselor is required, however, to have specified the severity level in all cases as not SD, SD, or MSD for each closure to any of closure statuses 08 (if from 04 or 06), 30, 28, or 26. In some instances, the Counselor may be required to make his or her best judgment of the severity level based on incomplete information limited to whatever information is present in the record of services or whatever direct observations can be made.]*

The severity determination can be reviewed, and amended to either a more significant or less significant severity level, as appropriate, prior to the date on which the Individualized Plan for Employment (IPE) is signed; however, following the signing of the IPE (and subsequently, throughout the remainder of the individual's participation in vocational rehabilitation services), the severity determination can be amended only to a more significant severity level.

*[REQUIRED PRACTICE. A review of the severity level last assigned is required: (1) before signing the initial IPE; and (2) annually thereafter, as part of the IPE review and amendment process, and is recommended: (3) any time that the record of services is being moved from status 24 (services interrupted) to any other status; (4) if the individual requests mediation or an administrative hearing with respect to his or her severity level assignment or the resulting priority for services category assignment under the order of selection; and (5) at the time of closure to any of statuses 08, 30, 28, or 26, in order to assure that all available severity information has been entered into IRIS and whether or not the assigned severity level should be amended. For all status 33 closures, the Vocational Rehabilitation Counselor must change the status only, and must not update the closure screen in IRIS, as completing the closure screen for status 33 will change status 26 closure data that may already have been submitted for federal reporting purposes. Review and amendment of the assigned severity level may also be necessary at any time during the individual's Vocational Rehabilitation Program participation that the individual experiences changes to—or additional significant information is received regarding—his or her disability, functional capacities, or service needs.]*

Each determination regarding the severity of an individual's disability must be made by a qualified Vocational Rehabilitation Counselor or by another qualified professional employed by the Vocational Rehabilitation Program, and cannot be delegated to any other individual or agency.

## **B. Notification of Eligible Individuals**

Contact with each eligible individual assigned to a priority category not currently being served and placed on the deferred services waiting list will be maintained, to assure the individual's continued interest in and availability for vocational rehabilitation services, as directed by the Central Support Services Office.

The Vocational Rehabilitation Counselor must provide timely notification to every individual regarding each initial priority category assignment and any subsequent priority category reassignment. The required notifications must:

1. be provided in writing, supplemented, if necessary, by appropriate modes of communication;
2. include, as applicable to each individual—
  - a description of each of the four priority categories under the order of selection procedure,
  - identification of the particular priority category to which the individual has been assigned or reassigned, the bases on which the priority category assignment has been made, and whether or not the priority category to which the individual has

been assigned is currently being served by the program or whether the individual's name must be placed on the deferred services waiting list,

- notification of the individual's right to seek a review of the severity determination used as the basis for priority category assignment or reassignment, through mediation or an administrative hearing, and
  - information regarding the availability and services of the Client Assistance Program (CAP), and how the CAP can be contacted for assistance; and
3. be provided within 10 business days of the initial priority category assignment or priority category reassignment.

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Unless the record of services is first closed, if the program is currently not operating under an order of selection procedure or (if an order of selection is in effect) the priority category to which the individual is assigned is currently being served under the order of selection procedure:

- the Vocational Rehabilitation Counselor must complete the comprehensive assessment for determining vocational rehabilitation needs;
- an IPE for the individual must be developed and signed; and
- services must be provided in accordance with the IPE.

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

If the program is operating under an order of selection procedure but the priority category to which the individual is assigned is currently not being served under the order of selection procedure:

- the comprehensive assessment for determining vocational rehabilitation, or any uncompleted portions thereof, must be terminated;
- no IPE can be developed or signed for the individual;
- the individual must be placed on the deferred services waiting list; and
- vocational rehabilitation services cannot be provided, except for information and referral services only, as described in section 430.17 of this chapter, following.

The Vocational Rehabilitation Counselor must, as appropriate to the individual's needs and informed choice, provide information and referral services to all individuals determined to be eligible for vocational rehabilitation services. The information and referral services provided must assure that all eligible individuals with disabilities (including eligible individuals who do



not meet the program's order of selection criteria for receiving vocational rehabilitation services if the program is operating under an order selection):

- receive information and referral services, including, as applicable and appropriate for each individual, information regarding job counseling, job referral, and job placement services; and
- are referred to other appropriate federal and state programs, including other components of the statewide workforce investment system.

If the individual has been assigned to an unserved priority category for purposes of the order of selection, the information and referral services required in accordance with paragraph (1) of this section must be provided without an IPE.

#### **E. Maintenance of Records**

For every eligible individual for whom a priority category assignment has been made, the record of services for the individual must include, as applicable to each individual:

- (1) copies of the notification or notifications required in accordance with section 430.14 of this chapter;
- (2) a description of any information and referral services provided, as described in section 430.16; and
- (3) a record of the contacts made or attempted with individuals placed on the deferred services waiting list, as required under section 430.17.

For every individual for whom a severity determination has been made, the record of services of the individual must include, as applicable to each individual:

- (1) the severity of the individual's disability, as determined in accordance with PPM 422.06;
- (2) all information obtained or generated for the purpose of any severity determination or redetermination, as described in PPM 422.07, and case notes describing the conclusions of the Counselor with respect to such information;
- (3) if the severity of the individual's disability has been based on a presumption of severity for SSDI beneficiaries and SSI recipients as described in PPM 422.08, the means by which verification was secured of the individual's Social Security Disability Insurance (SSDI) beneficiary and/or blind/disabled Supplemental Security Income (SSI) recipient status, as described in PPM 421.08(2);
- (4) identification of which of the nine functional capacities has been determined to be seriously limited, in accordance with the requirements of PPM 422.10 (one or two functional capacities, if the individual has been determined to be an individual with significant disabilities, or three or more functional capacities, if the individual has been determined to be an individual with most significant disabilities);

- (5) if the individual has been determined to be an individual with significant disabilities or an individual with most significant disabilities, identification of at least two of the multiple vocational rehabilitation services categories required, as per PPM 422.11;
- (6) verification that the individual is or is not expected to require service provision over an extended period of time, as required by PPM 422.12; and
- (7) all authorizations, billings, claim-vouchers, or other documentation fiscally required to authorize and make payment for diagnostic and evaluation and other services purchased for any necessary assessment to determine severity.

## IOWA ORDER OF SELECTION POLICY

This section of the paper describes Iowa's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Iowa.

#### A. Establishment of Priority Categories

At any time that the state vocational rehabilitation program cannot serve all eligible individuals who apply, it must develop a waiting list for services based on significance of disability. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement (August 2007, Revised March 2009)*]

**PRIORITY 1:** Individual with a Most Significant Disability (MSD).

**PRIORITY 2:** Individual with a Significant Disability (SD).

**PRIORITY 3:** Other eligibles.

All MSDs must be served before any SD can be served. All SDs must be served before Other Eligible groups can be served. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement (August 2007, Revised March 2009)*]

#### B. Terminology

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **Individual with a disability**—means an individual (i) Who has a physical or mental impairment as identified in RSA Coding; (ii) Whose impairment constitutes or results in a substantial impediment to employment; and (iii) Who can benefit in terms of an employment outcome from vocational rehabilitation services. (citation to federal regulations) [*Status 10-Accepted for Services; Status 04-0—Accepted for Services; Does not Meet Severity Category Being Served (August 2007, Revised December 2008)*]

2. **Individual with a most significant disability**—means an individual who is seriously limited in **three or more** functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or cognitive/motor skills) in terms of an employment outcome. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement (August 2007, Revised March 2009)*] In addition, the individual must require multiple vocational rehabilitation services over an extended period of time. [*Final Factsheet, updated 1/12/07*]
3. **Individual with a significant disability**—means an individual who has a **significant** physical or mental impairment which seriously limits **one or more functional capacities** (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement (August 2007, Revised March 2009)*] In addition, the individual must require multiple vocational rehabilitation services over an extended period of time. [*Final Factsheet, updated 1/12/07*]
4. **Other eligibles** include individuals who have been determined eligible but whose disability is not considered serious.
5. **Eligibility**—refers to a certification that an individual:
  - has a physical or mental impairment which for that individual constitutes or results in a substantial impediment to employment;
  - can benefit in terms of an employment outcome; and
  - requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment. [*Standards for Eligibility (August 2007, Revised December 2008)*]

Individuals receiving SSDI or SSI are presumed to be eligible. [*Status 10—Accepted for Services; Status 04-0 Accepted for Services, Does Not Meet Severity Category Being Served (August 2007)*]

Note: State policy adopts the federal definitions for the terms employment outcome, physical or mental impairment, and substantial impediment to employment. [*Standards for Eligibility*]

6. **Serious functional limitations**—A serious limitation in a functional area is indicated when the individual's functioning in the area is well below common expectations, or that the individual due to the disability, may require employability/work accommodations not typically made for other individuals. A serious limitation must be directly related to the disability.
7. **Most serious limitation**—A serious limitation in one area that has caused the individual to have lost employment due to the disability, has never been employed due to functional limitations related to the disability or the employer reports the

individual is unable to perform essential functions of the job due to functional limitation complications of the disability. [*Final Factsheet, updated 1/12/07*]

8. **Functional limitation areas include** [*Severity of Disability Guidance Manual (1/10/07)*]:
- a. **Mobility**—means moving about from place to place or moving the body in various positions. The individual’s ability to move the whole body from place to place or from position to position within a particular setting (home, school, or work) in the performance of essential activities. Includes travel to and from usual destinations in the community for activities of daily living, training, or employment.
  - b. **Communications**—means effectively exchanging (giving and receiving) information through written or spoken words or concepts.
  - c. **Self-care**—means ability to manage and take control of one’s self-care in the areas of personal, social, economic, and work life. The ability to perform activities of daily living related to self-care in order to become or maintain employment. Referral to the Independent Living program is appropriate when the sole purpose of services is to enhance the individual’s ability to live independently.
  - d. **Self-direction**—means the ability to manage and take control of one’s personal, social, and work life. The ability to plan, initiate, organize, or carry out purposeful activities related to working. Self-direction relates to the capacity to know, plan, and act on a course of action.
  - e. **Interpersonal skills**—mean the individual’s ability to establish and maintain working relationships impacting their ability to acquire and maintain competitive employment. Working relationships could involve personal, family, social and/or community interactions that directly relate to a person’s job performance and/or ability to maintain employment.
  - f. **Work tolerance**—means the capacity to perform consistently, given the level of physical, environmental or psychological demands commonly found in work settings.
  - g. **Work skills**—means possessing the work skills needed to procure employment and perform jobs which exist in the economy. For younger individuals or those entering the workforce after prolonged absence, learning the work skills needed to obtain and maintain employment which exist in the economy.
9. **Multiple Vocational Rehabilitation Services**—The term “multiple vocational rehabilitation services” means more than one service is required in order for the individual to be competitively employed.
10. **Extended Period of Time**—The term “over an extended period of time” means needing VR services for a duration of longer than one year.

### **C. Acceptable and Unacceptable Factors**

In determining whether an individual has a serious limitation in a functional area, the limitation must be directly related to the disability. Limitations may result from or be compounded by external factors, such as geographical location, poor public transportation, or lack of training. But if they are not disability-related, they should not be the basis of the limitation for purposes of defining a significant disability. [*Severity of Disability Guidance Manual (01/10/07)*]

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

Individuals are placed on the waiting list in order of the date of their application (replacing policy which placed individuals on the waiting list in the order of their eligibility). Individuals are taken off in the same manner. [*Waiting List-Title I (August 2007, Revised March 2009)*]

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Authority to Open and Close Priority Categories, as Needed**

The appropriateness of the category to which a client is assigned can be reassessed at any time. [*Waiting List-Title I (August 2007)*]An individual may be determined to be SD or MSD at any time after eligibility is determined. Once determined to be SD or MSD an individual classification is never downgraded during the time that the file is open. [*Status 10-Accepted for Services; Status 04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 200); Waiting List-Title I (August 2007, Revised December 2008)*]

### **B. Continuation of Services**

When a waiting list is implemented, all current clients will continue to receive services until the file is closed. [*Waiting List-Title I (August 2007, Revised December 2008)*]

### **C. Funding Arrangements**

Third party agreements specify that only clients who are eligible to actively receive services and are not on the waiting list may receive services under the agreement.

#### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

##### **A. Assessment for Determining Eligibility and Priority for Services**

Records must be collected and assessed to determine if an individual meets the criteria for eligibility. If the individual is eligible, appropriate placement on the waiting list must be determined. Preliminary assessment services will assist the counselor in determining for which waiting list the client qualifies. If the counselor determines that the impediments to employment are of a serious nature and constitute a need for services in order to prepare for, obtain, and retain employment, then the counselor determines which waiting list category should be assigned to the case. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement*] Additional assessments for purposes of determining the proper waiting list placement can be done. [*Status 04-0-Accepted for Services, Does not Meet Severity Category Being Served (August 2007, Revised December 2008)*]

##### **B. Notification of Eligible Individuals**

The waiting list is explained to each applicant as a part of the application process. [*Waiting List (August 2007)*] Individuals who are determined eligible for services but are placed on a waiting list can receive Information and Referral Services. At the time of eligibility determination, individuals will be advised of and offered services under Information and Referral. [*Status 10-Accepted for Services; Status 04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 2007, Revised December 2008)*]

On a yearly basis, all clients who had been on the waiting list for at least one year receive a letter and are advised that they remain on the waiting list. The letter asks the client to contact the agency if they wish to have their name remain on the waiting list, otherwise their case is closed.

##### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Individuals who are determined eligible for VR services are provided a comprehensive assessment of VR needs as the basis for determining of the nature and scope of services to be provided to accomplish their vocational goals and objectives. If the comprehensive assessment has not been completed prior to eligibility, it must be formally initiated to facilitate planning and development of the IPE. [*Status 10—Accepted for Services (August 2007, Revised December 2008)*]

#### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Individuals who are determined eligible for services but are placed on a waiting list can receive Information and Referral Services. Individuals can be referred to other federal and state programs, including programs carried out by other entities in the statewide workforce investment system. The program the individual is being referred to should be notified that the referral is being made. The individual should be provided the specific contact point within the agency to which they are being referred and information and guidance regarding the most suitable services to assist the individual reach employment. [*Status 10-Accepted for Services; Status04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 2007, Revised December 2008)*]

An agency representative may participate with IEP Team in planning for a student. If this is done before the case file is opened it is considered technical assistance. If it is done while the student is on the waiting list it is considered Information and Referral. The agency representative may participate in the staffing of a waiting list client if they are already in the building to serve non-waiting list clients. [*August 2007 Information and Referral Services*]

No special resources (money or staff time) may be provided to clients on the waiting list.

- No programs will be specifically created by the VR agency for this group of individuals;
- No purchase of services will be allowed under Information and Referral;
- No participation in VR agency Job Club is allowed. However, if a class is being provided and a waiting list client desires to sit in on a class with available room, then the client may participate but no materials or specialized instruction is allowed. However, if there are not enough clients available to have a class, the class is not conducted just so waiting list clients can attend. [*Status 10-Accepted for Services; Status04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 2007, Revised December 2008)*]

#### **E. Case Closure and Maintenance of Records**

The counselor must make a narrative entry in the R-413 section of the case file analyzing how the disability causes limitations and impediments to employment. [*Status 10-Accepted for Services; Status04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 2007, Revised December 2008)*]

#### **F. Role of the State Rehabilitation Council**

The SRC is involved in all policy changes for input and direction to reach final approval, including recent changes regarding eligibility criteria.



## **KANSAS ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Kansas' policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

RS will periodically determine whether there are sufficient funds to serve all eligible persons who apply. Factors to consider in this determination include:

- Availability of state general funds to match available federal VR funds.
- Application, referral and caseload trends.
- Adequacy of staff coverage.
- Costs of purchased services, such as diagnostics, medical, restoration and training.
- Estimated costs of continuing services under existing Individualized Plans of Employment (IPEs).
- Emphasis on serving persons with significant disabilities.
- Timeliness of determination of eligibility and provision of services.
- Outreach efforts.
- Unserved or underserved groups.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Kansas.

If there are insufficient resources to provide VR services to all eligible individuals who apply, RS will assure that those individuals with the most severe disabilities are selected for service before other individuals with disabilities.

#### **A. ESTABLISHMENT OF PRIORITY CATEGORIES**

**Category 1:** Eligible individuals with a most significant physical or mental impairment that seriously limits two or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome, whose VR can be expected to require multiple VR services over an extended period of time. In the event that VR services cannot be provided to all eligible individuals in Category 1, a waiting list based upon the date of application will be activated.

- Category 2:** Eligible individuals with a significant physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; whose VR can be expected to require multiple VR services over an extended period of time; and who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined, on the basis of an assessment for determining eligibility and VR needs, to cause comparable substantial functional limitation. In the event that VR services cannot be provided to all eligible individuals in Category 2, a waiting list based upon the date of application will be activated.
- Category 3:** Eligible individuals with non-significant disabilities. In the event that VR services cannot be provided to all eligible individuals in Category 3, a waiting list based upon the date of application will be activated.

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **Individual with a most significant disability** means an individual with a significant disability that seriously limits two or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome, whose VR can be expected to require multiple VR services over an extended period of time.
2. **Individual with a severe disability** means an individual with a disability:
  - Who has a significant physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
  - Whose vocational rehabilitation (VR) can be expected to require multiple VR services over an extended period of time; and
  - Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including

stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and VR needs to cause comparable substantial functional limitation.

### **3. Serious functional limitations.**

Indicators of serious functional limitations are defined in the Functional Limitations Worksheet used as an analytical aid by VR counselors. Limitations are reviewed in the context of employment outcomes and based on the disability.

**Mobility:** The individual, because of a disability, lacks the physical, cognitive or psychological ability to independently travel or requires accommodations to move about safely within home, work and community environments.

**Communications:** The individual, because of the disability, cannot accurately or efficiently give or receive information (through speaking, listening, reading or writing) without reasonable accommodations, adaptive aids or technology.

**Self-care:** The individual, because of a disability (which may be physical, cognitive or psychological) requires accommodations to plan for or perform the routine activities of daily living.

**Self-direction:** The individual, because of a disability, does not have the physical, cognitive or psychological ability to independently plan, initiative, organize, make decisions and carry out personal, social and work activities after his or her self-care needs have been met.

**Interpersonal skills:** The individual, because of a disability, cannot establish or maintain personal, family, or community relationships, or cannot interact appropriately with others in the workplace, thereby affecting the ability to secure or maintain employment.

**Work tolerance:** The individual, because of a disability, cannot meet the strength, stamina, endurance or psychological stresses of a job without accommodations regardless of the work skills possessed by the person; or cannot tolerate the physical environment of the workplace.

**Work skills:** The individual, because of the disability, lacks the work skills, work experience or ability to perform the essential job tasks (without accommodations) needed

to secure or maintain employment consistent with his or her strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

### **4. Functional limitation areas include:** mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

## **5. Multiple Vocational Rehabilitation Services.**

Multiple services means more than one service as listed on the IPE. Support services (maintenance, transportation, and services to family members) may not be counted toward multiple services. Routine counseling and guidance to facilitate participation in the VR process may not be counted toward multiple services. Significant services which are not provided by RS but which are related to the disability and employment outcome, and which are essential to the accomplishment of the IPE may be counted toward multiple services.

## **6. Extended Period of Time.**

Extended period of time means at least four months of services between Status 12 and closure.

## **7. Acceptable and Unacceptable Factors**

An Order of Selection may not be based on any other factors, including:

- Any duration of residency requirement, provided the individual is present in the State;
- Type of disability;
- Age, gender, race, color, creed, or national origin;
- Source of referral;
- Type of expected employment outcome;
- The need for specific services or anticipated cost of services required by an individual; or
- The income level of an individual or an individual's family.

## **8. Ranking Individuals Within a Priority (Waiting Lists)**

In the event that VR services cannot be provided to all eligible individuals in Category 1, a waiting list based upon the date of application will be activated.

In the event that VR services cannot be provided to all eligible individuals in Category 2, a waiting list based upon the date of application will be activated.

In the event that VR services cannot be provided to all eligible individuals in Category 3, a waiting list based upon the date of application will be activated.

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Authority to Open and Close Priority Categories, as Needed**

Implementation of the closure will be made statewide.

#### **B. Continuation of Services**

If there is a need to close one or more categories for services, the closure of one or more categories will not affect individuals who already have signed IPEs. IPE services will continue.

#### **C. Funding Arrangements**

RS will ensure that its funding arrangements, including grants, contracts, or cooperative agreements, are implemented consistent with the Order of Selection.

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

RS will not delay, through waiting lists or other means, determinations of eligibility, the development of IPEs for individuals determined eligible, or the provision of services for eligible individuals for whom IPEs have been developed in order to avoid closing categories of services in Order of Selection.

After eligibility has been determined and before the IPE is written, each client is assigned to a category group. The client will be assigned to the highest priority category for which he or she is qualified and a rationale will be documented in the case file. If the client's circumstances change or new information is acquired, the category designation can be changed to a higher priority

category. Category designation changes will not be made if the change would place the individual in a lower priority category.

If there is a need to close one or more categories for services:

- RS will set aside sufficient funds to purchase services necessary to determine eligibility.
- Applications for services will be accepted without restriction.

### **B. Notification of Eligible Individuals**

Clients will be notified of the right to appeal their category assignment.

Eligible individuals who cannot be served under the Order of Selection will be advised that their record will be placed on a waiting list. They will be notified should funding become available to provide the services.

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

RS will not delay, through waiting lists or other means, determinations of eligibility, the development of IPEs for individuals determined eligible, or the provision of services for eligible individuals for whom IPEs have been developed in order to avoid closing categories of services in Order of Selection.

If there is a need to close one or more categories for services, persons who need post-employment services will not be affected.

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Except for additional assessment or diagnostic services needed to analyze whether an individual can be moved to a higher category, no VR services (purchased or provided by Staff) may not be provided for individuals on the waiting list. Exceptions to this provision are not allowed.

In the event that one or more categories of services are closed through Order of Selection and a waiting list for services is established, RS shall provide information and referral services for those eligible individuals who cannot be served. The information and referral service provided should be adequate to ensure that the individual with a disability is provided accurate VR information and guidance, using appropriate modes of communication, to assist them in preparing for, securing, retaining or regaining employment.

An appropriate referral shall be to federal, state or other programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of the individual with a disability. For each referral, the individual shall be given:

- A copy of the notice of referral that RS will send to the other program, including a specific point of contact within the other program.
- Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain or regain employment.

#### **E. Maintenance of Records**

Referrals should be documented in the record of services.

#### **F. Role of the State Rehabilitation Council**

The State Rehabilitation Council (SRC) of Kansas guided the development of the existing Order of Selection policy in 2005. In 2009, the SRC's Policy Committee reviewed the existing policy in-depth and recommended that the SRC affirm its support for maintaining the existing policy. Subsequently the full SRC unanimously endorsed continuation of the existing policy.

The SRC is consulted regarding resources and the potential of establishing waiting lists at the beginning of each fiscal year and whenever circumstances warrant such consideration.

# **KENTUCKY ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Kentucky's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. The following sources were used to complete this description of state policies:

- Administrative Regulation 781 KAR 1:030 Section 3.
- State Policies and Procedures Manual

## **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

When the Agency head determines that OVR will be unable to provide services to all eligible applicants, an Order of Selection will be implemented. The Director of Program Services will issue a memorandum with appropriate instructions for OVR staff. [Manual at page 13]

## **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Kentucky.

### **A. Establishment of Priority Categories**

When the Order of Selection has been implemented, the system shall have six (6) priority categories based upon functional capacities as follows [Manual at page 14]:

- Category 1: Eligible individuals who have the most significant disabilities.
- Category 2: Eligible individuals with significant disabilities who have limitations in three (3) major areas of functional capacities.
- Category 3: Eligible individuals with significant disabilities who have limitations in two (2) major areas of functional capacities.
- Category 4: Eligible individuals with significant disabilities who have limitations in one (1) major area of functional capacity
- Category 5: Eligible individuals with non-significant disabilities that result in permanent functional limitations.
- Category 6: All other eligible individuals whose disabilities are non-significant.

### **B. Terminology**



The following definitions are used for purposes of the order of selection policy.

**1. Individual with a most significant disability** [Manual at page 12]

An individual who has a most significant disability is an individual who has a significant disability and requires intensive long term support to facilitate the performance of work activities on or off the job which would typically be performed independently if the individual did not have the disability or has limitations in four or more areas of major functional capacities. Long-term support may include but is not limited to the need for: a personal care attendant, supported employment or a disability related case manager.

An eligible individual with a significant disability who requires long-term support as defined above meets the definition of most significant disability regardless of how many areas of major functional capacities have limitations. Individuals with a significant disability who do not require long term support are considered most significantly disabled if they have limitations in four or more areas of major life functioning, if in the professional judgment of the counselor, such limitations constitute a most significant disability.

**Guidance for Counselors**

Supported Employment Services include as components both job coaching and long-term follow-up. When job coaching is utilized without the expectation of long-term support services, the consumer would meet the expanded definition of training (special setting). Intensive vocational rehabilitation services may also be used. In either case, the individual would meet the requirements for significant disability. The individual would not meet the definition of most significant disability for job coaching services without the need for long-term services unless they have limitations in four or more areas of major functional capacities. The counselor does have discretionary judgment in regard to the four functional areas when determining most significant disability. If the counselor determines that the consumer has significant limitations in less than four functional areas, even though limitations may be marked in four or more areas, the consumer can be determined to have a significant disability. The counselor may also determine that the consumer has a non-significant disability.

**2. Individual with a significant disability**

Significance of disability is a separate issue from eligibility. Once eligibility is determined, the significance or non-significance of the disability must be established. As part of the eligibility decision, the counselor determines whether the individual has a physical or mental impairment or combination of impairments that seriously limit one or more functional capacities in terms of employment outcome. In order to be considered significantly disabled, an individual is expected to require multiple vocational rehabilitation services one of which is assumed to be vocational

rehabilitation counseling and guidance. At least one additional service must be expected to continue over an extended period of time as defined by the definition of expanded services. [Manual at page 8]

### **Guidance for Counselors**

This process relies heavily upon counselor judgment. Limitations identified during the eligibility process through medical recommendations, information about disabilities, labor market trends, attendant factors, etc. will be considered when determining the need for multiple services and whether the service needs meet the definition of an expanded service.

The purpose of presumptive eligibility is to streamline the eligibility process and speed access to services for SSI/SSDI recipients. Therefore, a decision regarding eligibility or the necessity for trial work experience must be made as quickly as possible and certainly within the required sixty days.

Recipients, by statutory requirement, are considered to have a significant disability. Therefore, the case must be assigned Priority Category I, II, III, or IV in the Order of Selection. ***Presumptive Eligibility, while presuming an individual has a significant disability, does not presume these cases meet the most significant disability category.*** The counselor should assign the appropriate category based on the individual's functional limitations. [Manual at page 7]

### **3. Serious functional limitations.**

Serious limitation means that the individual frequently requires assistance from others, personal adaptations, assistive technology and/or accommodations not typically needed for other workers to participate in employment. Counselors should use their judgment about whether or not the limitations are substantial in terms of employment outcome.

For progressive disabilities, the counselor can use professional judgment, experience, and resource materials to document the presumption of potential limitations. [Manual at page 4]

### **4. Major functional capacity areas include [Manual at page 4]:**

**Work Tolerance:** The ability to carry out required physical and cognitive work tasks in an efficient and effective manner over a sustained period of time.

**Mobility:** The physical, cognitive, sensory or psychological ability to move efficiently from place to place, including community, school, home, and work.

**Work Skills:** The ability to learn and/or perform work functions.

**Self-Direction:** The ability to plan, initiate, organize, and carry out goal directed activities related to job preparation and employment.

**Communication:** The accurate and efficient transmission and/or reception of information, either verbally or non-verbally due to physical, sensory, emotional or cognitive impairments. This does not include communication difficulties related to foreign language or cultural differences.

**Interpersonal Skills:** The ability to interact in an acceptable and mature manner with co-workers, supervisors, and others to facilitate the normal flow of work activities (not due to cultural or language factors).

**Self-Care:** The ability to perform activities of daily living as they affect the individual's ability to participate in training and/or work activities.

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Continuation of Services**

Any individual previously declared eligible for services will not be affected when OVR implements an Order of Selection. [Manual at page 13]

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

It is the responsibility of the counselor to document eligibility. For each individual determined eligible, the counselor shall certify, using the Agreement of Understanding, that the individual has met basic eligibility requirements. [Manual at page 1]

Upon implementation of an Order of Selection, OVR will continue to accept referrals of and applications from individuals with disabilities. The Order of Selection will not regulate the provision or authorization of diagnostic and assessment services. [Manual at page 13]

Any person entering accepted status after implementation of the Order of Selection will be assigned to a priority category. In order to determine the priority category the eligibility statement will be completed. [Manual at page 13]

A case may be moved from the pre-service listing to an open priority category, trial work experience, or closure as appropriate. [Manual at page 13]

## **B. Notification of Eligible Individuals**

If the eligible individual is assigned to a priority category that is not being served, the case will be placed on a pre-service listing that is essentially a waiting list. A Shortage of Funds letter should be sent to the individual and a copy placed in the case folder. If the individual fails to respond within thirty (30) days, the case should be closed. [Manual at page 13]

A consumer may remain on the pre-service listing indefinitely. However, best practice indicates these cases should be reviewed every six (6) months. A list of pre-service cases can be generated with a follow-up letter. Follow-up letters may be mailed to individuals to determine if they wish to remain on the waiting list. [Manual at page 14] Immediate reclassification into a higher priority category will be permitted whenever circumstances justify the reclassification.

## **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

At the consumer's request, an Individual Plan for Employment (IPE) may be developed to the extent possible and held so that services may be initiated as quickly as possible if the Order of Selection changes to serve that category. [Manual at page 14]

Whenever OVR is unable to serve an individual with a disability due to the Order of Selection, information and referral services **must** be provided. [Manual at page 14-15] The 1998 Amendments to the Rehabilitation Act require that information and referral services be provided to all individuals with disabilities who do not meet the open categories of the Order of Selection. These cases are those placed on the pre-service list. These services include:

- Providing vocational rehabilitation information and guidance to assist individuals in achieving employment; and

- Appropriately referring individuals to other Federal and State programs, including other statewide workforce investment programs, which are best suited to meet the individual's specific employment needs.

It is the responsibility of the counselor to have accurate information about available services and service providers in order to aid the individual in accessing the most suitable services to prepare for, secure, retain, or regain employment. Information about local services and service providers can be obtained from a variety of sources including local One-stop Centers and the Kentucky Cares Resource Directory. The Kentucky Cares Resource Directory is available on line at <http://kycares.ky.gov/resourcedirectory/default.asp> and provides information by county on services, service providers, basic eligibility requirements, contact person, phone number, address, and maps to the location.

The referral must include a notice of the referral; information about a specific point of contact and information and advice about the most suitable services for assisting the individual to prepare for, secure, retain or regain employment. Counselors may utilize any method of referral as long as the required information is provided and appropriately documented in the case record. The Information and Referral Form has been developed to meet the requirements of the amendments. If the counselor opts to utilize the form, a separate Information and Referral Form should be completed for each agency the consumer chooses. The counselor and consumer have the option of selecting the most appropriate method of communicating the referral to the potential service provider (i.e. mail, phone, e-mail, etc.).

The lower portion of the form may be detached if the individual does not want to be identified as a consumer of the Office of Vocational Rehabilitation. As best practice the consumer should be provided with a copy of the form and another copy should be included in the case record.

#### **D. Maintenance of Records**

The referral must include a notice of the referral; information about a specific point of contact and information and advice about the most suitable services for assisting the individual to prepare for, secure, retain or regain employment. Counselors may utilize any method of referral as long as the required information is provided and appropriately documented in the case record. The Information and Referral Form has been developed to meet the requirements of the amendments. If the counselor opts to utilize the form, a separate Information and Referral Form should be completed for each agency the consumer chooses. The counselor and consumer have the option of selecting the most appropriate method of communicating the referral to the potential service provider (i.e. mail, phone, e-mail, etc.). [Manual at page 15]

The lower portion of the form may be detached if the individual does not want to be identified as a consumer of the Office of Vocational Rehabilitation. As best practice the consumer should be

provided with a copy of the form and another copy should be included in the case record.  
[Manual at page 15]

## **LOUISIANA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Louisiana's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Louisiana.

#### **A. Establishment of Priority Categories**

The Counselor assesses limitations in functional capacity in order to distinguish between levels of severity of the disability as follows:

**Selection Group I** - The Most Significantly Disabled. An eligible individual is considered the most significantly disabled (Group I) when the following apply:

- a. The individual meets the definition of an "individual with a significant disability" as defined in Subsection 405.2; and
- b. The individual's significant physical or mental impairment seriously limits four (4) or more functional capacity areas; and
- c. The individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time;

**Selection Group II** – The Most Significantly Disabled. An eligible individual is considered the most significantly disabled (Group II) when the following apply:

- a. The individual meets the definition of an "individual with a significant disability" as defined in Subsection 405.2; and
- b. The individual's severe physical or mental impairment seriously limits three (3) functional capacity areas; and

- c. The individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time

**Selection Group III – Significantly Disabled.** An eligible individual is considered significantly disabled (Group III) when the following apply:

- a. The individual meets the definition of an “individual with a significant disability” as defined in Subsection 405.2; and
- b. The individual's severe physical or mental impairment seriously limits two (2) functional capacity areas; and
- c. The individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time.

**Selection Group IV - Significantly Disabled.** An eligible individual is considered significantly disabled (Group IV) when the following apply:

- a. The individual meets the definition of an “individual with a significant disability” as defined in Subsection 405.2; and
- b. The individual's severe physical or mental impairment seriously limits one (1) functional capacity area; and
- c. The individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time.

**Selection Group V - Non-Significantly Disabled.** An individual is considered non-significantly disabled (Group V) when:

- a. the individual has a physical or mental impairment; and
- b. the individual has been determined eligible for vocational rehabilitation services; and
- c. the individual does not meet the above-stated criteria for an individual who is either “the most significantly disabled” or “significantly disabled.”

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **Individual with a disability**
2. **Individual with a most significant disability**



See categories I and II.

**3. Individual with a significant disability**

See categories III and IV.

**4. Non-significantly disabled.**

See category V.

**5. Significant functional limitations.**

**Note:** The state includes specific examples of significant functional limitations under each functional capacity area. (see below)

**6. Functional limitation functional capacity areas include**

Placement in the Order of Selection is based on functional limitations in eight (8) functional capacity areas, which are as follows:

- Mobility
- Motor Skills
- Communication
- Self-Care
- Self-Direction
- Interpersonal Skills
- Work Tolerance
- Work Skills

**7. Multiple Vocational Rehabilitation Services.**

**8. Extended Period of Time.**

**C. Acceptable and Unacceptable Factors**

Assignment to a selection group is made by the Counselor after a determination of eligibility for vocational rehabilitation and a determination of whether the individual is either significantly disabled or non-significantly disabled. The guiding principles for placement in the Order of Selection are as follows:

1. The limitation is a result of the disability.
2. Functional limitations result from the disability and decisions are not based on the degree of need from lack of financial resources.

Extended factors, such as lack of training, geographical location, unavailability of transportation, support systems, etc. are not considered in determining an individual's placement in the Order of Selection.

The following factors shall not be used either in determining the order of selection or in determining the placement category of eligible individuals:

- a. any duration of residency requirement, provided the individual is present in the state;
- b. type of disability;
- c. age, gender, race, color, creed, or national origin;
- d. source of referral;
- e. type of expected employment outcome;
- f. the need for specific services or anticipated cost of services required by an individual; or
- g. the income level of an individual or an individual's family.

#### **D. Ranking Individuals Within a Priority (Waiting Lists)**

When it is impossible to serve all eligible individuals within a priority category, the individuals (in addition to referral to other components of the statewide workforce investment system) will be placed on a deferred services waiting list. Individuals on the deferred services waiting list will be served in chronological order based on the date of application.

If the order of selection is rescinded, individuals on deferred services waiting lists and in unserved categories will be contacted and served in chronological order based on the date of application.

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Continuation of Services**

LRS shall provide for continuity of services once an otherwise eligible individual is selected for and begins to receive services under an IPE, irrespective of the severity of the individual's disability.

#### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

##### **A. Assessment for Determining Eligibility and Priority for Services**

Before a Counselor considers placement of a particular consumer into a Selection Group in the Order of Selection, the Counselor must first determine whether or not the individual is eligible and whether the individual is significantly disabled or non-significantly disabled. It is important to remember eligibility is not determined by diagnosis alone. The Counselor must go through the decision-making process for eligibility (Refer to Part 405).

##### **B. Notification of Eligible Individuals**

Upon placement into a priority category, individuals will be notified in writing of their category assignment and of their right to appeal their category assignment.

##### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

LRS' order of selection shall not limit the scope of services available for eligible individuals within the selection group(s) being served.

##### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

LRS will, as appropriate, refer those individuals in Selection Groups(s) not being served to other components of the statewide workforce investment system that are best suited to address the specific employment needs of the individual with a disability.

##### **E. Maintenance of Records**

If it is determined that a consumer's placement in the Order of Selection should be moved from a less severe group to a more severe group after the consumer had previously been approved as eligible and placed in an Order of Selection category, the Counselor and/or Regional Manager \*(if changing as a result of an Administrative Review),\*\* as applicable, must complete the following:

1. Make the appropriate case notes in AWARE to document the change in the Order of Selection and file the supporting documentation in the case record, as applicable.
2. \*Refer to the AWARE Manual, Participant Module-Eligibility for instructions to update the Eligibility Determination page in AWARE and the needed approvals.\*\*

## 406.1 Functional Capacity Areas, Examples of Functional Capacity Areas, and Examples of Significant Functional Limitation

### Chart

NOTE: Eligibility Section of AWARE has a more comprehensive listing of Functional Limitations.

COUNSELORS CAN USE THE FOLLOWING INFORMATION AS A "TOOL" TO UNDERSTAND FUNCTIONAL CAPACITY AREA AND SERIOUS FUNCTIONAL LIMITATIONS.	
Functional Capacity Area & Examples of Functional Capacity Area	Examples of a Significant Functional Limitation
<p style="text-align: center;"><b>MOBILITY</b></p> <p>The physical and psychological ability to move from place to place at home and in the community.  Using public transportation  Obtaining a driver's license  Traveling alone in unfamiliar areas  Ambulating without assistance (person or device)  Any other indicator that affects the individual's mobility in terms of an employment outcome.</p>	<p>A significant limitation indicates that most common life and work activities are impaired or prevented because the person usually requires assistance from others to get around in the community and/or requires modifications, assistive technology, and/or accommodations not typically made for other workers. Examples: Unable to obtain a driver's license due to disability, etc.; Unable to drive a vehicle without modification due to disability; Requires a wheelchair, prosthesis or orthotic for mobility; Requires mobility training.</p>
<p style="text-align: center;"><b>MOTOR SKILLS</b></p> <p>The purposeful movement and control of the body and its members to achieve specific results.  Using upper extremity(ies) to obtain, control, and use objects  Using upper extremity(ies) to control and coordinate fine motor movements  Using lower extremity(ies) to control and coordinate gross motor movements  Performing tasks at a competitive work pace  Any other indicator that affects the individual's motor skills in terms of an employment outcome</p>	<p>A significant limitation indicates that the individual requires orthotics, prosthetics, or other adaptive equipment in order to perform common life/work activities and/or requires modifications, assistive technology, and/or accommodations not typically made for other workers. Examples: Requires turntable on desk for person who has problems reaching; Requires carrier/assistance to move objects less than 10 lbs. from one place to another.</p>
<p style="text-align: center;"><b>SELF CARE</b></p> <p>The ability to care for self and living environment.  Managing a daily schedule  Adjusting to changes in daily routine or new situation  Managing financial responsibilities</p>	<p>A significant limitation indicates the individual is not able to complete activities of daily living without modifications, assistive technology, and/or accommodations not typically made for other workers.</p>

COUNSELORS CAN USE THE FOLLOWING INFORMATION AS A "TOOL" TO UNDERSTAND FUNCTIONAL CAPACITY AREA AND SERIOUS FUNCTIONAL LIMITATIONS.

Functional Capacity Area & Examples of Functional Capacity Area	Examples of a Significant Functional Limitation
<p>Assessing/recognizing/managing potential environmental hazards</p> <p>Performing activities of daily living</p> <p>Any other indicator that affects the individual's self care in terms of an employment outcome</p>	<p>Examples: Requires personal assistance or assistive device for any of the following: eating, toileting, grooming, dressing, cooking, shopping, housekeeping, money management, and health and safety needs.</p>
<p><b>SELF DIRECTION</b></p> <p>The ability to regulate behavior in a purposeful and predictable way, taking into account personal goals, environmental conditions, and cultural values and expectations.</p> <p>Identifying logical steps necessary to reach goals</p> <p>Completing tasks</p> <p>Identifying consequences of behavior</p> <p>Working independently</p> <p>Any other indicator that affects the individual's self direction in terms of an employment outcome</p>	<p>A significant limitation indicates the individual requires special supervision, modifications, assistive technology, and/or accommodations not typically made for other workers. Examples of functional limitations that might require this level of intervention: Unable to independently complete any of the following: begin and follow through on tasks, monitor one's own behavior; make decisions; sustain an ordinary routine; respond appropriately to change in the work setting; set realistic goals or make plans.</p>
<p><b>INTERPERSONAL SKILLS</b></p> <p>The ability to establish and maintain positive personal, family, and community relationships necessary to achieve/maintain work.</p> <p>Understanding obvious social cues</p> <p>Establishing or maintaining positive relationships and/or interactions</p> <p>Adjustment to disability-related characteristics (e.g. disfigurement, deformity, behavior, etc.) which cannot be avoided or modified and have a very low degree of public and employer acceptance</p> <p>Any other indicator that affects the individual's communication in terms of an employment outcome</p>	<p>A significant limitation indicates the individual requires modifications, accommodations, or other adaptations not typically made for other workers. Examples of functional limitations that might require this level of intervention: has difficulty in establishing and maintaining personal relationships, responding appropriately to criticism from supervisors, accepting instructions from supervisors and/or exhibits behaviors/conditions that detract from the performance of, or acceptance by, others.</p>
<p><b>COMMUNICATION</b></p> <p>The ability to exchange (give and receive) information.</p> <p>Talking/Speaking</p> <p>Generalizing, transferring, and/or assimilating information (written, spoken, receptive, expressive)</p> <p>Any other indicator that affects the individual's communication in terms of an employment outcome</p>	<p>A significant limitation indicates the individual is not able to communicate expressively or receptively, without modifications, assistive technology, and/or accommodations not typically made for other workers. Examples of functional limitations that might require this level of intervention: Unintelligible speech;</p>

COUNSELORS CAN USE THE FOLLOWING INFORMATION AS A "TOOL" TO UNDERSTAND FUNCTIONAL CAPACITY AREA AND SERIOUS FUNCTIONAL LIMITATIONS.

Functional Capacity Area & Examples of Functional Capacity Area	Examples of a Significant Functional Limitation
	significantly limited expressive or receptive communication skills.
<p style="text-align: center;"><b>WORK TOLERANCE</b></p> <p>The capacity to meet the physical demands of work.  Leaving/missing work for medical treatment/problems  Working an eight hour work day  Performing work requiring lifting, carrying, pushing, or pulling  Sitting/standing/walking for extended periods of time  Maintaining a constant production rate pace  Any other indicator that affects the individual's work tolerance in terms of an employment outcome</p>	<p>A significant limitation indicates the individual requires intervention to perform work activities and/or will require modification, assistive technology, and/or accommodations not typically made for other workers. Examples of functional limitations that might require this level of intervention: Requires frequent or extended periods of time from work due to necessary treatments or medical problems; Unable to work for an eight hour work day due to limitations in physical or psychological stamina; Unable to perform work requiring frequent lifting and carrying of objects weighing 10 lbs. or less and/or occasionally lift objects weighing 20 lbs. or less; Unable to sit/stand for extended time periods; Unable to maintain a constant production rate even though the amount of force exerted is negligible.</p>
<p style="text-align: center;"><b>*WORK SKILLS**</b></p> <p>The capacity to learn and perform job tasks and to adapt to new skills needed to stay employed.  *Sporadic/no work history due to disability**  *Maintaining job due to disability**  Remembering, understanding, and/or following oral or written instructions  *Unable to complete a sequence of tasks**  Learning new tasks  Conforming to established work rules  Achieving expected productivity  Meeting deadlines  Following safety rules  Punctual in reporting to work on time; returning from breaks on time  Transferable work skills  *Requires individualized AT to perform duties**  Any other indicator that affects the individual's work skills in terms of an employment outcome</p>	<p>A significant limitation indicates the individual will require special supervision, modification, assistive technology, and/or accommodations not typically made for other workers. Examples of functional limitations that might require this level of intervention: Unable to learn new tasks without intensive and/or specialized instruction; reading, spelling, or math skills are below the 5th grade level; has unproductive work habits that require a job coach.</p>

## **MAINE ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Maine's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. The state policies described in this section are contained in a proposed rule. Deadline for comments is November 2, 2009.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Maine.

If services cannot be provided to all eligible individuals who apply, the Director of DVR will implement an Order of Selection as set forth in this section. [Section 5]

#### **A. Establishment of Priority Categories**

The priority category shall be assigned, based on their level of significance of disability; "Level of significance of disability" means one of the following [Section 5]:

**Priority Category # 1**, "most significantly disabled";

**Priority Category # 2**, "significantly disabled"; or

**Priority Category # 3**, "disabled" as set forth below.

#### **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **"Disabled"** means an eligible individual who has;
  - (1) a serious limitation in terms of an employment outcome in 1 or more functional capacity areas. Functional capacity areas are; mobility, work tolerance, communication, self-care, interpersonal skills, cognition and learning (self- direction), or work skills. "Serious limitation in terms of an employment outcome" means a reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual



requires services or accommodations in order for the individual to work or be a fully functioning member of the community; and:

- (2) whose vocational rehabilitation is not expected to require multiple core vocational rehabilitation services as outlined in Section 9 of this rule, services 9.1 through 9.14; or
- (3) whose vocational rehabilitation is not expected to require an extended period of time.

2. **Most significantly disabled**” means an eligible individual who meets the following criteria:

- (1) who has a serious limitation in terms of an employment outcome in four or more functional capacity areas. Functional capacity areas are; mobility, work tolerance, communication, self-care, interpersonal skills, cognition and learning (self- direction), or work skills. "Serious limitation in terms of an employment outcome" means a reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodations in order for the individual to work or be a fully functioning member of the community; and
- (2) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services, meaning two or more core vocational rehabilitation services as outlined in Section 9 of this rule, services 9.1 through 9.14; and
- (3) whose vocational rehabilitation can be expected to require an extended period of time.

3. **“Significantly disabled**” means an eligible individual who meets the following criteria:

- (1) who has a serious limitation in terms of an employment outcome in at least two or three functional capacity areas. Functional capacity areas are: mobility, work tolerance, communication, self-care, interpersonal skills, cognition and learning (self- direction), or work skills. "Serious limitation in terms of an employment outcome" means a reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodations in order for the individual to work or be a fully functioning member of the community; and
- (2) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services, meaning two or more core vocational rehabilitation services as outlined in Section 9 of this rule, services 9.1 through 9.14; and

- (3) whose vocational rehabilitation can be expected to require an extended period of time; and
- (4) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, acquired traumatic brain injury, heart disease, hemiplegia, hemophilia, HIV infection, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

#### **4. Serious functional limitations.**

"Serious limitation in terms of an employment outcome" means a reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodations in order for the individual to work or be a fully functioning member of the community.

#### **5. Functional limitation areas include**

Functional capacity areas are: mobility, work tolerance, communication, self-care, interpersonal skills, cognition and learning (self- direction), or work skills.

#### **6. Multiple Vocational Rehabilitation Services**

Multiple vocational rehabilitation services means two or more core vocational rehabilitation services outlined in Section 9 of this rule, services 9.1 through 9.14. [Section 5]

#### **7. Ranking Individuals Within a Priority (Waiting Lists)**

Individuals with disabilities shall be served first based on significance of disability and second by date of application consistent with the priority order described above. [Section 5]

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order

of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Continuation of Services**

Individuals whose IPE has been developed and signed prior to the date of implementation of the Order of Selection will continue to receive cost services. [Section 5]

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

After determining eligibility, counselors must assign a priority category and follow the Order of Selection set forth below for the provision of services. [Section 5]

#### **B. Notification of Eligible Individuals**

Maine DVR will notify all eligible individuals of the priority categories in the Order of Selection. Eligible individuals in priority categories not currently being served will be notified in writing of their assignment to a particular category and their right to appeal their category assignment. [Section 5]

#### **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Eligible individuals who do not meet the Order of Selection category currently being served will have access to services through information and referral. Individuals will be provided vocational rehabilitation counseling and guidance to assist such individuals in preparing for, securing, retaining, or regaining employment, and will be appropriately referred to other programs, including other components of the statewide workforce investment system. [Section 5]

#### **D. Maintenance of Records**

Maine DVR will establish and maintain a case record for each applicant, and recipient of vocational rehabilitation services, which includes data necessary to comply with Maine DVR and federal Rehabilitation Services Administration requirements. [Section 1 #3]

## **MARYLAND ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Maryland's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. The following information is drawn from the Maryland Division of Rehabilitation Services, Rehabilitation Services Manual.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

Vocational rehabilitation services shall be provided based upon availability of funds. Because sufficient funds are not available to provide vocational rehabilitation services to all eligible individuals, the Division has instituted an Order of Selection which has been in effect since February 1991. [Section 503.05] The determination to implement that regulatory requirement was based on a finding that the Maryland agency was unable to serve all eligible individuals. Two factors principally come into play when considering implementation of an Order of Selection: sufficient workforce capacities (primarily rehabilitation counseling capacity) and case services funds (purchase of service capacity).

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Maryland.

The Rehabilitation Act of 1973, as amended, specifies that an Order of Selection shall be determined on the basis of serving first those individuals with the most significant disabilities (Section 101(a)(5)). The Division allocates case service funds in a manner that ensures this priority status in the delivery of rehabilitation services. [Section 503]

#### **A. Establishment of Priority Categories [Section 503.06]**

Individuals applying for or receiving services shall be placed in priority categories. Depending upon Division resources, the categories shall be closed for services in ascending order beginning with Category III and proceeding to Categories II and I. Under the order of selection, the Division will continue to emphasize and enhance services to students with disabilities transitioning from school to work.

DORS staff will be advised via formal issuance when categories are closed or reopened.

The Order of Selection categories are as follows:

1. **Individuals with the Most Significant Disabilities.**
2. **Individuals with Significant Disabilities.**
3. **Individuals with Non-Severe Disabilities.** This includes individuals determined eligible for Vocational Rehabilitation Services but who are determined to not have a significant or most significant disability.

## **B. Terminology**

The following definitions are used for purposes of the order of selection policy.

### **1. Individual with a disability**

An individual who meet eligibility criteria for the vocational rehabilitation program [Section 503.02]

### **2. Individual with a most significant disability [Section 503.02]**

- a. An individual with a "most significant" disability is an individual who is available and willing to participate in the DORS Vocational Rehabilitation program and meets the definition of significant disability (see [Section 503.01](#)) and has a disability which seriously affects **three (3)** or more functional capacities (see [Section 503.01](#)).
- b. Individuals who automatically meet the definition of individual with a significant disability (see [VR Priority Guide](#)) may also meet the definition of individual with a most significant disability, if **three** capacities are seriously affected.
- c. Refer to the [VR Priority Guide](#) for disabilities/circumstances which are considered to automatically meet the definition of individual with a most significant disability.
- d. Individuals who are eligible for long-term supports of DDA or MHA and are pursuing competitive or supported employment are presumed to be individuals with a most significant disability. (See [Section 501.01\(d\)](#).)
- e. Staff is required to enter in the first text box on the Eligibility Determination page of **AWARE** a description of the justification of the priority category of Most Significant Disability. Staff shall either:
  1. Indicate the disability and state that it is "automatic" according to the [VR Priority Guide](#); or
  2. State how at least three capacities checked on the list on the Eligibility Determination page are **seriously affected** by the disability.

- f. The Supervisor or designee is required to review the eligibility/priority determinations and enter a case note in **AWARE** documenting his/her approval or disapproval of the decisions.

### 3. Individual with a significant disability

An individual shall be certified as having a significant disability when [Section 503.01]:

- a. The individual has a severe physical or mental impairment which **seriously limits** one or more functional capacities such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, in terms of an employment outcome. The individual's vocational rehabilitation can be expected to require multiple vocational rehabilitation services: at least two from the main services of guidance and counseling, medical rehabilitation services including technology services, job placement and vocational training; and
- b. The individual's vocational rehabilitation is projected to require an extended period of time of at least 6 months.
- c. Any individual meeting the above criteria may be determined to have at least a significant disability. An individual is deemed to **automatically** meet the above criteria when:
  1. The individual is a recipient of Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) payments by reason of blindness or disability; or
  2. The individual is in Special Education and receiving the majority of educational/academic supports in a self-contained classroom and/or facility; or
  3. The individual has one of the major disabling conditions automatically meeting the definition of "significant" disability or "most significant" disability, specified on the [VR Priority Guide](#).
- e. Disability Priority in **AWARE**. See [RSM 2, Attachment 300-1](#).

### 4. Functional capacities to be considered include the following [Section 503.01]:

**Mobility.** Mobility refers to the ability to move from place to place inside and outside the home. A serious limitation in mobility exists if, due to the disability, the person requires assistance from others to get around in the community; or if the individual requires modifications, adaptive technology, or accommodations (not typically made for other workers) in order to move around the community; or if the person needs specialized training to learn to move around in the community.

The following circumstances do not constitute serious, disability-related limitations in mobility, though they may be considered in rehabilitation planning as related factors: Absence of or limitations in public transportation available in a geographic area; loss

of driving privileges because of accumulation of points and/or charges such as DWI; lack of a personal vehicle.

**Communication.** Communication is the ability to effectively exchange information through words or concepts (writing, speaking, listening, sign language, or other adaptive methods). A serious limitation in communication exists if the disability results in severely impaired expressive or receptive communication, either oral or written, and to be able to communicate effectively, the individual requires modifications, adaptive technology, or accommodations not typically made for other workers. Upon first contact, the individual may not be readily understood by others or may not understand others.

Communications problems stemming from a language or cultural difference that are not disability based would not constitute serious limitations in communication, though they would need to be considered in rehabilitation planning.

**Self-care.** Self-care is the ability to manage oneself or ones living environment (including but not limited to eating, toileting, grooming, dressing, money management, and medication compliance) as they affect the individual's ability to participate in services or work-related activities. Limitations may occur because of physical, cognitive or emotional impairments and could impact all tasks or only specific tasks. A serious limitation in self-care exists if the disability results in the individual being dependent upon other individuals, services, or devices to manage themselves or their living environment.

Lack of or limited financial resources affecting self-care would not constitute serious limitations in self-care because it is not disability-related. However, such factors would need to be considered in rehabilitation planning.

**Self-direction.** Self-direction refers to the ability to plan, initiate, problem solve, organize and independently carry out goal-directed activities related to self-care, socialization, recreation and work. A serious limitation in self-direction exists if due to the disability the individual is confused or disoriented, or requires assistance or intervention on an ongoing basis or during episodes in order to perform tasks, monitor own behavior, and make decisions.

General impulsivity and lack of focus, often characteristics of teenagers, would not in and of themselves constitute a serious limitation in self-direction for transitioning students, but would need to be considered in rehabilitation planning.

**Interpersonal skills.** Interpersonal skills refers to the ability to establish and maintain personal, family, community and work relationships. A serious limitation in interpersonal skills means that due to the disability the individual has no or limited ability to interact with others in a socially acceptable manner or is unable to relate to peers or co-workers without exhibiting inappropriate behaviors.

Immaturity, which is a common characteristic of teenagers and may be expressed as lack of developed communication skills, in and of itself does not constitute a serious limitation in interpersonal skills. Such traits, however, should be considered in rehabilitation planning.

**Work tolerance.** Work tolerance refers to the capacity to perform effectively and efficiently jobs that require various levels of physical and/or psychological demand, for at least a partial work day. A serious limitation in work tolerance exists when the individual will require modification, adaptive technology, or accommodations (not typically made for other workers) in terms of capacity or endurance. For example, the individual may not be able to sustain an 8-hour workday, meet production standards, or perform at a consistent pace without frequent rest breaks.

Individuals who could work full time but choose to work less than full time in order to retain benefits or for other reasons are not considered to have a serious limitation in work tolerance.

**Work skills.** Work skills refers to the ability to perform specific tasks required to carry out job functions, the capacity to benefit from training in the necessary skills, and the capacity to practice the work habits needed to stay employed. A serious limitation in work skills exists when the disability results in an inability to obtain or maintain employment normally available to persons of equivalent age, education, training, or experience. In order to acquire work skills, the person requires modifications, adaptive technology or accommodations not typically made for other workers.

Lack of work skills, for example, of transitioning youth because of age, does not in and of itself constitute a serious limitation in work skills, but may be considered as a related factor in rehabilitation planning. Anticipated difficulty in achieving work skills, and requirements for AT and other modifications, aside from absence of work experience, may be considered in determining limitations related to work skills.

In determining whether there are serious limitations in work skills, consider the impact of the disability on specific employment goals rather than on the universe of jobs. For example, a math impairment may have a significant impact on an individual's ability to be an engineer, but little impact on many other careers, including rehabilitation counselor or DDS examiner.

5. **Serious limitations** are defined under each functional capacity area above.

6. **Multiple Vocational Rehabilitation Services.**

The individual's vocational rehabilitation can be expected to require multiple vocational rehabilitation services: at least two from the main services of guidance and counseling,



medical rehabilitation services, including technology services, job placement and vocational training. [Section 503.01(b)]

7. **Extended Period of Time** means at least 6 months. [Section 503.01]

### **C. Acceptable and Unacceptable Factors**

It is emphasized that determination of priority category is based on the **disability** and its impact on employment. There must be clear evidence, demonstration or documentation of the limitations imposed by the disability. Priority category shall not be based solely on self-report, Except for disabilities that are readily apparent. [Section 503]

Individuals may have a number of other compelling factors, aside from the disability, affecting their ability to achieve employment, including poverty, limited English proficiency, and lack of family support. These related factors would need to be taken into account in rehabilitation planning if the individual were determined eligible and could be served under the Order of Selection. However, such related factors are not to be included as a basis for determination of severity of disability and priority category. [Section 503]

Additional unacceptable factors are listed under each of the functional capacity areas (above).

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

Individuals are ranked within each category based on date of eligibility.

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Authority to Open and Close Priority Categories, as Needed**

The authority to open and close priority categories rests with the State Director for Vocational Rehabilitation in consultation with the State Rehabilitation Council and the State Superintendent of Schools (cabinet official of the parent agency). [Section 503.09]

### **B. Continuation of Services**

Services shall be provided only to those individuals in an open category. However, the Division shall continue to plan for and provide services to any individual determined eligible prior to the

date on which the Order of Selection category to which the individual has been assigned has been closed, irrespective of the severity of the individual's disability. [Section 503.06]

The Division will continue to honor its commitment of resources to Individualized Plans for Employment that are currently in effect. Specifically stated, this change in operating procedures will have no impact on IPE's that have already been approved. [DORS Administrative Instruction 07-17]

#### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

##### **A. Assessment for Determining Eligibility and Priority for Services**

Priority status (i.e., whether the individual has a significant, most significant or non-severe/not significant disability) is included in **AWARE** in Eligibility Determination (see See [RSM 2, Attachment 300-1](#)). [Section 503.08]

The first text box on the Eligibility Determination page in **AWARE**, Section 1, Determination shall be used to document the justification of priority category assignment. The Supervisor or designee is required to review eligibility/priority category determination and enter a case note indicating approval or disapproval. The [VR Priority Worksheet \(RS-4m\)](#) may be used to assist appropriate, and may be particularly useful for new counseling staff. [Section 503]

The determination that an individual has a most significant or significant disability shall be made prior to or concurrently with the determination of eligibility in order to identify whether the eligible individual meets Order of Selection/Priority criteria and can therefore be provided services. [Section 503.03]

Trial Work Experiences and Extended Evaluation are used only when there are questions concerning an applicant's ability to benefit from services in terms of an employment outcome due to the severity of the disability. The determination of significant or most significant disability will need to be made prior to Trial Work Experiences or Extended Evaluation. (Trial Work and Extended Evaluation are not used for individuals in Evidence Based Practice in Supported Employment (see [RSM 2, Section 804.02](#)) or for individuals presumed eligible for VR services who are eligible for DDA or MHA long-term supports and who are pursuing competitive or supported employment.) [Section 503.03]

## **B. Notification of Eligible Individuals [Section 503.07]**

The counselor will notify all eligible individuals of:

- The priority categories in the Order of Selection;
- Their assignment to a particular category; and
- Their right to appeal their category assignment (see [RSM 1, Section 304](#), Appeal Hearing).

Eligible individuals who cannot presently be served under the Priority of Services/Order of Selection will be advised that their record will be placed on a waiting list for a year, during which time they will be advised if Division funding becomes available to provide the requested services. [Section 503.09]

After one year on the waiting list (and subsequently on an annual basis at the request of the individual), individuals will be sent a letter to determine if they wish to remain on the waiting list. The letter will state the current status of the Order of Selection and whether or not there is the likelihood that services can be provided in the near future. [Section 503.09]

## **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

DORS develops IPE's and provides timely, quality services to individuals consistent with the agency policy in RSM 2, Section 600 and 700.

## **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Because of DORS limited case service funding, purchase of goods and services which require completion of an Individualized Plan for Employment may not be provided to individuals in delayed status. However, the Division has some capacity to provide limited assessment and counseling services to individuals in delayed status. Provision of these services in delayed status shall be documented in case notes. Services provided during delayed status are limited to the following [Section 503.09]:

- **Guidance and Counseling**, on a limited basis to the degree that it does not impact the capacity of staff to address referrals and applications and provide the full range of services to individuals in service, job ready and employment statuses.
- **Career assessments**, on a limited basis (focused and exploratory only), as may be needed to make appropriate referrals to "other appropriate Federal and State programs," e.g., One-Stops.
- **AT assessments**, if needed in order to benefit from community services. Note that except for AT devices needed for determining eligibility and priority category, purchase of AT devices and services requires completion of an IPE. DORS and other

sources may loan equipment and devices to individuals in delayed status. Scheduling of AT assessments should take into account the likely timing of IPE development (moving from delayed to service status) so that the AT assessment does not need to be repeated once the device or services can be purchased.

- **Information and referral** should be provided to individuals being placed on the waiting list. Consideration should be given to referral to a community college, especially if the individual can access a tuition waiver, to Centers for Independent Living, and to one-stop career centers as well as other local resources, as appropriate.
- **Referral for job placement** to no-cost (comparable benefit) providers.

#### **E. Maintenance of Records [Section 503.04]**

The record of services shall contain reports and other information supporting the determination that the individual has a significant or most significant disability. The Eligibility Determination page in **AWARE** shall include justification of the priority category in the first text box, as indicated above. The record shall also include a case note by the supervisor or designee indicating approval or disapproval of the eligibility decision and priority category. The [VR Priority Worksheet \(RS-4m\)](#) may be completed and included in the record. [Section 503.04]

The record of services will include [Section 503.09]:

- A. Information supporting the assignment to the Order of Selection category.
- B. The completed Waiting List (Delayed Status) Letter in **AWARE**; a copy of the letter shall be retained in the electronic record of services.
- C. The completed justification for priority category on the Eligibility Determination page text box, and case note from the supervisor or designee indicating approval of eligibility/priority.

#### **F. Role of the State Rehabilitation Council**

The Maryland Rehabilitation Council takes a lead role in the planning and conduct of a series of public meetings held annually in Maryland specifically to gather input and feedback regarding the public vocational rehabilitation program. The basis and status of the Order of Selection policy is a standing discussion item at those public meetings. In addition, the state VR agency provides a report to the members of the SRC at each meeting regarding status and recommendations concerning any changes to the operating parameters regarding delayed cases/waiting list/Order of Selection.

## MASSACHUSETTS ORDER OF SELECTION POLICY

This section of the paper describes Massachusetts' policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

Prior to instituting or amending order of selection or a related waiting list, the Commission will ensure that its actions comply with applicable state and federal statutory and regulatory requirements. [107 CMR 4.08]

### II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

#### A. Establishment of Priority Categories

Order of selection refers to the process of selecting eligible individuals with disabilities who can be provided vocational rehabilitation services when the Commission has determined that resources are inadequate to provide services to all eligible individuals. [107 CMR 4.08 (1)] All eligible individuals will be assigned to [107 CMR 4.08 (1)]:

**PRIORITY I:** if they have been determined to be individuals with the most significant disabilities;

**PRIORITY II:** if they have been determined to be individuals with significant disabilities;  
or

**PRIORITY III:** if they have been determined to be individuals with disabilities.

First priority in selection for service will be given to individuals with the most significant disabilities. Eligible individuals with the most significant disabilities will be first selected to be provided vocational rehabilitation services. [107 CMR 4.08 (3)] Second priority in selection for service will be given to individuals with significant disabilities. Eligible individuals with significant disabilities may be selected *only* after determination that funds are available to provide vocational rehabilitation services to all eligible individuals with the most significant disabilities. [107 CMR 4.08 (4)] Last priority in selection for service will be

given to other eligible individuals with disabilities. Eligible individuals with disabilities may be selected *only* after determination that funds are available to provide vocational rehabilitation services to all eligible individuals with most significant disabilities and all eligible individuals with significant disabilities. [107 CMR 4.08 (5)]

## **B. Terminology**

The following definitions are used for purposes of the order of selection policy.

1. **Individual with a disability** means an individual with a disability when he or she has a physical or mental impairment which constitutes or results in a substantial impediment to employment and can benefit in terms of an employment outcome from vocational rehabilitation services. [107 CMR 4.08 (2)]
2. **Individual with a significant disability** means an individual with a significant disability when he or she has [107 CMR 4.08 (2)]:
  - a. a significant physical or mental impairment which seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
  - b. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
  - c. who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cognitive dysfunction, cystic fibrosis, deafness, head injury, heart disease, hemiplegic, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability or end-stage renal disease that causes comparable substantial functional limitation.

An individual who has been recently determined to have a disability by the Social Security Administration under Title II [SSDI] or Title XVI [SSI] of the Social Security Act is considered to have a physical or mental impairment which constitutes or results in a significant physical or mental impairment which seriously limits one or more functional capacities in terms of an employment outcome.

3. **Individual with a most significant disability** [107 CMR 4.08 (2)] means an individual with a most significant disability who has a significant physical or mental impairment which seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome and whose vocational rehabilitation can be expected to require:
  - a. Vocational rehabilitation services **over an extended period of time** of no less than six months; and

- b. **Two or more separate and distinct vocational services** within the following categories:
- a. Interpreter or CART services provided by qualified personnel for individuals who are deaf or hard of hearing;
  - b. Services within 107 CMR 4.08(2)(c) 2.a and/or 107 CMR 4.08 (2) (c) b. through i, the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;
  - c. Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;
  - d. Diagnosis and treatment of physical and mental impairments;
  - e. Occupational licenses, tools, equipment and initial stocks and supplies;
  - f. Technical assistance and other consultation services to conduct market analyses; develop business plans and otherwise provide resources to pursue self-employment or telecommuting or establishing a small business operation as an employment outcome.
  - g. Rehabilitation technology, including vehicle modification, telecommunications, sensory, and other technological aids and devices;
  - h. Supported employment services; and
  - i. Specific post-employment service in 107 CMR 4.08(2) (c) a. through j, necessary to assist an individual with a disability to, retain, regain, or advance in employment;
  - j. Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the following definition:
    - 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;
  - k. Rehabilitation teaching services, and orientation and mobility services;
  - l. Job placement assistance of a specialized nature including job seeking skills, job club, purchased direct placement assistance and job retention services;
  - m. Transition services in accordance with the following definition:

Transition services means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement

from school to post-school activities, including post-secondary education, vocational training, integrated employment( including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include 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. Transition services must promote or facilitate the achievement of the employment outcome, and

n. Personal assistance services in accordance with the following definition:

Personal assistance services means a range of services provided by one or more persons 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. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

Please note that the following do **not** qualify as distinctive services in determining an individual with a most significant disability [*Instructional Memorandum Reference Number: 4.08*]:

- (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 if such services are not available under the Vocational Rehabilitation Program;
- (4) Job-related services not of a specialized nature including job search and placement assistance, follow-up and follow-along services;
- (5) Maintenance while receiving services under an individualized plan for employment

**4. Functional areas** include mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills [*MRC OOS FUNCTIONAL CAPACITIES;OOS Functional Capacities Checklist*].

**MOBILITY**—The ability to move from one place to the other and/or to physically manipulate the environment. Includes, but is not limited to: ambulation, access and egress, transportation, stair climbing, bending, reaching, navigation and orientation, range of motion, lifting and carrying.



**COMMUNICATION**—The ability to give and receive information. Includes, but is not limited to: speaking, writing, reading, perceiving, understanding, and hearing.

**SELF-CARE**—The capacity to perform tasks that involve caring for self and living environment. The ability to manage physical, emotional and safety needs. Includes, but is not limited to: health, food preparation, nutrition, grooming, hygiene, transportation, housing, home-making, money-management, medication-administration and medical appointments.

**SELF-DIRECTION**—The ability to plan and initiate activities that will reach a stated goal. Includes, but is not limited to: organizing, planning, initiating, goal-setting, problem solving, reasoning, time management and judgment.

**INTERPERSONAL SKILLS**—The ability to interact in a socially acceptable and mature manner with co-workers, supervisors and customers to facilitate normal flow of work activities. Includes, but is not limited to; interacting with others appropriately, understanding social cues, eye contact, handshakes, respecting others personal boundaries, empathizing, and managing anger.

**WORK TOLERANCE**—The ability to carry out required physical and cognitive work tasks in an efficient and effective manner over a sustained period of time.

**WORK SKILLS**—The ability to do specific job tasks based on acquired vocational, educational, and work experience.

### **C. Ranking Individuals Within a Priority (Waiting Lists)**

Based upon a determination that funds are insufficient to provide vocational rehabilitation services to all individuals determined eligible for such services, the Commission may institute or amend a statewide waiting list of eligible individuals who have not been selected to receive vocational rehabilitation services. A statewide waiting list of eligible individuals who have not been selected to receive vocational rehabilitation services will be maintained, and will list individuals by order of selection priority category assignment and the date of the signed application for vocational rehabilitation services. [107 CMR 4.08 (6)]

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Authority to Open and Close Priority Categories, as Needed**

The Commission will periodically, but at least quarterly, determine which eligible individuals who have not been selected to receive vocational rehabilitation services may be selected. Commission staff will be notified in writing of such determinations. Counselors will advise those individuals who are selected and take actions necessary to provide vocational rehabilitation services. [*Instructional Memorandum Reference 4.08*]

### **B. Continuation of Services**

The order of selection by priority category will not affect vocational rehabilitation services to eligible individuals with disabilities who have been selected to receive vocational rehabilitation services and for whom an individualized plan for employment has been developed, agreed to, and approved until such time as the individualized plan for employment is terminated for reasons other than achievement of the employment objective of the individual. [*107 CMR 4.08 (10)*]

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

The determination of an individual's eligibility, order of selection priority and vocational rehabilitation needs will, as much as possible, be based upon a review of existing data and documentation that may be provided directly by the individual or, as appropriate the individual's family or representative. With the individual's consent it may be obtained from the Social Security Administration, education officials, or from other service sources. The Commission will obtain only that data and information which is necessary to determine eligibility, order of selection priority and vocational rehabilitation needs. All information will be obtained and maintained in accordance with the Commission's confidentiality requirements. [*107 CMR 4.05 Assessments for Determining Eligibility, Order of Selection Priority, and Vocational Rehabilitation Needs*]

The review of existing data and preliminary assessment must be documented in the individual's record and include an appraisal of the current general health status of the individual, and existing medical records as necessary and available. If existing information does not describe the current functioning of the individual, is unavailable, inappropriate or insufficient for a vocational rehabilitation counselor to determine eligibility, order of selection priority or to identify an eligible individual's vocational rehabilitation needs, a comprehensive assessment must be done.

The assessment may include trial work experiences, assistive technology devices and services, personal assistance services and any other supports that are necessary to determine whether an individual is eligible. *[107 CMR 4.05 Assessments for Determining Eligibility, Order of Selection Priority, and Vocational Rehabilitation Needs]*

In other words, the order of selection does not apply to assessments necessary to make determination of eligibility, order of selection priority assignment, and vocational rehabilitation needs. All applicants may receive goods and services during such assessments, to the extent necessary to make determination of eligibility and determination of order of selection priority assignment. *[107 CMR 4.08 (13); Instructional Memorandum Reference Number 4.08]*

Order of selection priority category assignment of eligible individuals with disabilities will be determined after certification of eligibility and will be based on the review of existing data to the maximum extent possible. A certification of order of selection assignment will include reasons for the priority category determination. *[107 CMR 4.08 (14)]*

Order of selection of eligible individuals who have not been selected to receive vocational rehabilitation services may be amended if there has been a change in the nature and severity of a physical or mental impairment which results in a change in functional capacities, changes to expected requirement for multiple vocational rehabilitation services over an extended period of time or the priority category assignment was a consequence of a misclassification. *[107 CMR 4.08 (15)]*

## **B. Notification of Eligible Individuals**

At the time of determination or change of order of selection assignment the individual (or, as appropriate, a representative of the individual) will be notified in writing of the determination of order of selection assignment, the appeal rights available to the individual including the availability of services provided by the Client Assistance Program. *[107 CMR 4.08 (16)]*

Order of selection priority category classification or reclassification may be appealed in writing within 30 days of notification of priority category classification or reclassification. *[107 CMR 4.08 (17)]*

## **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

An eligible individual selected to receive vocational rehabilitation services may receive vocational rehabilitation services necessary to render such individual employable consistent with an individualized plan for employment and subsequent amendments. *[107 CMR 4.08 (11)]*

Vocational rehabilitation services to individuals for whom an IPE has been developed, agreed to, and approved will not be affected until such time as their IPE is terminated for reasons other than achievement of the employment objective or available funds have been exhausted. Selected individuals will receive vocational rehabilitation services necessary to render them employable consistent with an IPE and any amendments. An IPE may be developed for individuals assigned

to Priority Category I. However, receipt of services may be delayed due to the implementation of the waiting list. [*Instructional Memorandum Reference 4.08*]

#### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Eligible individuals with disabilities **not** selected to receive vocational rehabilitation services are limited to assessment for determining eligibility and vocational rehabilitation needs, referral and other services designed to assist individuals with disabilities in securing needed services from federal, state, and local public agencies providing services related to the rehabilitation of individuals with disabilities, and counseling, guidance, and referral for job placements. IPEs may not be implemented for eligible individuals with disabilities assigned to Priorities II and III. [*107 CMR 4.08 (12); Instructional Memorandum Reference Number 4.08*]

#### **E. Role of the State Rehabilitation Council**

A decision that resources are inadequate to provide vocational rehabilitation services to all eligible individuals with disabilities will be reviewed by the Commission at least annually. The Commissioner will report the findings of such review to the Commission's state Rehabilitation Council. [*107 CMR 4.08 (7)*]

## MICHIGAN ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Michigan's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The State VR agency is required to implement an order of selection when it expects that the state will *have insufficient fiscal and/or personnel resources to fully serve all eligible individuals. (Section 101(a)(5)(A) of the Rehabilitation Act of 1973 (Act) and 34 CFR 361.36(a)(1))* [Basic Order of Selection Facts-Frequently Asked Questions] The decision to establish and implement an order of selection has to be made prior to the beginning of each fiscal year and reevaluated whenever changed circumstances indicate that the agency's resources are not sufficient to fully serve all eligible individuals. *(34 CFR 361.36(c))* [Basic Order of Selection Facts-Frequently Asked Questions]

A State agency may establish an order of selection, but doesn't have to implement the order at the beginning of the fiscal year. However if it doesn't implement, it must serve all eligible individuals. Otherwise it has to implement the order by closing one or more priority categories. State VR agencies may have one, some, or all priority categories closed. *(34 CFR 361.36(c)(3)).* [Basic Order of Selection Facts-Frequently Asked Questions] The Agency director is responsible for determining how many priority categories and how many eligible clients within each priority category shall receive services at any given time based on the resources available. The decision to provide services to fewer than all priority categories is reviewed periodically throughout the fiscal year. A full review of the need for an order-of-selection-for-services (OSS) occurs as part of the annual planning process. [Order of Selection for Services, General Policies (2300)]

A workgroup established by the State VR agency meets to monitor red flags i.e., indicators to determine how State VR agency would know if the state is approaching an OSS [Email from Harold Wasner (August 29, 2008)]:

- Red flags:
  - 1) Number of days from referral to orientation (informing the individual of the application process) – 90 days maximum by policy – but business practice is within 30. Current red flag is a medium time of greater than 30 days.
  - 2) Number of days from application to eligibility is within 60 days of application – red flag would be if that median time exceeds 45 days.
  - 3) Number of days from eligibility to plan – 90 days – if frequently exceeded would be an indicator.

- 4) Average months from intake to closure – exceeds XX months.
  - 5) Median caseload size exceeds criterion value.
  - 6) Days to fill civil service counselor vacancies – longer than 60 days between post and hire.
  - 7) Number of blended staff – exceeds 25% of MRS Agency rehabilitation counselors.
  - 8) Significant loss of case service dollars—to be determined annually.
  - 9) Loss of state dollars match greater than 5%—current FY GF Match.
  - 10) Customer complaints – direct and from CAP and MRC, ombudsperson, advocates-significant increase in those.
  - 11) Delay in services – reports of increase from
    - ombudsperson and CAP, e.g., seeing a jump in complaints that XXXX location is delaying cases to next fiscal year; check budget of XXXXX; check other sources to validate.
    - District/Site managers—budget is running short and not able to fund cases in the fall or high cost cases told to wait.
  - 12) Advocates complaints – Bureau Director e.g., multiple advocacy groups are complaining that services are being delayed; conduct immediate review of issue to determine intervention.
- Red flags are indicators that require interventions to correct. Triggers would be insufficient money or staff to provide assessments or IPE services anywhere in the state that can't be rectified by a shift in staff, resources or other means.

## II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

### A. Establishment of Priority Categories

At any time Agency resources do not permit all eligible individuals to be served, an order of selection for services shall be implemented giving first priority to individuals with the most significant disabilities. Second priority shall be given to individuals with significant disabilities and third priority to those with non-significant disabilities. If all eligible clients within a priority category cannot be served, they shall be served in the order in which they applied. [*Order of Selection for Services, General Policies (2300)*; [*Basic Order of Selection Facts-Frequently Asked Questions*]

**PRIORITY CATEGORY 1:** Most Significantly Disabled.

**PRIORITY CATEGORY 2:** Significantly Disabled.

**PRIORITY CATEGORY 3:** Not Significantly Disabled.

## B. Terminology

The following definitions are used for purposes of the order of selection policy. [*Order of Selection for Services, General Policies (2300); Disability Priority Job Aid (2300a)*]

1. **Most Significant Disability**—individuals with a severe physical or mental impairment that **seriously limits 2 or more functional capacities** in terms of an employment outcome **and** whose vocational rehabilitation can be expected to require **more than 2 i.e., 3 or more** primary vocational rehabilitation services over **at least six months**.
2. **Significant Disability**—Individuals with a severe physical or mental impairment that **seriously limits 1 or more** of the **functional capacities** listed below in terms of an employment outcome **and** whose vocational rehabilitation can be expected to require **more than 2 i.e., 3 or more** primary vocational rehabilitation services over **at least six months**.
3. **Not significantly disabled**—all clients who do not meet the criteria for "most significant disability" or "significant disability."
4. **Functional areas** include mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills.

**Mobility**—The physical and psychological ability to move about from place to place inside and outside the home compared to people with normal mobility. This includes travel to and from usual destinations in the community for activities of daily living, training, or work. This includes limitations due to risks a vulnerable person or the effects of psychological or cognitive factors. [*Disability Priority—Serious Limitations Job Aid*]

**Communications**—The ability to effectively exchange (give and receive) information through spoken words or concepts (*writing, speaking, listening, sign language, or other adaptive methods*). The emphasis is on limitations resulting from an impairment-related communication difficulty, not a communication problem resulting from a language or cultural difference. [*Disability Priority—Serious Limitations Job Aid*]

**Self-care**—The ability to manage self or living environment (i.e., *eating, toileting, grooming, dressing, and money management*), as they affect an individual's ability to participate in training or work-related activities. This includes an individual's management of any special health and safety needs which exist—for example, medication management. Limitations may occur because of physical, cognitive, or emotional impairments, and could extend to all tasks or only specific tasks. [*Disability Priority—Serious Limitations Job Aid*]

**Self-direction**—The ability to plan, initiative, problem solve, organize or carry out goal-directed activities related to self-care, socialization, recreation, and working

independently. This does not relate to the worth of an individual's goals or plans, but the capacity to know, plan and act on a course of action based on personal values or goals. [*Disability Priority—Serious Limitations Job Aid*]

**Interpersonal skills**—The individual's ability to establish and maintain personal, family, and community relationships as it affects (*it is likely to affect*) job performance and security. [*Disability Priority—Serious Limitations Job Aid*]

**Work tolerance**—Capacity to effectively and efficiently perform jobs requiring various levels of physical and/or psychological demand. Limitations may be due to physical disability, stamina/fatigue, effects of medication, or psychological factors. [*Disability Priority—Serious Limitations Job Aid*]

**Work skills**—The ability to do specific tasks required to carry out job functions as well as the capacity to benefit from training in the necessary skills. [*Disability Priority—Serious Limitations Job Aid*]

5. **Multiple Vocational Rehabilitation Services**—The term “multiple vocational rehabilitation services” includes primary vocational rehabilitation services. [*Disability Priority Job Aid (2300a)*]
6. **Extended Period of Time**—The term “over an extended period of time” means needing VR services for a duration over at least six months.
7. **Seriously limits**—means that the individual's impairment limits function in a functional area to poor or well below what is typically expected, or that the individual requires accommodations (such as special working conditions, rehabilitation technology or substantial support or supervision) typically not made for other individuals in training or employment. [*Disability Priority Job Aid (2300a); 2300b Disability Priority—Serious Limitations Job Aid*]
  - a. **Mobility**—A serious limitation indicates that most common life and work activities are impaired or prevented and/or the person usually (more than half the time) requires assistance from others to get around in the community, and/or their range of travel is severely limited, and/or they require modifications, adaptive technology, and/or “accommodations” (not typically made for other workers) in order to move around the community.
  - b. **Communications**—A serious limitation indicates that the individual is not able to communicate effectively, or is dependent upon a person, service, device or alternate mode of communicating and/or augmentation in order to communicate and may not be readily understood by others, or understand others, on their first contact (*strangers*) and/or they require modifications, adaptive technology, and/or “accommodations” (*not typically made for other workers*) in order to communicate with others in the training or work environment.
  - c. **Self-care**—A serious limitation indicates that the individual is dependent upon others, or a service or device to complete these activities.



- d. **Self-direction**—A serious limitation indicates the individual requires supervision on an ongoing basis or has episodes during which they require supervision (for example, a person with a bipolar effective disorder) in order to begin and carry through on tasks, monitor one’s own behavior and make decisions, and/or is confused and disoriented and requires constant supervision.
  - e. **Interpersonal skills**—A serious limitation indicates the individual difficulty in establishing and maintaining relationships at all levels (personal, family and community), and/or exhibits behaviors which detract from the performance of other workers, as well as the individual’s performance and employability, and requires more than normal intervention on the part of the supervisor.
  - f. **Work tolerance**—A serious limitation indicates the individual will require modification, adaptive technology, and/or accommodations (*not typically made for other workers*) in terms of capacity or endurance.
  - g. **Work skills**—A serious limitation indicates the individual, due to their impairment, is not able to obtain or maintain employment normally available to persons of equivalent age and education, and has no skills which could be readily used on a job which exists in the local economy, or an economy to which the individual is willing to relocate, resulting in limited vocational options, and/or the individual, due to their impairment, will require more training and supervision (*not typically given to other trainees*) to obtain/maintain work skills, and/or due to their impairment, the individual will require accommodations (*not typically made for other trainees*) in order to participate in and benefit from training.
8. **Accommodations**—are special working conditions, rehabilitation technology, or substantial support and/or supervision. [2300b, *Disability Priority-Serious Limitations Job Aid*]

### C. Acceptable and Unacceptable Factors

No factor can be used to determine eligibility and priority order other than those in law, regulation and policy, including the type of disability, referral source, age, race, ethnicity, income, location or any other social or environmental factors to determine significance of disability or priority category. [Statewide Conference Call (April 30, 2008); [Basic Order of Selection Facts-Frequently Asked Questions]

While limitations may result from or be compounded by external factors, such as geographical location, poor public transportation, or lack of training; these factors should **not** be the basis of the limitation for purpose of defining significant impairment. [2300b *Disability Priority—Serious Limitations Job Aid*]

### D. Ranking Individuals Within a Priority (Waiting Lists)

Waiting lists are developed on a statewide basis for eligible individuals, regardless of location, based on their significance of disability priority order and on the date of application. The order is typically managed centrally. The waiting list for those in the highest priority order are exhausted first, then the waiting list for the next highest priority order is exhausted

and so on. [*Order of Selection for Services, General Policies (2300)*]; [*Basic Order of Selection Facts-Frequently Asked Questions*]

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a State agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Statewide Basis**

Order of selection requires a statewide waiting list for services—it cannot be limited to a certain area of the state. [*Statewide Conference Call (April 30, 2008)*] The full range of VR services must be available to all customers served in all parts of the state. [*Basic Order of Selection Facts-Frequently Asked Questions*]

#### **B. Authority to Open and Close Priority Categories, as Needed**

The Agency director will notify Agency staff and major statewide agencies and organizations of the priority categories it is expected the Agency will be able to serve in the new fiscal year. Any changes in the priority categories to be served during the fiscal year will also be communicated in writing by the State director to Agency staff and pertinent others. [*Order of Selection for Services, General Policies (2300)*]

#### **C. Continuation of Services**

An order-for-selection does not apply to clients who already have an IPE. [*Order of Selection for Services, General Policies (2300)*] Customers whose IPEs are being *implemented* the date the OOS is initiated are not affected by the order of selection. [*Basic Order of Selection Facts-Frequently Asked Questions*]

#### **D. Funding Arrangements**

Any third party funding arrangements must be consistent with the order of selection. If cooperative agreements are not consistent with order of selection, they must be re-negotiated. [*Basic Order of Selection Facts-Frequently Asked Questions*]

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be

developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

For purposes of disability priority, rehabilitation counselors must use the *Disability Priority—Serious Limitations Job Aid (2300b)*. The document defines each of the seven functional areas (mobility, communications, self care, self direction, interpersonal skills, work tolerance, and work skills), defines serious limitations in each of the functional areas and then provides a checklist for each of the functional areas. The definitions are set out above (Establishment of Order of Selection, terminology); set out below are materials from the checklist used to assess disability priority.

**Mobility:** Regularly requests any of the following to get around in the community

Modifications  
Rehabilitation Technology  
Accommodations  
Assistance from others  
Range of travel is severely limited.

**Communications:** Can't participate in one-to-one conversation without lip reading, sign language, or other aids (*augmentative communication devices, written aids, etc.*) or can't interpret telephone conversation even when amplified.

Not readily understood by others on first contact.

Talks excessively, interrupts inappropriately to the point that natural conversation is impeded.

Below fifth grade level in reading or written expression.

Limited to single words or short phrases.

Doesn't readily understand others.

**Self-care:** Requires assistance for personal needs on the job from others.

Places self at risk due to poor decision-making, reasoning, judgment.

Requires special attention or monitoring to prevent accident or injury.

Unable to handle money/paycheck.

**Self-Direction:** Requires supervision on a frequent or ongoing basis to begin and carry through with goals and plans, job tasks, to monitor own behavior, or make decisions.

Confused or disoriented and requires constant supervision.

Highly distractible/short attention span/severe difficulty concentrating on work.

Unaware of consequences of behavior.

**Interpersonal skills:** Work history includes recent negative references, firings or multiple short term jobs or other evidence of work adjustment problems.

Serious problems in interpreting and responding appropriately to the behavior and communications with others

Unable to understand acceptable levels and types of personal interaction appropriate to the work site

Social isolation/withdrawal or rejected by co-workers

Frequent conflict with co-workers or supervisors

Conversation is rambling/halting, weak or pressured; may be illogical, irrelevant or obscure

**Work Tolerance:** Unable to climb a flight of stairs walk 100 yards on a level surface with pausing.

Can't lift more than 20 lbs (*occasionally*) or carry more than 10 lbs. (*frequently*)

Requires modification, adaptive technology and/or accommodations not typically made for others in terms of capacity or endurance, (e.g. special rest periods, *adjustment in starting or ending time, shorter day or week*)

Likely to be absent from work three or more days per month.

**Work Skills:** Unable to obtain or maintain employment normally available to persons of equivalent age and education and has no skills which could readily be used on a job which exists in the economy.

Can only learn tasks which are routine and repetitive

Requires accommodations or rehabilitation technology to participate in training to develop work skills.

Speed of performing simple manual tasks is significantly impaired

Serious impairment in the ability to recall instructions or the appropriate task sequence

Requires more training and supervision than other trainees to obtain/maintain work skills

## **B. Notification of Eligible Individuals**

The State VR agency will inform each eligible individual with disabilities which priority group he/she has been assigned at the time eligibility is determined. The eligible individual will be told whether he or she will need to wait for services or if the State VR agency is able to serve the individual right away. [*Order of Service*]

## **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Customers served under an IPE will be able to obtain a full range of services. [*Statewide Conference Call (April 30, 2008)*] The full range of VR services must be available to all customers under an order of selection. Regulations do not permit provision of partial services, for example, only placement services. [*Basic Order of Selection Facts-Frequently Asked Questions*]

## **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

No IPE needs to be developed for those on waiting list. Cost-services cannot be provided to those on the waitlist, only counseling regarding referrals to other agencies. [*Statewide Conference Call (April 30, 2008)*]; [*Basic Order of Selection Facts-Frequently Asked Questions*]

If the Agency Director determines that vocational rehabilitation services must be provided under an order of selection, an information and referral system will be implemented. This will ensure that eligible individuals with disabilities who do not meet order of selection priority categories will be referred to the local Michigan Works! Program for assistance with core, intensive and training services, or for other services as appropriate. [*Order of Selection for Services, General Policies (2300)*]; [*Basic Order of Selection Facts-Frequently Asked Questions*]

Eligible individuals who do not meet the order of selection priority criteria shall, at a minimum, be referred to other federal and state programs, including the Michigan Works! Program. Referrals are to be made to those programs best suited to address the specific employment needs of an individual with a disability. Each referred individual shall have a notice of referral to present to the agency carrying out the program; information identifying a specific point of contact within the agency carrying out the program and; information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment. [*Order of Selection for Services, General Policies (2300)*]

### **E. Role of the State Rehabilitation Council**

Michigan Rehabilitation Council members are a part of the Order of Selection monitoring workgroup. They sponsor “Myths and Facts on Order of Selection” Workshops in several parts of the state. A decision to enter into an Order of Selection would be made in conjunction with the review, analysis, and advice of the Rehabilitation Council.

## MINNESOTA ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Minnesota's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The director of the agency shall determine the need for an order of selection annually. The director's determination shall be made after consulting with and obtaining advice from the State Rehabilitation Council. The director's determination shall be based on the anticipated number of individuals eligible for services from the vocational rehabilitation program and the resources anticipated to be available to the vocational rehabilitation program. The director shall open as many priority categories as it is projected that the agency can serve, starting with the first priority category listed in part 3300.5030. The agency retains the discretion to open and close established priority categories based on an assessment of need and resources, but the agency must not change the established order of categories. [3300.5020 (subpart 1)]

### II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Minnesota.

#### A. Establishment of Priority Categories [3300.5030; Guidance Materials; Field Operations Manual]

**First priority category.** The first priority category includes all individuals with a most significant disability.

**Second priority category.** The second priority category includes all individuals with a significant disability that results in serious functional limitations in two functional areas.

**Third priority category.** The third priority category includes all individuals with a significant disability that results in a serious functional limitation in one functional area.

**Fourth priority category.** The fourth priority category includes all other eligible individuals.

## **B. Terminology**

The following definitions are used for purposes of the order of selection policy.

### **1. Individual with a disability [federal definition]**

### **2. Individual with a most significant disability [3300.5010(17)]**

"Individual with a most significant disability" means an eligible individual:

1. who has a severe physical or mental impairment that results in a serious functional limitation in terms of employment in three or more functional areas;
2. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
3. who has one or more physical or mental impairments resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders including stroke and epilepsy, paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another physical or mental impairment or combination of physical or mental impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable serious functional limitation.

### **3. Individual with a significant disability[3300.5010(18)]**

1. who has a severe physical or mental impairment that results in a serious functional limitation in terms of employment in one or two functional areas;
2. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
3. who has one or more physical or mental impairments resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders including stroke and epilepsy, paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another physical or mental impairment or combination of physical or mental impairments determined on



the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable serious functional limitation.

Consumers eligible to receive SSI or SSDI (based on their own disability) are presumed to have a severe impairment that seriously limits at least one functional area in terms of employment. They are also presumed to require multiple Vocational Rehabilitation Services over an extended period of time.

#### **4. Serious functional limitations.**

"Serious functional limitation" means that, due to a severe physical or mental impairment, one or more of an individual's functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills is restricted to the degree that the individual requires services or accommodations not routinely made for other individuals in order to prepare for, secure, retain, or regain employment. [3300.5010(40)]

Serious functional limitations means a reduction in functioning, due to a severe physical or mental impairment, to the degree that the individual requires services or accommodations not typically made for other people in order to prepare for, enter, engage in, or retain employment. Accommodations are defined as special working conditions, job re-engineering, rehabilitation technology, or substantial support and/or supervision. While barriers to employment may result from or be compounded by external factors, such as geographical location, poor public transportation, or lack of training, these factors can not be the basis for determining if a serious functional limitation exists. [Guidance Materials]

It should be noted that the Guidance Materials also include comprehensive definitions of serious limitations broken down for each of the functional areas as well as a checklist (appended to the description).

#### **5. Functional limitation areas include: [3300.5010(13)]**

Mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

For the purposes of this subpart:

A. "communication" means the ability to effectively give and receive information through words or concepts, such as reading, writing, speaking, listening, sign language, or other adaptive methods;

B. "interpersonal skills" means the ability to establish and maintain personal, family, and community relationships as it affects, or is likely to affect, job performance and security;

C. "mobility" means the physical and psychological ability to move about from place to place inside and outside the home, including travel to and from usual destinations in the community for activities of daily living, training, or work;

D. "self-care" means the skills needed to manage self or living environment, such as eating, toileting, grooming, dressing, money management, and management of special health or safety needs, including medication management, as they affect an individual's ability to participate in training or work-related activities;

E. "self-direction" means the ability to independently plan, initiate, organize, or carry out goal-directed activities or solve problems related to working;

F. "work skills" means:

(1) the ability to do specific tasks required to carry out job functions; and

(2) the capacity to benefit from training in how to perform tasks required to carry out job functions; and

G. "work tolerance" means the capacity or endurance to effectively and efficiently perform jobs requiring various levels of physical demands, psychological demands, or both.

It should be noted that the Guidance Materials (appended to the description) include more comprehensive definitions for each of the functional areas.

## **6. Acceptable and Unacceptable Factors**

Eligibility and priority for services is determined without regard to sex, age, race, creed, color, religion, national origin, type of disability, duration of residence in Minnesota, status with regard to public assistance, sexual orientation, or citizenship. [Policy] Serious functional limitations (see above) do not include limitations that are the result of geographic location, poor transportation, lack of training, etc. [Order of Selection Checklist Form]

## **7. Ranking Individuals Within a Priority (Waiting Lists)**

The Priority for Service system is a statewide system. At regular intervals Vocational Rehabilitation Services management will determine the number of eligible consumers who may be taken off the waiting list and can now be served. Consumers will come off the waiting list in order of their application date within the priority category being opened. [Field Operations Manual]

# **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve

all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Authority to Open and Close Priority Categories, as Needed**

The agency retains the discretion to open and close established priority categories based on an assessment of need and resources, but the agency must not change the established order of categories. [3300.5020 (subpart 1)]

Each RAM will designate a support staff person who will have the responsibility of managing the office waiting list. This has been done so that consumers are contacted quickly when their name comes off the waiting list. It standardizes procedures statewide and allows the counselors to work with active consumers. A separate central file drawer for the case files of consumers on the waiting list will be maintained. [Field Operations Manual]

#### **B. Continuation of Services**

When there is a change in the priority categories open under an order of selection, the agency must continue to provide vocational rehabilitation services to eligible individuals who have begun to receive services in accordance with an employment plan developed before the change occurred. [3300.5010 (subpart 2)]

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

Priority decisions should be based on the current condition of the individual. When an individual has serious impediments to employment attributable to disabilities such as mental illness where the condition is currently stabilized, the counselor can look at the person's history to document serious functional limitations. If the counselor establishes that the history results in *current* serious functional limitations to employment due to the disability, this can be considered when determining which service priority category should be assigned. [Guidance Materials]

The Priority for Services form is completed for all eligible consumers to show which priority category they are in. All areas in which the individual has serious functional limitations must be

identified. [Guidance Materials] See Appendix for comprehensive chart describing criteria and assessment strategies for each of the functional areas.

## **B. Notification of Eligible Individuals**

Vocational Rehabilitation Services will ensure that individuals with a disability, including individuals who are on the waiting list, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment. [Information and Referral Policy]

- 1) VRS Management will send a list when consumers on the waiting list are now eligible to receive services. The WLM sends the appropriate letter within 2 days.
  - a) Letter #1 is sent to consumers who are passing through the waiting list without waiting for services.
  - b) Letter #4 is sent to consumers whose name has come up on the list after a waiting period. The letter should give the consumer 15 working days from the date of the letter to respond. If a letter is returned because of a new address, a letter is sent to the new address. Phone contact should be used for consumers with reading or cognitive difficulties or whenever practical.
- 2) If a consumer responds, WLM makes an appointment for them to see a counselor and moves the case to Plan Development. The case is given to the counselor.
- 3) The WLM closes all cases not interested, not responding or unable to locate. WLM should case note their actions.
- 4) Cases must be moved to Plan development or closed within 30 days after they are eligible to come off the waiting list. [Field Operations Manual]
- 5) The agency has developed a series of letters that can be used to inform consumers of their priority status with the agency. They are listed on the Intranet under Priority for Services. A copy of all letters sent to the consumer must be in case notes in WF1. If other means are used to communicate with the consumer, a case note must document that. If we end up closing the case because all attempts to engage the consumer failed, we need to have documentation of those attempts at contact. The letters are attached to this chapter. Consumers should be given 15 days to respond to any letters or contacts, even though we have 30 days to move or close the case file. This would allow us an opportunity to use additional or alternate contact attempts, allow some response time for the consumer, if necessary, and still meet the 30-day guideline. [Field Operations Manual]

**Letter #1 – Open Category Letter:** This letter is sent to consumers who are made eligible and are placed in an open priority category. This letter does not reference the waiting list, as they will not be waiting for services but can be moved into Plan Development right away.

**Letter #2 - First priority Category – but on Waiting list:** This letter is sent to consumers who are made eligible and in the first priority category, but have to wait. No authorizations may be written while the case is waiting and no counseling can be provided. It is recommended the WLM keep these cases in a file drawer separate from the counselor's active cases.

**Letter #3 – Closed Priority Category:** When a consumer has been determined eligible but their priority category is closed, this letter must be sent. No authorizations may be written while the case is waiting and no counseling can be provided. It is recommended the WLM keep these cases in a file drawer separate from the counselor's active cases.

**Letter #4 – Off Waiting List:** This letter is sent to consumers who are coming off the waiting list.

**Letter #5 – No Contact:** This letter is sent to consumers who have not been in contact with us for quite some time. This letter advises them that their case file will be closed if they do not respond within a specified time frame.

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

The agency must provide vocational rehabilitation services to eligible individuals who have an IPE. [3300.5020, subpart 2]

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Eligible – Does not meet Priority for Service.

This status means the consumer meets the eligibility criteria, has been assigned to a Priority Category and is placed on the waiting list for VRS services. No authorizations can be written for case files in this status. No counseling can be provided. [Field Operations Manual]

Vocational rehabilitation services will ensure that individuals with a disability, including individuals who are on the waiting list, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment. [VR POLICY MANUAL]

### **E. Maintenance of Records**

The record of service will contain a statement signed by a Vocational Rehabilitation Services Counselor of the counselor's decision regarding eligibility and priority for services. [Qualifying for Services Policy]

A record of service will be maintained for each applicant and eligible individual to ensure the timely provision of services and to allow for accurate federal and state reporting on the Vocational Rehabilitation Services program. For each applicant or eligible for service consumer, a record of service must include, to the extent pertinent, the following information:

1. If an applicant has been determined to be an eligible individual, documentation supporting that determination.
2. If an applicant has been determined to be ineligible, documentation supporting that determination.
3. Justification for closing a consumer's record of service if that closure is based on reasons other than ineligibility.

4. Documentation supporting the determination of priority for services. [Record of Service Policy—items 5-17 not copied]

The rationale for closure must be reflected in the record of service. The counselor shall close an individual's record of service at any time in the vocational rehabilitation process when it has been determined that:

- The individual is not eligible, or is no longer eligible, or
- Appropriate planned services have been provided and the individual has achieved an employment outcome under an Employment Plan, or
- The individual is not interested in services, is not cooperating or is otherwise unavailable for services or there are no resources available for extended ongoing support services for supported employment. [Closures Policy]

**For Cases Closed as Not Interested, Not Cooperative, Otherwise Unavailable for Services, or When Resources for Necessary Ongoing Support Services for Supported Employment are not Available**

*Standard 1. The record of service contains the rationale for closure.*

*Standard 2. For records closed as not interested, not cooperating or otherwise unavailable for services, timely and sufficient efforts have been made to contact or engage the individual in services.*

Check Yes if Vocational Rehabilitation Services staff have made regular efforts to maintain contact with the individual. Check No if there are long unexplained gaps in case recording even if there are later efforts to locate the consumer.

What constitutes a sufficient effort will vary according to the unique circumstances in each case. The person's disability can be a factor. For example, in some instances a learning disability or a developmental disability can impact whether the person can read a letter. Deafness may impact whether a person is likely to respond to a regular phone call, or serious mental illness may impair comprehension of, or response to, written or oral messages. Cultural/language differences may also be a factor. Thus, the type of effort should be in consideration of the individual's impairment.

Examples of situations where Vocational Rehabilitation Services staff may close a case as "otherwise unavailable for services" include that the individual:

- Cannot be located.
- Moved from the state.
- Has been institutionalized under circumstances which preclude participation in Vocational Rehabilitation Services.
- Transferred to another agency.
- Is deceased. [Closures Guidance]

## **F. Role of the State Rehabilitation Council**

The director of the agency shall determine the need for an order of selection annually. The director's determination shall be made after consulting with and obtaining advice from the State Rehabilitation Council. [3300.5020 (subpart 1)]

## **GUIDANCE MATERIALS**

[See Policy Materials](#)

**SERIOUS FUNCTIONAL LIMITATIONS****Functional Area: Mobility**

<b>OVERALL DEFINITION</b>	<b>DEFINITION OF SERIOUS LIMITATION</b>	<b>CHECKLIST</b>
The physical and/or psychological ability to move about from place to place inside and outside the home, including travel to and from usual destinations in the community for activities of daily living, training, or work, that affects or is likely to affect job performance and/or job retention. This includes limitations due to risks as a vulnerable person or the effects of psychological or cognitive factors.	A serious limitation means that the individual has a reduction in the ability to move from place to place to the degree that the individual requires services or accommodations that are not typically made for other people in order to move around the community. Does not include limitations due to the lack of a driver's license, geographic location, or availability of transportation. Accommodations mean special working conditions, job re-engineering, rehabilitation technology, or substantial support and supervision.	<ul style="list-style-type: none"> <li>• Needs assistance from others or other accommodations to participate in job training or work activities.</li> <li>• Vocational training or work opportunities are limited to physically accessible sites.</li> <li>• Unable to leave home to participate in job training and work activities.</li> </ul>

**Serious Functional Limitation in Mobility****Assessing whether the limitation is “serious”**

The record of service must reflect that the impairment is severe and that the SFL results from the impairment. The serious limitations must have relevance at the time the decision is made.

A person may have a SFL in mobility if his/her cognitive issues interfere with his/her ability to learn a bus route independently. The person then may require travel coaching as an accommodation. A person has a serious functional limitation in mobility if they can not handle making his/her own arrangements for transportation such as Metro Mobility. Other accommodations include written instructions for the person who has memory or confusion issues. A person who has difficulty with new learning or knowledge transfer problems may require on-going training as routes change or his/her travel needs change. These are examples of SFLs in Mobility. If a person can learn the routes and/or arrange his/her own transportation, the limitation is not considered



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serious. Possession of a driver's license, by itself, is irrelevant to determining whether a person has a serious functional limitation in mobility.

**Functional Area: Self-Direction**

OVERALL DEFINITION	DEFINITION OF SERIOUS LIMITATION	CHECKLIST
<p>The ability to independently plan, initiate, organize, or carry out goal-directed activities or solve problems related to working. This does not relate to the worth of an individual's goals or plans, but the capacity to know, plan and act on a course of action based on personal values or goals.</p>	<p>A serious functional limitation in self direction means that due to a severe impairment the individual's ability to independently plan, initiate, problem-solve, organize or carry out work or training related activities is restricted to the degree that s/he requires services or accommodations not routinely made for others to accomplish activities necessary to prepare for, secure, retain or regain employment. Accommodations mean special working conditions, job re-engineering, rehabilitation technology, or substantial support and supervision.</p>	<ul style="list-style-type: none"> <li>• Unable to independently plan and manage or solve problems during job preparation or employment-related task.</li> <li>• Severe difficulty in remaining on-task to complete required training or employment tasks in assigned time period due to being easily distracted or having a short attention span.</li> <li>• Requires substantially more supervision than others at work or in training due to disorientation and confusion.</li> <li>• Inability to recognize the consequences of, or self-correct, inappropriate behaviors in a job search, on the job, or in training, leading to problems with job retention or job safety.</li> <li>• Impairment results in severe difficulty adjusting to new job preparation or employment situations.</li> </ul>

**Serious Functional Limitation in Self Direction****Assessing whether the limitation is 'serious':**

To support a serious functional limitation in self direction, the record of service must reflect that the limitations are current, are the result of the person's impairment and significantly impacting the person's ability to prepare for secure, retain or regain employment.

To be considered serious, the issue would not be a mild degree of occasional redirection or moderate supervision. It also would need to be more than the usual mild anxiety we all face when starting a new job. The issues must be tied to the impairment and not maturity level or lack of interest factors. The issues usually occur in life in general and are a persistent pattern of behaviors, not an occasional one. The Vocational Rehabilitation Services counselor needs to separate or rule out the non-disability related issues.

Self direction issues can look like interpersonal skills issues. Both issues have checkboxes on the checklist that refer to interpreting and responding appropriately to behaviors. The difference is in whether or not the behavior involves relationships. Self direction issues are usually trouble with executive functions like planning and problem solving. The interpersonal skills issues are relationship ones. A person could have both types of issues responding to behaviors in life.

Accommodations for self direction include job coaching, selective placement, natural supports on the job site, visual cues for job tasks and memory aids such as a date book and a task list.

**Functional Area: Self-Care**

<b>OVERALL DEFINITION</b>	<b>DEFINITION OF SERIOUS LIMITATION</b>	<b>CHECKLIST</b>
Self care means “the skills needed to manage self or living environment, such as eating, toileting, grooming, dressing, money management, and management of special health or safety needs, including medication management, as they affect an individual’s ability to participate in training or work related activities.”	A serious limitation means the individual has a reduction in the ability to manage personal cares to the degree that the individual requires accommodations or services that are not typically made for other people. This includes an individual's management of any special health and safety needs. Accommodations mean special working conditions, job re-engineering, rehabilitation technology, or substantial support and supervision.	<ul style="list-style-type: none"> <li>• Safety or well-being is at risk in vocational training or at work due to poor judgment or disability management.</li> <li>• Significant deficits in grooming or personal hygiene limit access to employment.</li> <li>• Poor money management seriously limits the person’s ability to participate in vocational training or work activities.</li> <li>• Needs assistance for personal needs or health care procedures to participate in vocational activities.</li> </ul>

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**Serious Functional Limitation in Self Care****Assessing whether the limitation is “serious”:**

To support a *serious* functional limitation in self care, the record of service must reflect that the limitation is current, on-going, and the result of the person’s impairment. Look at whether assistance is needed continuously, or with significant frequency, on an on-going basis.

Examples of services or accommodations that might indicate a serious FL in self-care include the following:

- Needs a PCA to dress, bathe, toilet, or eat
- Lives in a group home or other residential setting which provides self care help
- Uses devices for managing activities of daily living
- Needs significant monitoring to prevent accident or injury (safety)
- Receives services from a community organization or a person that helps with daily living
- Can’t (or doesn’t) take medications independently
- Has a payee for benefits (having a family member who handles finances may not be a *serious* limitation)

“Safety or well-being is at risk in vocational training or at work due to poor judgment or disability management” is frequently checked without supporting documentation. This area is especially misunderstood for people with chemical dependency or mental health impairments who may have put themselves at risk while using drugs or alcohol or not taking prescribed medication. If the person is maintaining sobriety or is stable without close supervision or monitoring, self care should not be checked as an issue. To warrant a self-care limitation for reasons of personal safety, the individual should be unaware of safety standards and/or unable to apply them without regular assistance.

**Differentiating self care from other areas of functional limitation:**

Self-direction vs. self-care: A person who gets confused or disoriented or who needs cues or prompts to stay on task, resulting in the need for substantially more supervision than others has a SFL in self direction. Consider self care if the person’s limitations mean they need to be monitored to be safe.

Interpersonal skills vs. self-care: A person who functions independently but needs supervision or accommodations to get along with others or to understand appropriate behavior has a limitation in interpersonal skills.

Self-care vs. communication: A person who is dependent on someone else to complete applications or other written documents has a communication limitation rather than a self-care limitation.

**Functional Area: Interpersonal Skills**

<b>OVERALL DEFINITION</b>	<b>DEFINITION OF SERIOUS LIMITATION</b>	<b>CHECKLIST</b>
The individual's ability to establish and maintain personal, family and community relationships as it affects or is likely to affect job performance and/or retention.	A serious limitation means the individual has a reduction in the ability to establish and maintain relationships at all levels to the degree that the individual requires accommodations or services that are not typically made for other people. Accommodations mean special working conditions, job re-engineering, rehabilitation technology, or substantial support and supervision.	<ul style="list-style-type: none"> <li>• Inappropriate or disruptive behavior leads to negative consequences in vocational training and/or at work.</li> <li>• Severe difficulty understanding acceptable levels and types of relationships negatively affects ability to prepare for, secure, retain or regain employment.</li> <li>• Social isolation, withdrawal, or rejection substantially limits vocational opportunities.</li> <li>• Work relationships seriously impeded by talking that is excessive, halting, illogical, irrelevant, or of unnatural volume.</li> <li>• Serious problems interpreting and responding appropriately to the behavior and communications of others in vocational or training activities.</li> </ul>

**Serious Functional Limitation in Interpersonal Skills****Assessing whether the limitation is “serious”:**

To support a serious functional limitation in interpersonal skills, the record of service must reflect that the limitations are current, are the result of the person’s impairment and significantly impacting the person’s ability to prepare for, secure, retain or regain employment.

In a work situation there are basic interpersonal relationships that must be developed and maintained by an individual. These include: employee and supervisor relationships, employee and co-workers’ relationships, and customer relations.

A serious functional limitation is not demonstrated simply because an individual is shy, irritable, or has some trouble getting along with a supervisor or coworkers. To be considered a serious functional limitation in interpersonal skills, there must be a pattern to the person’s behavior and those behaviors must have resulted in serious consequences at work such as frequent employer intervention, disciplinary action or termination of employment.

Examples of services or accommodations that might indicate a serious FL in interpersonal skills include the following:

- close supervision with frequent feedback regarding social interactions
- short breaks to re-group when confronted with challenging social situations
- private space to contact a support person
- flexible scheduling to attend therapy appointments

**Differentiating interpersonal skills from other areas of functional limitation:**

Communication: Determine if serious problems interpreting and responding appropriately to the behavior and communications of others are due to interpersonal skills limitations or to problems with communication.

People who talk with unnatural volume may have a communication deficit rather than a limitation in SFL in interpersonal skills. Unless the volume seriously affects interactions with others it should not be considered an interpersonal skills issue.

Self-direction: Determine if the need for substantially more supervision than others is due to disorientation and confusion (self-direction) or to severe difficulty understanding acceptable levels and types of relationships (interpersonal skills.)



**Functional Area: Communication**

OVERALL DEFINITION	DEFINITION OF SERIOUS LIMITATION	CHECKLIST
<p>The ability to effectively give and receive information through words or concepts, using methods such as reading, writing, speaking, listening, sign language, or other adaptive methods. The emphasis is on limitations resulting from a disability related communication difficulty, not on a communication problem resulting from a language or cultural difference.</p>	<p>A serious functional limitation in communication means “the individual has a reduction in the ability to effectively give and receive information through spoken word, writing or listening to the degree that the individual requires services or accommodations that are not typically made for other people,” i.e. the individual is dependent upon other people, a service, or a device to communicate.</p> <p>Accommodations mean special working conditions, job re-engineering, rehabilitation technology, or substantial support and supervision.</p>	<ul style="list-style-type: none"> <li>• Requires speech reading, sign language, real-time captioning, language board, written aids or other visual cues to participate in conversation needed to prepare for, secure, retain or regain employment.</li> <li>• Speech is not readily understood by others on first contact, seriously limiting interaction in work or training.</li> <li>• Severe difficulty understanding and processing verbal communication needed to successfully prepare for, secure, retain or regain employment.</li> <li>• Severe difficulty with functional writing seriously limits ability to write at work, or independently complete job applications.</li> <li>• Lacks functional reading skills sufficient to follow written directions at work or read job applications.</li> <li>• Severe difficulty with verbal communication needed to successfully interview or perform vocational activities.</li> </ul>

**Serious Functional Limitation in Communication****Assessing whether the limitation is “serious”:**

To support a *serious* functional limitation in communication, the record of service must reflect that the limitation is current, on-going, and the result of the person’s impairment. Look at whether assistance is needed continuously, or with significant frequency, on an on-going basis.

To be considered a serious limitation in communication, the barrier needs to create a significant barrier in preparing for, enter, engaging in or maintaining employment without accommodations or services. While individuals may have limitations in

communication such as limited writing skills or some level of hearing loss, these would not be considered serious limitations if these limitation do not seriously restrict the person's ability to effectively give and receive information through words or concepts.

Remember that the emphasis is on limitations resulting from a disability related communication difficulty, not a communication problem resulting from a language or cultural difference.

Examples of services or accommodations that might indicate a serious FL in communication include the following:

- Requires a sign language interpreter to communicate
- Utilizes a language board to participate in a conversation
- Uses a TTY
- Needs telephone amplification
- Uses text pagers for communicating
- Uses telephonic relay or video relay
- Learns new things through demonstration or use of pictures
- Needs a person to complete forms or communicate anything in writing

**Differentiating communication from other areas of functional limitation:**

Work skills vs. communication: When considering if a person might also have a SFL in work skills, assess if a person is able to learn new work skills once their communication difficulties have been accommodated. If the person can reasonably learn new work skills without additional accommodations then the person would probably not have a SFL in work skills.

**Functional Area: Work Tolerance**

<b>OVERALL DEFINITION</b>	<b>DEFINITION OF SERIOUS LIMITATION</b>	<b>CHECKLIST</b>
Capacity or endurance to effectively and efficiently perform jobs requiring various levels of physical and/or psychological demand. Limitations may be due to physical disability, stamina/fatigue, effects of medication, or psychological factors.	A serious limitation means that the individual has a reduction in capacity, stamina or endurance to the degree that the individual requires services or accommodations that are not typically made for other people. Accommodations mean special working conditions, job re-engineering, rehabilitation technology, or substantial support and supervision.	<ul style="list-style-type: none"> <li>• Requires accommodations or modifications for capacity and endurance to prepare for, secure, retain or regain employment.</li> <li>• Requires assistive/adaptive technology(ies) for capacity and endurance to prepare for, secure, retain or regain employment.</li> <li>• Experiences significant episodic functioning which substantially limits ability to work consistently.</li> </ul>

**Serious Functional Limitation in Work Tolerance****Assessing whether the limitation is “serious”:**

The distinction between a substantial impediment to employment for purposes of eligibility and a serious functional limitation for purposes of establishing priority for services is one of degree and scope.

The record of service must reflect that the impairment is severe and that the SFL results from the impairment. The serious limitations must be present at the time the decision is made or if the limitation is due to episodic functioning must be expected to recur with some frequency.

A SFL in work tolerance may manifest itself in such things as diminished strength, significantly decreased range of motion, impaired flexibility, muscle or cognitive fatigue, or reduced stamina.

Issues with cognitive endurance and capacity may be demonstrated by significantly reduced concentration, processing time beyond the expected or noticeable difficulty attending to a task.

Look for whether the individual requires accommodations not made for others and/or whether the range of jobs the individual can do is severely restricted because of capacity or endurance.

**Examples of accommodations** for work tolerance include such things as:

- reduced or re-structured work schedules, e.g.
  - working from home with a two hour on, two hour off schedule
  - a part time work schedule due to dialysis treatments
  - extra scheduled rest breaks
- use of a service dog
- use of a PCA
- job task restructuring
- adaptations or accommodations (beyond the ergonomic) e.g.
  - a motorized circular file cabinet
  - use of a vibrating timer at periodic intervals to bring someone back to task if pain causes distractibility

Examples of adaptations that, in and of themselves, don't necessarily indicate a *serious* functional limitation:

- Use of a telephone headset
- an electric stapler
- an ergonomic chair

These things are certainly things that people with a SFL in work tolerance might need but if someone is using them because they are smart things to use then it wouldn't support a SFL in work tolerance. The "why" behind the use of the items is critical as is the degree to which they need the items.

**Differentiating work tolerance from work skills:**

Work tolerance is about physical or psychological capacity and endurance.

Work skills have to do with learning and performing a broad range of jobs.

**Differentiating work tolerance from self direction:**

Attention or concentration due to self direction is about having problems because of problems in monitoring one's own actions or becoming distracted by externals.

Attention or concentration issues due to work tolerance have to do with fatigue or endurance more in response to internal factors.

**Functional Area: Work Skills**

OVERALL DEFINITION	DEFINITION OF SERIOUS LIMITATION	CHECKLIST
<p>"Work skills" means:</p> <ol style="list-style-type: none"> <li>1) the ability to do specific tasks required to carry out job functions; and/or</li> <li>2) the capacity to benefit from training in how to perform tasks required to carry out job functions</li> </ol>	<p>A serious limitation means that the individual has a reduction in skill to the degree that the individual requires accommodations or services that are not typically made for others to learn or perform job tasks. Accommodations mean special working conditions, job re-engineering, rehabilitation technology, or substantial support and supervision.</p>	<ul style="list-style-type: none"> <li>• Impairment limits vocational choices to routine and repetitive job tasks.</li> <li>• Impairment seriously limits the development of skills which others of equivalent age and education have typically developed, and which are necessary to obtain or maintain employment.</li> <li>• Severe difficulty in learning, retaining, or integrating new information relevant to employability.</li> <li>• Speed or quality of performing entry-level work tasks is below competitive standards.</li> <li>• Requires special training, accommodations, or technology to learn and/or perform work skills.</li> <li>• Lacks transferable skills to perform appropriate employment.</li> </ul>

**Serious Functional Limitation in Work skills****Substantial Impediment to Employment vs Serious Functional Limitation**

The distinction between a substantial impediment to employment for purposes of eligibility and a serious functional limitation for purposes of establishing priority for services is one of degree and scope.

For example, an individual who cannot continue in his or her usual line of work because of an impairment may have a substantial impediment to employment without having a serious functional limitation in the area of work skills. If the individual has transferable skills that can be used in other jobs, we would not find the applicant to have a *serious* functional limitation in work skills (although he or she may, of course, have a serious limitation in other functional areas.) To determine that an individual has a SFL in work skills, we are looking for those who have difficulties in a broad range of jobs rather than in a single area or task.

An individual who can learn material presented and only needs the accommodation of extra time to take tests may have a substantial impediment to employment but would not have a serious FL in work skills. Examples of accommodations that may rise to the level of a SFL in terms of learning would be the need for accommodations such as job coaching, pictographs, memory aids, frequent repetition, or extended one-to-one instruction.

**Casework Approach**

- *Information gathering:* In addition to the applicant information form, a Vocational Rehabilitation Services staff member (counselor, customer service representative, or intake person) obtains the applicant's work history and experiences with learning. The purpose is to learn what skills a person has and to assess the applicant's capacity to learn skills. The interview should cover the following areas.

Work history:

- employers
- dates of employment
- job duties (description of responsibilities)
- skills used
- accommodations provided to learn or perform the job
- equipment/machinery used
- he details behind why the consumer left each job
- Supports provided on any job

Barriers the consumer sees to obtaining, maintaining or performing a job

Hobbies: to look for transferable skills

Educational history:

- schools attended (dates)
- areas of study

# of credits completed (in what period of time)

grade level attained and grades

accommodations needed/received

any special learning needs

- *Analysis* of the applicant's work skills is done by a qualified Vocational Rehabilitation Services counselor and recorded in the case record (other information would also be included for a full comprehensive assessment.)

What are the individual's transferable skills that could be

used on other jobs

Does the impairment prevent the applicant from performing a broad range of jobs

What is their capacity for learning new skills

Do they have any specialized learning needs

Impact of the disability on performance

### **Distinguishing a SFL in work skills from a SFL in other areas**

It can be difficult to separate a SFL in work skills from other functional areas, especially work tolerance, interpersonal skills or communication. Work skills has to do with learning and performing the tasks of the job. Work tolerance has to do with capacity and endurance. Interpersonal skills are the soft skills someone uses to get along on the job. Communication is the exchanging of information. All of these may be necessary for someone to perform the job, and all of them may affect the person's ability to perform job tasks, but they should not be confused with whether or not the consumer has work skills.

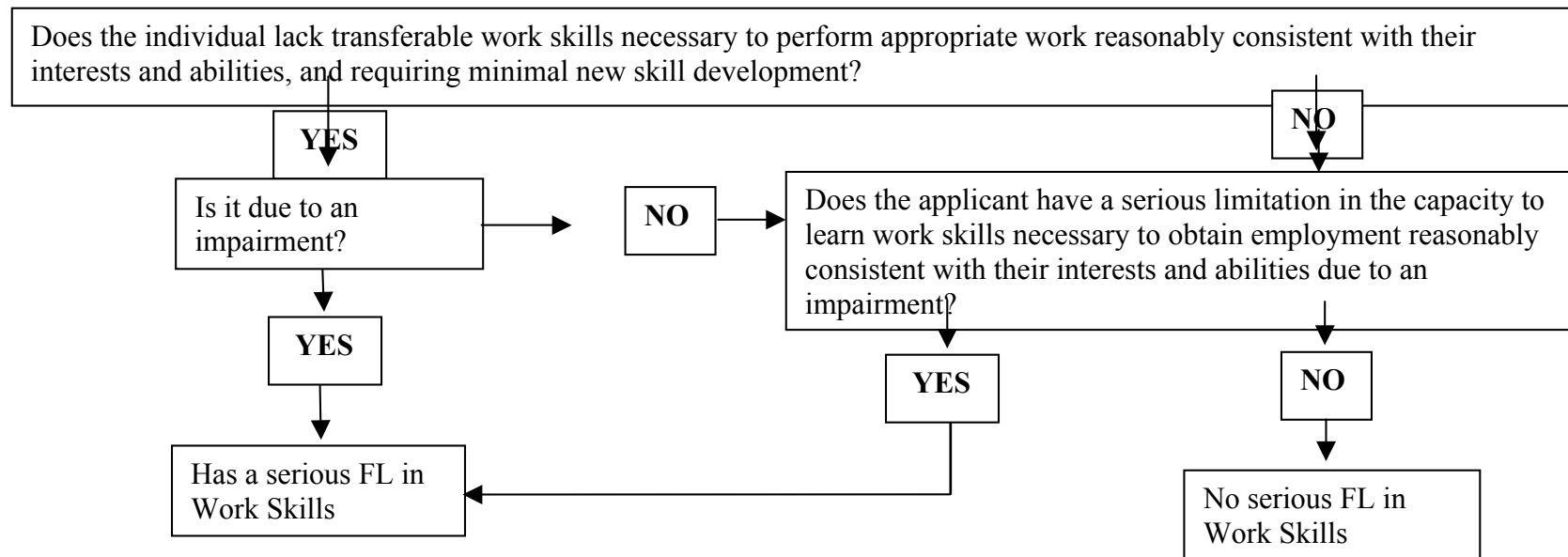
Do not assume that because an individual might possibly require post secondary training or other skills training, that the person has a SFL in the area of work skills.



"Work skills" means:

- 1) the ability to do specific tasks required to carry out job functions; and/or
- 2) the capacity to benefit from training in how to perform tasks required to carry out job functions.

### Is There a Serious FL in Work Skills?



## MISSISSIPPI ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Mississippi's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

It is the intent of the Mississippi Department of Rehabilitation Services to provide comprehensive vocational rehabilitation services to all eligible individuals who apply for services. In the event that vocational rehabilitation services cannot be provided to all eligible applicants due to financial limitations, the Agency has adopted an Order of Selection that establishes a system for prioritizing individuals with the most significant disabilities to receive services. [Section 5.7 of Policy Manual]

### II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Mississippi.

An Order of Selection should be designed to ensure that individuals with the most significant disabilities as described in the *OVR/OVRB Resource Guide* above, will receive services in preference to less significantly disabled individuals, as described in the *OVR/OVRB Resource Guide*, in the event of a shortfall in funding. [Section 5.7 of Policy Manual]

#### A. Establishment of Priority Categories [Section 5.7A of Policy Manual]

**Priority 1.** Individual with a most significant disability:

**Priority 2.** Individual with a significant disability.

**Priority 3.** Individuals with disabilities who do not meet the definitions of either "individuals with the most significant disabilities" or "individuals with significant disabilities", but will require specific vocational rehabilitation services to prepare for, secure, retain, or regain employment.

#### B. Terminology

The following definitions are used for purposes of the (waiting list) order of selection policy.

## **1. Individual with a disability**

The term individual with a disability means an individual who has a physical or mental impairment; whose impairment constitutes or results in a substantial impediment to employment; and who can benefit in terms of an employment outcomes from the provision of vocational rehabilitation services. [Section 4, OVR/OVRB Resource Guide]

## **2. Individual with a most significant disability** [Section 5.7A of Policy Manual]

An individual who meets the criteria for "significantly disabled" (Section 7(21) of the 1998 Rehabilitation Act Amendments) and:

- (i) *whose physical or mental impairments seriously limit two or more functions in terms of employment outcomes, and,*
- (ii) *who will require vocational rehabilitation services in order to prepare for, secure, retain, or regain employment that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.*

## **3. Individual with a significant disability** [Section 5.7A of Policy Manual]

An individual with a disability—

- (i) who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- (ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- (iii) who has one or more physical or mental disabilities, or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

Allowed SSDI beneficiaries or SSI recipients are not afforded any special consideration in establishing the priority categories of the order, notwithstanding the automatic classification of such an individual as an "individual with a significant disability." [Section 5.7 of Policy Manual]

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Authority to Open and Close Priority Categories, as Needed**

If at any time, services cannot be provided to all of those individuals who can reasonably be expected to be determined eligible during the coming year, the Executive Director of the Department may declare the implementation of the Order of Selection. [Section 5.7 of Policy Manual]

The Executive Director will notify staff by Executive Director Memorandum when the Order of Selection is to be implemented or withdrawn. [Section 5.7 of Policy Manual]

#### **B. Continuation of Services**

Should a funding shortfall occur, the agency will continue to serve those individuals on an existing Individualized Plan for Employment, including the provision of post-employment services. [Section 5.7 of Policy Manual]

Individuals having an active plan under the former Order of Selection will continue to receive services uninterrupted. [Section 5.7C of Policy Manual]

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

The Order of Selection system will in no way restrict the provision of diagnostic and evaluation services. [Section 5.7 of Policy Manual]

Functional Limitations - To be an impediment to employment (see definition of individual with a disability), a physical or mental impairment must be assessed in terms of the limitations that impairment presents to an individual's ability to function vocationally - i.e., to prepare for, secure, retain, or regain competitive employment.

Such assessment may include, to the degree needed to make such a determination, an assessment of the personality, interests, career choices, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social and recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual.

Such assessment may also 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, habits, tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment. [Section 5.4.1 of Policy Manual]

#### **B. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

An IPE cannot be developed for individuals in a closed priority category. However, the Order of Selection system does not preclude delivery of non-purchased services (i.e., counseling, guidance, placement, referral services, coordination of comparable benefits and services paid by a third party) for these individuals. [Section 5.7 of Policy Manual]

Persons meeting eligibility requirements but in a closed category have access to a comprehensive information and referral system (see the *OVR/OVRB Resource Guide*). [Section 5.7C of Policy Manual]

#### **C. Maintenance of Records**

Specific details about referral to another agency are to be documented in the case record. [Section 5.7C of Policy Manual]

#### **D. Role of the State Rehabilitation Council**

The VR agency consults with the State Rehabilitation Council regarding the need to establish an order of selection, priority categories, criteria for determining individuals with the most significant disabilities, and administration of the order of selection.

# **MISSOURI ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Missouri's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. The policies described below are contained in the following documents: Part 90-4.300 of Title 5 of the Missouri Code of Regulations and CSG Client Services Guide Date Issued 10/1/07.

## **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

## **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Missouri.

### **A. Establishment of Priority Categories**

In the event vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the state of Missouri, the Division of Vocational Rehabilitation (DVR) will implement a statewide order of selection. In accordance to the following priority categories, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services. Services shall be provided based upon the eligible individual's placement in one (1) of the following category priorities [5 CSR 90-4.300(2):

1. Priority Category I. An individual with the most significant disabilities as defined below;
2. Priority Category II. An individual with a significant disability as defined below;  
or
3. Priority Category III. An individual with a disability as defined below.

### **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

#### **1. Individual with a disability [5 CSR 90-4.300(1)]**

Any individual as defined in this rule and the following:

- Who has a physical or mental impairment;
- Whose impairment constitutes or results in a substantial impediment to employment; and

- Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

## **2. Individual with a most significant disability [5 CSR 90-4.300(1)]**

An individual with a significant disability as defined in this rule, and who is seriously limited in three (3) or more of the functional areas described below.

## **3. Individual with a significant disability [ 5 CSR 90-4.300(1)]**

An individual with a disability, as defined in this rule and the following:

1. Who has a severe physical or mental impairment that seriously limits one (1) or more functional capacities (such as mobility; communication; self-care; self-direction; interpersonal skills; work tolerance; and/or work skills) in terms of an employment outcome;
2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
3. Who has one (1) or more physical or mental disabilities resulting from amputation; arthritis; autism; blindness; burn injury; cancer; cerebral palsy; cystic fibrosis; deafness; head injury; heart disease; hemiplegia; hemophilia; respiratory or pulmonary dysfunction; mental retardation; mental illness; multiple sclerosis; muscular dystrophy; musculo-skeletal disorders; neurological disorders (including stroke or epilepsy); spinal cord conditions (including paraplegia or quadriplegia); sickle cell anemia; specific learning disability; end-stage renal disease; or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

## **4. Serious functional limitations.**

MDVR defines serious functional limitations as requiring extensive effort or consideration.

## **5. Functional areas include [5 CSR 90-4.300(1)]**

- A. Self-care;
- B. Communication;
- C. Mobility;
- D. Self-direction;
- E. Work tolerance;
- F. Work skills; and/or
- G. Interpersonal skills;

### **C. Ranking Individuals Within a Priority (Waiting Lists)**

The eligible individual's date of application will be used to determine the order of services within a priority category. [5 CSR 90-4.300(3)]

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Continuation of Services**

Services authorized or provided to any eligible individual shall not be disrupted as a result of an order of selection or the closing of a priority category. [5 CSR 90-4.300(11)]

### **B. Funding Arrangements**

All funding arrangements for providing services, including any third-party arrangements and awards by DVR shall be consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, DVR shall renegotiate these funding arrangements so that they are consistent with the order of selection. [5 CSR 90-4.300(5)]

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

The order of selection shall in no way affect the provision or authorization of diagnostic and evaluation services needed to determine eligibility. [5 CSR 90-4.300(10)]

An eligible individual's placement in a priority category may be changed under justifiable circumstances. [5 CSR 90-4.300(8)]



## **B. Notification of Eligible Individuals**

An eligible individual will be placed in the appropriate priority category and receive written notification of the assigned priority category.

[5 CSR 90-4.300(3)]

An eligible individual will be notified of their right to appeal their category assignment.

[5 CSR 90-4.300(4)]

Below is the procedure included in the CSG Client Service Guide regarding notification of clients [320.3]:

1. Discuss Order of Selection and provide Q and A sheet at initial interview.
2. Discuss District Office Resource List and provide at initial interview.
3. Determine eligibility and complete SD Classification Form identifying the priority category to which the client has been assigned.
4. Once eligibility and priority category are determined, send the client written notification of eligibility and their assigned priority category.
5. If the individual is determined eligible and assigned to a Priority Category currently being served, move case to Status 10, and send eligibility letter to include the following information:
  - Eligibility Determination
  - Priority Category Assignment
  - An appointment date and time, or confirm next step in vocational planning
6. If the individual is determined eligible, and assigned to a Priority Category not currently being served and placed on a waiting list, move case to Status 04, and send eligibility letter to include the following information:
  - Eligibility Determination
  - Priority Category Assignment
  - Individual's right to appeal, and information on Client Assistance Program (CAP)
  - Referral to one-stop/other agencies to meet the individual's needs
7. To maintain a current 04 waiting list, the following practices should be followed:
  - Six months from eligibility, an email is generated notifying the supervisor/assistant supervisor, counselor and senior secretary to send the 04 update letter to those clients remaining in a priority category not currently being served.
  - Twelve months from eligibility for those clients in a priority category not currently being served, an email is generated notifying the supervisor/assistant supervisor, counselor and senior secretary to review and update the case.
  - The counselor should attempt phone contact with the client and/or client's contact numbers, and the outcome of that contact should be documented in the case folder.

- If unable to contact by phone, the category review letter requesting a response should be mailed to the client, and

If the client indicates he/she wants to remain on the waiting list, the above process will be repeated annually. If the client does not respond to the category review letter within fifteen (15) days, phone contact should be made with the client and/or client's contact numbers and the outcome of that contact documented in the case folder. If unable to contact by phone, place case in an inactive status at that time. Central Office will notify, via email, District Supervisor/Assistant District Supervisor, Counselor and Senior Secretary when funds are available. Notify client by "Status 04-10" letter.

As soon as client indicates interest, case will be moved to status 10 to proceed with vocational planning and providing services. If client does not respond within fifteen (15) days, send "Status 04 Reminder Letter/Closure". If client does not respond within thirty (30) days, place case in inactive status, and close status 30.

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Order of selection priority categories do not apply to post-employment services. [5 CSR 90-4.300(12)]

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Eligible individuals who are in a priority category that is not open, shall be provided accurate vocational rehabilitation information and guidance (including counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment. These individuals will also be referred to other appropriate federal and state programs, including the statewide workforce investment career centers. [5 CSR 90-4.300(6)]

Individuals being referred to appropriate programs, as mentioned above, shall be provided the following [5 CSR 90-4.300(7)]:

1. A notice of the referral to the agency carrying out the program;
2. Information identifying a specific point of contact within the agency to which the individual is being referred; and
3. Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain or regain employment.

The order of selection shall in no way affect eligible individual's access to services provided through DVR.s information and referral system. [5 CSR 90-4.300(13)]

### **E. Maintenance of Records**

Rationale for placement will appear in the individual's case file. [5 CSR 90-4.300(9)]

### **F. Role of the State Rehabilitation Council**

DVR will consult and seek recommendations from the SRC on a regular basis or as needed about the following:

- (4) Need to establish an order of selection and review of state plan information and justification
- (5) Development or changes in policies or practices regarding the order of selection and how they effect persons with disabilities
- (6) Regular update on status of waiting lists numbers, waiting time for individuals on waiting lists and release of individuals from waiting lists to active services
- (7) Regular discussion of priority categories of the order of selection;
- (8) Assistance in defining the criteria for determining individuals with the most significant disabilities;
- (9) Discussion on the effectiveness of the Information and Referral process for individuals who are on waiting lists

## **NEBRASKA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Nebraska's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Nebraska.

The agency must provide the full range of services listed in the Rehabilitation Act, as appropriate, to all eligible individuals in the state who apply. In the event that these services cannot be provided to all eligible individuals in the state who apply the agency must determine each individual's priority in an order of selection and provide services accordingly. [Order of Selection Policy]

#### **A. Establishment of Priority Categories**

The order of selection must be based on a refinement of the definition of 'individual with a significant disability' in the Rehabilitation Act. When funding is not sufficient to serve all eligible individuals those in Priority Group One will be served first, those in Priority Group Two second and those in Priority Group Three served last. [Order of Selection Policy]

**Priority Group Three:** All eligible individuals.

**Priority Group Two:** Any eligible individual who:

1. has a severe physical or mental impairment that results in a low or very low rating in one functional area (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills);

requires multiple services over an extended period of time; and

has one or more physical or mental impairments resulting from amputation, arthritis, autism, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal

- disorders, neurological disorders (including stroke and epilepsy), spinal cord injuries, including paraplegia and quadriplegia, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations; or
2. receives SSDI or SSI based on their disability. Individuals who receive SSDI or SSI automatically qualify for priority group two and are assessed to determine whether they qualify for priority group one.

**Priority Group One:** Any eligible individual who:

Has a severe physical or mental impairment resulting in a rating of very low in two or more functional areas (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills);

Requires multiple services over an extended period of time; and

Has one or more physical or mental impairments resulting from amputation, arthritis, autism, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord injuries, including paraplegia and quadriplegia, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.

**B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **Individual with a disability**
2. **Individual with a most significant disability** [See above under Priority Group One—the state does not include reference to “individual with a most significant disability”]
3. **Individual with a significant disability** [See above under Priority Group Two—the state does not include reference to “individual with a significant disability”]

**Very low, low, and low average functional capacities**

Use the following to rate the functions. As a result of the impairment the individual:

VERY LOW

Is extremely or markedly limited in performing the functional capacity as a result of an impairment to the extent that the functional capacity cannot be performed independently

OR

Can only perform the function with the aid of assistive technology, durable medical goods, medication, personal care assistance, support employment services, interpreter services for the deaf and hard of hearing and/or other intensive assistive supported services.

LOW

Is considerably limited in performing the functional capacity thereby restricting the individual's ability to learn and perform essential work skills and tasks at the level expected of the average worker. This can include, but is not limited to, taking significantly longer to learn or perform a task or a series of tasks, experiencing difficulty in tolerating common environmental factors, psychological stresses, and maintaining appropriate behaviors in the work place.

LOW AVERAGE

Is limited, but not considerably so in performing the functional capacity.

A rating of low or very low in any sub-category within the seven major categories would translate into the same rating for the major category.

#### **4. Functional limitation areas include**

In determining the priority group the following functional areas will be assessed:

**Communication:** Effectively exchanging (giving or receiving) information through written or spoken words or concepts. Includes speaking, reading, listening, writing, interviewing and understanding.

**Interpersonal Skills:** The individual's ability to establish and maintain working relationships impacting their ability to acquire and maintain competitive employment. Working relationships could involve personal, family, social and/or community interactions that directly relate to a person's job performance and/or ability to maintain employment.

**Mobility:** Moving about from place to place or moving the body in various positions. The individual's ability to move the whole body from place to place or from position to position within a particular setting (home, school, or work) in the performance of essential activities. Includes travel to and from usual destinations in the community for activities of daily living, training, or employment.

**Self Care (includes Self Care ADL):** Ability to manage and take control of one's self care in the areas of personal, social, economic, and work life. The ability to perform activities of daily living related to self care in order to become or maintain employment.

**Self Direction:** Ability to manage and take control of one's personal, social, and work life. The ability to plan, initiate, organize, or carry out purposeful activities related to working. Self direction relates to the capacity to know, plan, and act on a course of action.

**Work Skills:** Possessing the work skills needed to procure employment and perform jobs, that exist in the economy. For younger individuals or those entering the workforce after prolonged absence, learning the work skills needed to obtain and maintain employment, that exists in the economy.

**Work Tolerance:** The capacity to perform consistently, given the level of physical environmental or psychological demands commonly found in work settings.

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

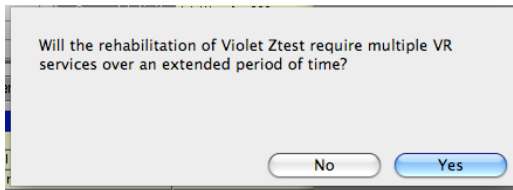
Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

Individuals' priority in the order of selection will be determined at the time of eligibility for services. [Order of Selection Policy]

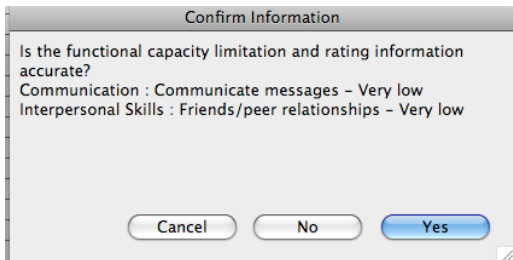
Once the Eligibility has been determined QUEST will automatically begin the Priority process.

1. First you will be asked to confirm that the consumer requires multiple services over an extended period of time.



Will the rehabilitation of Violet Ztest require multiple VR services over an extended period of time?

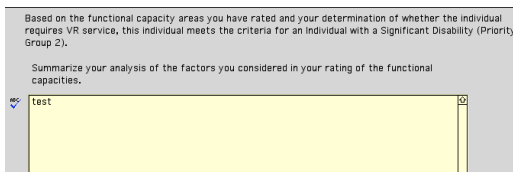
2. You will also reconfirm the functional limitations.



Confirm Information

Is the functional capacity limitation and rating information accurate?  
Communication : Communicate messages – Very low  
Interpersonal Skills : Friends/peer relationships – Very low

3. Next you will document your analysis of the factors you considered in your rating of the functional capacities.

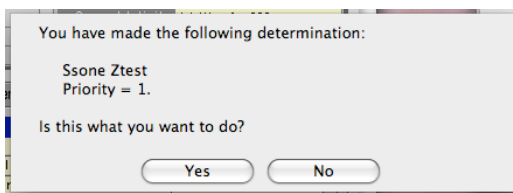


Based on the functional capacity areas you have rated and your determination of whether the individual requires VR service, this individual meets the criteria for an individual with a Significant Disability (Priority Group 2).

Summarize your analysis of the factors you considered in your rating of the functional capacities.

test

4. Priority has now been determined. Please confirm.



You have made the following determination:

Ssone Ztest  
Priority = 1.

Is this what you want to do?

5. If after priority has been determined as Priority Group 2 or 3 and the consumers limitations have increased you can move them up in Priority. Go to the Action Tab, Approvals screen and select “Assign priority”. You will be asked the same questions as you were in the original priority questions.

## **B. Notification of Eligible Individuals**

Complete the ‘Eligibility Notice’ letter for those in a priority group that can be served.

Any staff member may sign the letter.



Complete the 'Priority Group Not Served' letter for those in a priority group that cannot be served. Any staff member may sign the letter.

Mail (or give) the letter to the consumer.

**NOTE:** When an individual under the age of 19 is moving from the Transition Program to the Employment Program, a letter regarding the client's application and eligibility must be sent to the parent/guardian. Staff must select one of two letters posted on VRIS regarding eligibility notification to parents. The first option is to send the Parent Proposed Eligibility Notice letter notifying the parent/guardian that an appointment has been made with the student to complete the eligibility. The second option is the Parent Eligibility Confirmation letter that notifies the parent/guardian that an eligibility determination has already occurred and informs them of the next step in the process.

## **NEVADA’S ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Nevada’s policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

In the event that the Bureau is unable to serve all eligible individuals due to limited resources, those with “most significant” disabilities will be served first through an Order of Selection (OOS) procedure. Under OOS, participants are placed on a prioritized waiting list by level of significance of disability and are served when funding and resources are available.

#### **Order of Selection for Vocational Rehabilitation Services**

The Rehabilitation Division has the responsibility to provide an organized and equitable method to serve individuals with disabilities, if it is anticipated that all eligible individuals who apply for vocational rehabilitation services cannot be served. The Division will:

- Determine the need for an Order of Selection
- Time the establishment of an Order of Selection
- Develop priority categories for an Order of Selection
- Implement and monitoring an Order of Selection
- Determine a priority category for each eligible individual
- Manage the resources available for the provision of vocational rehabilitation services for each fiscal year
- Assure that first priority for vocational rehabilitation services is given to individuals with the most significant disabilities
- Assure the state wideness of the Order of Selection
- Define the circumstances under which the Division will not require an Order of Selection

#### **Determination of Need for Order of Selection for VR Services**

Prior to the beginning of each fiscal year, the Division will:

- Project the cost of determining eligibility for all applicants for vocational rehabilitation services in the next fiscal year; and
- Project the cost of serving, in the next fiscal year, the projected number of individuals with IPE's in place at the end of the current fiscal year; and

- Project the cost of serving, in the next fiscal year, individuals who's IPE's will be put in place in that year.

After the start of a fiscal year, the Administrator will declare the Division's Vocational Rehabilitation Programs under Order of Selection for vocational rehabilitation services when the budget information available indicates that the projected resources (staff and funding) available for vocational rehabilitation services identified, for the remainder of the fiscal year, are not adequate to meet all projected costs for the remainder of the year. (34 CFR 361.36).

## **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Nevada.

### **A. Establishment of Priority Categories**

Following implementation, services shall be provided to individuals in priority categories in the following order:

- Eligible individuals determined to be **most significantly disabled**, as defined in Definitions, beginning with the earliest application date.
- Eligible individuals determined to be **significantly disabled**, as defined in Definitions, beginning with the earliest application date.
- **All other eligible individuals** determined to have no significant disability as defined in Definitions, beginning with the earliest application date.

When eligible individuals who are determined to be significantly disabled can be served, all eligible individuals determined to be most significantly disabled shall be served regardless of the date of application.

When eligible individuals who are determined to have no significant disability can be served, all eligible individuals determined to be significantly disabled shall be served regardless of the date of application.

### **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

#### **1. Not significantly disabled**

Not Significant Disability (Disabled): An eligible individual who meets the following criteria:

- Who has no serious limitation in terms of an employment outcome in any functional capacity area; or
- Who vocational rehabilitation is not expected to require multiple vocational rehabilitation services, or
- Whose vocational rehabilitation is not expected to require an extended period of time.

## **2. Individual with a most significant disability**

Most Significantly Disabled: An eligible individual who meets the following criteria:

- Who has a serious limitation in terms of an employment outcome in at least four functional capacity areas; and
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services; and
- Whose vocational rehabilitation can be expected to require an extended period of time; and
- Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, acquired traumatic brain injury, heart disease, hemiplegia, hemophilia, HIV infection with clinical evidence of immunosuppression, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation; or
- Who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.) and who has a serious limitation in terms of an employment outcome in at least four functional capacity areas, receives disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act [[42 U.S.C. 301](#) et seq., [401](#) et seq., [1201](#) et seq., [1351](#) et seq., [1381](#) et seq.] or receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act ([42 U.S.C. 421 \(i\)](#)).

## **3. Individual with a significant disability**

Significantly Disabled: An eligible individual who meets the following criteria:

- Who has a serious limitation in terms of an employment outcome in at least one functional capacity area, and
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services, and

- Whose vocational rehabilitation can be expected to require an extended period of time, and
- Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, acquired traumatic brain injury, heart disease, hemiplegia, hemophilia, HIV infection, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation, or
- Who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.)

#### **4. Serious functional limitations.**

A reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodation in order the individual to work or be a fully functioning member of the community.

Accommodation: For the purpose of evaluating the impact in a functional capacity area means any type of assistance required as a result of an impairment including, but not limited to, work site adaptation, job restructuring, assistive technology devices, personal assistance services, prescribed medication, alternate media, or prosthesis.

#### **5. Accommodation**

Accommodation: For the purpose of evaluating the impact in a functional capacity area means any type of assistance required as a result of an impairment including, but not limited to, work site adaptation, job restructuring, assistive technology devices, personal assistance services, prescribed medication, alternate media, or prosthesis.

#### **6. Functional limitation areas include**

Communication, interpersonal skills, mobility, self-care, work skills, and work tolerance, which are impacted by an individual's disability.

Communication: The ability to use, give and/or receive information.

Interpersonal Skills: The ability to establish and/or maintain appropriate interactions with others.

Mobility: The ability to move from place to place

Self-Care: The ability to plan and/or perform activities of daily living.

Work Skills: The ability to sustain the required level of work functions.

Work Tolerance: The ability to sustain the required level of work functions.

#### **7. Multiple Vocational Rehabilitation Services.**

Two or more vocational rehabilitation services, excluding counseling and guidance, services to family members and transportation.

8. **Extended Period of Time** means more than 6 months.

### **C. Acceptable and Unacceptable Factors**

Order of Selection for Vocational Rehabilitation Services shall not be based on the following:

- Any geographical location of residency within the state;
- Any duration of residency requirement, provided the individual is available to participate;
- Type of disability;
- Sex, race, age, religious creed, color, ancestry, national origin, sexual orientation, or marital status;
- Source of referral;
- Type of expected employment outcome;
- The particular service need or anticipated cost of services required by an individual; and
- The income level of an individual or an individual's family.

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

Upon determination in accordance with the Determination of Need for Order of Selection for Vocational Rehabilitation Services that an Order of Selection must be implemented, the Division shall establish a waiting list. Individuals who are not included in the priority category(ies) being served shall be placed on a waiting list in accordance with Monitoring the Order of Selection for Vocational Rehabilitation Services.

Priority Category: The order in which individuals will be served. The category shall be established, first based on their level of significance of disability and second, their date of application.

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Authority to Open and Close Priority Categories, as Needed**

When the Administrator of the Division has declared the Division in Order of Selection for Vocational Rehabilitation Services, at least a quarterly review will be done to determine whether the projected resources available to serve individuals in priority category/ies currently being served are adequate to meet all projected costs for such individuals for the remainder of the fiscal year.

If the review indicates that the projected resources are inadequate to serve individuals in priority categories currently being served, the priority categories being served will be reduced accordingly. Individuals in a priority category no longer being served, whose IPE was written and signed prior to implementation of the reduction shall continue to receive services including additional services subsequently identified as necessary to complete their IPE.

If the review indicates that the projected resources are adequate to serve only individuals in priority categories currently being served, no change will be made in the priority categories being served.

If the review indicates that the projected resources are adequate to serve individuals in additional priority categories, those categories will be served. The Administrator shall make a declaration of any change in priority categories.

### **B. Continuation of Services**

Upon implementation of the Order of Selection for Vocational Rehabilitation Services, individuals whose IPE was written and signed prior to implementation shall continue to receive services including additional services subsequently identified as necessary to complete their IPE.

Individuals who were determined eligible prior to implementation, but for whom the IPE's have not been written and signed, shall be assigned to a priority category.

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

Assessing the level of significance of disability shall be:

- A collaborative effort on the part of the Division staff and the individual with a disability and, as appropriate, his/her family, or advocates, or designated representative; and
- Based on information collected from a wide variety of sources; and
- Based on a review of the individual's daily life, including community, home, school, and work, considering an individual's ability to participate in major life activities, as they impact an employment outcome; and
- A consideration of the impact of an individual's impairment/s in each of the functional capacity areas (communication, interpersonal skills, mobility, self-care, work skills and work tolerance).

When assessing the functional impact of the disability, Division staff shall, in collaboration with the individual and/or the individual's representative, complete the Significance of Disability Instrument (SOD), indicating whether any serious limitation in terms of an employment outcome exists in each of the functional capacity areas. The following factors are to be considered in determining if a serious limitation in terms of an employment outcome exists in each functional capacity area. The factors listed below and the SOD Instrument for each of the functional capacity areas are not considered to be all-inclusive or fully comprehensive.

A serious limitation in terms of an employment outcome is indicated in the area of communication when, as a result of the physical and/or mental impairment:

- The individual requires accommodation to use, give and/or receive verbal/auditory information; or
- The individual requires accommodation to use, give and/or receive visual information.

A serious limitation in terms of an employment outcome is indicated in the area of mobility when, as a result of the physical and/or mental impairment:

- The individual requires accommodation to move from place to place; or
- The individual is limited in terms of distance and/or terrain that can be traveled.

A serious limitation in terms of an employment outcome is indicated in the area of interpersonal skills when, as a result of the physical and/or mental impairment, the individual requires accommodation to establish and/or maintain appropriate interactions with others.

A serious limitation in terms of an employment outcome is indicated in the area of self-care when, as a result of the physical and/or mental impairment, the individual requires accommodation to plan and /or perform activities of daily living.

A serious limitation in terms of an employment outcome is indicated in the area of work skills when, as a result of the physical and/or mental impairment:

- The individual requires accommodation to sustain the required level of work function; or



- The individual is restricted from working in certain work environments which may include, but are not limited to, cold, heat and noise.

### **B. Notification of Eligible Individuals**

Upon implementation of the Order of Selection for Vocational Rehabilitation Services, individuals who were determined eligible prior to implementation, but for whom the IPE's have not been written and signed, shall be assigned to a priority category.

All eligible individuals assigned to a priority category, who do not have a signed IPE, shall be notified, in writing, of the Division's intention to implement Order of Selection for Vocational Rehabilitation Services. If the individual chooses, a designated representative may receive notification on his/her behalf.

The individual shall receive a copy of the SOD within thirty (30) days of determination of the level of significance of disability. The individual, or the individual's designated representative, and the Rehabilitation Counselor shall sign the form and it shall be included in the individual's case file.

## NEW YORK'S ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes New York's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of New York.

#### A. Establishment of Priority Categories

The Rehabilitation Act requires that if VESID can not serve all eligible individuals who apply for services, a process (Order of Selection) must be developed to establish the order in which individuals with disabilities will be provided services. The Order of Selection Policy is in effect but not put into operation unless Order of Selection is declared. This policy outlines the equitable means VESID has established to determine how eligible individuals will be selected to receive services if there is an Order of Selection in place. As mandated by law individuals with the [most significant disability](#) must be served first.

VESID will base the determination of who may receive services only on the significance of an individual's disability and by the date of application for VESID services.

Order of Selection in no way affects the eligibility process. Eligibility determination follows all existing [policy](#) and [procedure](#).

When an individual has been determined eligible for VESID services he or she must also be assigned to a significance of disability category. VESID has three categories of significance of disability:

1. [most significant](#);
2. [significant](#); and
3. [less significant](#).

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

### **1. Individual with a disability**

The state uses the federal definition.

### **2. Individual with a most significant disability**

An individual with a most significant disability means an individual:

- a. who has one or more physical or mental disabilities, determined by an assessment of eligibility and vocational rehabilitation needs, which cause substantial functional limitations; and
- b. who has a severe physical or mental impairment which seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) impacting an employment outcome; and
- c. whose vocational rehabilitation will require multiple vocational rehabilitation services over an extended period of time.

### **3. Individual with a significant disability**

An individual with a significant disability means an individual:

- a. who has one or more physical or mental disabilities, determined by an assessment of eligibility and vocational rehabilitation needs, which cause substantial functional limitations; and
- b. who has a severe physical or mental impairment which seriously limits one or two functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) impacting an employment outcome; and
- c. whose vocational rehabilitation will require multiple vocational rehabilitation services over an extended period of time.

### **4. Individual with a less significant disability**

An individual with a less significant disability means an individual:

- a. who has one or more physical or mental disabilities, determined by an assessment of eligibility and vocational rehabilitation needs, which cause substantial functional limitations; and
- b. whose vocational rehabilitation is not expected to require multiple vocational rehabilitation services; and
- c. whose vocational rehabilitation services will not require an extended period of time.

An individual who has a disability and is receiving SSI or SSDI benefits, as determined by the Social Security Administration, is to be considered an individual with at least a significant disability. Further review by the counselor of the consumer's functional capacities may result in a determination that the individual has a most significant disability.

#### **5. Serious limitations in functional capacities.**

VESID must determine which functional capacities of an individual are seriously limited by reviewing and assessing available information/reports including information provided by the individual and the individual's family, and by counselor observation.

"Seriously limits" means that the limitation in functional capacity results in significant behavioral consequences in terms of intensity, frequency, or duration in relation to achieving an employment outcome. The counselor must consider these elements when determining whether the impairment seriously limits a functional capacity.

Intensity - The degree to which the limitation affects the individual's ability to function.

Frequency - The number of times a given limitation affects the individual's ability to function within a set period of time.

Duration - The length of time the limitation has existed or is expected to last.

#### **6. Functional limitation areas include**

Functional capacities to be considered are:

Mobility means a person's ability to move to and from work or within a work environment, including walking, climbing, coordination, accessing and using transportation, as well as use of spatial and perceptual relationships.

Communication is a person's ability to transmit and/or receive information through spoken, written or other non-verbal means.

Self-care means the ability to perform activities of daily living, to participate in training or work-related activities, including eating, toileting, grooming, dressing, cooking, shopping, washing, housekeeping, money management and health and safety needs.

Self-direction is an individual's ability to independently plan, learn, reason, problem solve, memorize, initiate, organize, and make decisions. These processes allow individuals to assimilate information and learn specific skills related to job functions.

Interpersonal skills means the ability to establish and/or maintain personal, family or community relationships as they affect job performance.

Work tolerance is defined as a person's capacity to meet the demands of the work place regardless of the work skills already possessed by the individual. Limitations may be due to physical disability, stamina/fatigue, effects of medication, or psychological factors.

Work skills means the ability to demonstrate specific tasks and work-related behaviors, to carry out job functions as well as the capacity to benefit from training necessary to obtain and maintain appropriate employment.

#### **7. Multiple Vocational Rehabilitation Services.**

Only services that are necessary, as a direct result of the disability, to reduce the impact of limitations to functional capacity on an employment outcome are included in the determination of significance of disability. This includes services that are provided by others as comparable benefits. Specialized vocational or other training designed for individuals with disabilities, physical and mental restoration services, special transportation, rehabilitation technology, job search, placement assistance and job retention services are examples of services that are to be counted in this determination.

Counseling and guidance services and placement services provided by VESID staff to all consumers, vocational and other training services required by all individuals to meet a specific employment goal, and assessment services to determine eligibility are examples of services that may be required by the individual to meet an employment outcome but are not counted toward significance of disability. Generic training, education or other services that are required by all individuals to meet an employment goal are not considered when determining significance of disability.

#### **8. Extended Period of Time.**

A determination that services will be required for an extended period of time is made when required services are expected to last for six or more months after eligibility has been determined.

### **C. Ranking Individuals Within a Priority (Waiting Lists)**

Any eligible individual not being served due to Order of Selection will be placed on a waiting list. A separate statewide list will be maintained for each of the significance of disability categories. The order in which an individual is placed on the waiting list is based on the date of application. The waiting list is overseen from Central Office. As resources become available, individuals on the waiting list will be notified when services can be provided.

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals

of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Authority to Open and Close Priority Categories, as Needed**

Once an Order of Selection is declared a determination must be made, based on resources available, which new eligible applicants, if any, can be provided services. The determination can range from serving no new eligible individuals who apply for services to serving all new eligible applicants.

Individuals in the most significant disability category must be served first. Once all individuals in the most significant disability category can be served, VESID may add the category of individuals with significant disabilities. If enough resources are available, VESID may add the category of individuals with less significant disabilities.

The next category may not be opened unless VESID can serve all individuals in the prior category.

#### **B. Continuation of Services**

All individuals in Plan Development or beyond at the time Order of Selection is implemented will continue to receive all required services according to current policies and procedures regardless of the status of Order of Selection. This includes individuals who need [post employment services](#) to maintain or regain employment.

The [IPE](#) will be developed only if the individual is eligible to be served under the Order of Selection and the individual is ready for Plan Development. This includes "no cost" plans to VESID.

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

The VESID counselor must identify at eligibility, without delaying the eligibility decision, an individual as having a [most significant](#), [significant](#), or [less significant disability](#). The determination is based on the individual's functional capacities, the services needed to reduce the impact of disability-related limitations and the duration of the rehabilitation services required for the individual to achieve an employment outcome. Significance of disability shall be based on

existing information and may be amended at any time during the life of the case. Significance of disability is not based on a specific diagnosis or disability.

#### **B. Notification of Eligible Individuals**

All eligible individuals must be notified of the [priority categories](#) used by VESID in an Order of Selection, what significance of disability category they have been assigned, and their [right to appeal their category](#) assignment.

#### **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

For all individuals placed on a waiting list VESID will provide information and guidance regarding job related services. This may include referring individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce investment system. VESID staff must give individuals a specific point of contact within the agency to which the individual is being referred as well as information and advice regarding the most suitable services. The provider to whom a referral is made is to receive a letter of notice regarding a referral being made.

#### **D. Maintenance of Records**

**See above**

## **NORTH CAROLINA’S ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes North Carolina’s policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The Division Director will make a determination prior to the start of each Federal fiscal year or whenever circumstances change during the year whether to implement an Order of Selection for services. If resources are sufficient to accept all individuals determined eligible for services, the Division will not implement the Order of Selection.

If resources are not sufficient to serve all individuals determined eligible, the Director will implement the Order of Selection.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of North Carolina.

#### **A. Establishment of Priority Categories**

Each individual who is determined to be eligible is assigned a category based on the significance of the individual’s disability. Priority is placed on individuals assigned to the categories that represent the Most Significant Disabilities

**Category One** Individuals with the most significant disabilities (MSD) that are seriously limited in four functional capacity areas

**Category Two** Individuals with the most significant disabilities (MSD) that are seriously limited in three functional capacity areas

**Category Three** Individuals with significant disabilities (SD) that are seriously limited in two functional capacity areas

**Category Four** Individuals with a significant disability (SD) that are seriously limited in one functional capacity area



**Category Five** Individuals with a non-significant and permanent disability that will need multiple vocational rehabilitation services to attain a suitable employment outcome

**Category Six** Any eligible individual that does not qualify for placement in a higher category.

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

### **1. Individual with a disability**

The state uses the federal definition.

### **2. Individual with a most significant disability**

The state includes two categories under the term (see above).

### **3. Individual with a significant disability**

The state includes two categories under the term (see above).

### **4. Significant disability**

The term is defined as having “one or more seriously limited functional capacities”.

### **5. Multiple services**

The term is defined as “two or more core services”.

### **6. Extended period of time**

The term is defined as “nine months or requires permanent personal assistance, rehabilitation technology, or extended services”.

## **C. Ranking Individuals Within a Priority (Waiting Lists)**

Individuals not accepted for services will be placed in a pre-service listing (case status code 04) by their priority category until resources become available. **Pre-Service List - (Waiting List)** - List of eligible clients that establishes the order in which individuals will be provided services once resources are available. Clients are placed on the list after eligibility for services has been determined by their priority category and date of application.

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve

all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Statewide Basis; Authority to Open and Close Priority Categories, as Needed**

When implementing an Order of Selection, the Division shall implement it on a statewide basis.

#### **B. Continuation of Services**

When implementing an Order of Selection, the Division shall continue to provide all needed services to individuals who began receiving services under an IPE prior to implementing the Order of Selection and continue to serve individuals who are receiving services under an IPE for post employment.

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

The Division shall ensure its funding arrangement for providing services, including third party arrangements and establishment grants, is consistent with the Order of Selection.

#### **B. Notification of Eligible Individuals**

When implementing an Order of Selection, the Division shall notify all eligible individuals in writing of the priority categories and their categorical assignment. Notify all eligible individuals in writing of their right to appeal the decision.

The counselor will provide written notification to all applicants at the time of application of (1) the existing Order of Selection and (2) that restrictions will be imposed on who may be accepted for services. At the time of eligibility determination, the counselor will assign the appropriate highest Order of Selection Category for each individual and provide written notification of the category to the individual. If due to a change in the client's circumstances it is deemed necessary to change the individual's Order of Selection Category, the counselor will notify the client in writing of the change. The client may appeal the Order of Selection category.

An Order of Selection has no impact on the Division's obligation for case finding and referrals. The Division has a continuing responsibility to make the public and referral sources aware of the services it has to offer individuals with disabilities, especially those with the most significant disabilities.

When a restricted category is opened for services, the Division will notify individuals in that category in writing that they can now be accepted for services or that they will continue to be on the waiting list until further notice.

### **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

When implementing an Order of Selection, the Division shall ensure that eligible individuals who are placed on a pre-service list (case status code 04) are provided the following information and referral services:

- \* Accurate Vocational Rehabilitation information and guidance (which may include counseling and referral for job placement) to assist them in preparing for, securing, retaining, or regaining employment;
- \* Use of appropriate modes of communication to assist them in the referral and guidance process;
- \* Referral to other appropriate Federal and State programs, including other components of the statewide workforce investment system best suited to address the specific employment needs of an individual with a disability;
- \* Notice that the referral has been made to the agency carrying out the program;
- \* Information identifying a specific point of contact within the agency to which the individual is being referred; and
- \* Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

### **D. Maintenance of Records**

**See above.**

## OHIO ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Ohio's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. The state policy framework was revised in October 2009.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

When a state vocational rehabilitation program, such as RSC, does not have adequate resources to serve all eligible individuals in the state, the Code of Federal Regulations (34 CFR 361.36) requires that an Order of Selection is implemented. The Order of Selection delineates parameters for selecting the order in which consumers are served and requires that consumers with the most significant disabilities are served first. [OAC 3304-65 (A); Manual: 4.1]

### II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Iowa.

#### A. Establishment of Priority Categories [OAC 3304-65 (C); Manual: 4.2]

There are three priority categories for Order of Selection. The Ohio Administrative Code (OAC [3304-2-65](#)) defines the Order of Selection priority categories in the following way:

- **Most Significant Disability (MSD – first priority group)** refers to an individual who is expected to need multiple vocational rehabilitation services over an extended period of time and whose disability seriously limits three or more functional capacities in terms of an employment outcome.
- **Significant Disability (SD – second priority group)** refers to an individual who is expected to need multiple vocational rehabilitation services over an extended period of time and whose disability seriously limits one or two functional capacities in terms of an employment outcome
- **Other Eligible Individuals (Other – third priority group)** refers to an individual who meets the definition of eligible per rule [3304-2-54](#) of the Ohio Administrative Code (OAC) but who either is not expected to need multiple services over an extended period of time and/or who does not have limitations to functional capacities in terms of an employment outcome.

There are several factors that must be considered in order for the counselor to make an accurate decision about the consumer's priority status. In addition to the presence of a disability which causes substantial limitation(s) to employment (Criterion 1), other factors to be considered in making an Order of Selection priority determination include the number of functional capacity areas which limit the consumer in terms of employability (Criterion 2) and the need for multiple services over an extended period of time (Criterion 3). The following chart provides a quick reference to designate which priority category an individual would be assigned to:

	<b>Criterion 1</b>	<b>Criterion 2 (functional capacity limitations)</b>	<b>Criterion 3 (services over an extended period of time)</b>
<b>MSD</b>	Met	3 +	2+
<b>SD</b>	Met	1 or 2	2+
<b>Other</b>	Met	0	0-1

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

### **1. Individual with a disability**

The state uses the federal definition.

### **2. Individual with a most significant disability**

The term means an individual who is expected to need multiple vocational rehabilitation services over an extended period of time and whose disability seriously limits three or more functional capacities in terms of an employment outcome. [OAC 3304-2-65 (C) (1); Manual: 4.2]

### **3. Individual with a significant disability**

The term means an individual who is expected to need multiple vocational rehabilitation services over an extended period of time and whose disability seriously limits one or two functional capacities in terms of an employment outcome. [OAC 3304-2-65 (C) (2); Manual: 4.2]

The Code of Federal Regulations indicates that consumers that have been determined eligible for Social Security benefits are considered to be, at a minimum, an individual with a significant disability (SD). Counselors must still make a determination as to whether these consumers meet the criteria for MSD. Consumers should not proceed into status 04 until such a determination has been made. [OAC 3304-65 (D); OAC 3304-65 Manual: 4.3]

### **4. Other eligibles** include individuals who have been determined eligible but whose disability is not considered serious. [OAC 3304-65 (C) (3)]

## 5. Serious functional limitations.

"Seriously limited" means that the limitation in functional capacity results in significant behavioral consequences in terms of intensity, frequency, or duration in relation to achieving an employment outcome. The counselor must consider these elements when determining whether the impairment seriously limits a functional capacity. [Manual:4.2]

- **Intensity** - The degree to which the limitation affects the individual's ability to function.
- **Frequency** - The number of times a given limitation affects the individual's ability to function within a set period of time.
- **Duration** - The length of time the limitation has existed or is expected to last.

## 6. Functional limitation areas include

- **Communication** is a person's ability to transmit and/or receive information through spoken, written or other non-verbal means. The emphasis is on limitations resulting from the disability-related communication difficulty, not from a communication problem resulting from language or cultural differences.
- **Mobility** is a person's ability to move to and from home and work or within a work environment, including walking, climbing, coordination, accessing and using transportation, as well as use of spatial and perceptual relationships. This may include limitations in terms of distance and/or terrain that can be traveled.
- **Interpersonal skills** are a person's ability to establish and/or maintain personal, family or community relationships as they affect job performance. This could include necessary communications, appropriate and acceptable behavior, ability to cooperate in a team setting, understanding, and use of tact as they affect a person's job performance and participation in work-related activities.
- **Self-care** is a person's ability to independently perform activities of daily living, to participate in training or work-related activities, including eating, toileting, grooming, dressing, cooking, shopping, washing, housekeeping, money management and health and safety needs. This may include the ability to control and regulate his/her own personal, social, and work life (i.e., maintain schedules and routines, follow directions and established rules, organizational skills, etc.) at a level which allows the individual to participate in training or work-related activities.
- **Self-direction** is a person's ability to independently plan, learn, reason, problem solve, memorize, initiate, organize, and make decisions. These processes allow individuals to assimilate information and learn specific skills related to job functions.
- **Work tolerance** is a person's ability to fulfill the demands of the work place regardless of the work skills already possessed by the individual. Limitations may be due to physical disability, stamina/fatigue, effects of medication, or psychological factors. This may include a restriction from working in certain work environments which may include, but are not limited to, cold, heat and noise.
- **Work skills** are a person's ability to demonstrate proficiency specific tasks and work-related behaviors, to carry out job functions as well as the capacity to benefit from training necessary to obtain and maintain appropriate employment.

## **7. Multiple Vocational Rehabilitation Services.[Manual: 4.2]**

Multiple services means more than one vocational rehabilitation service which is necessary, as a result of a person's disability, in order to reach an employment goal. These include services that are provided by others as comparable benefits, but do not include ancillary services such as transportation, maintenance, and services to family members. Specialized vocational or other training, physical and mental restoration services, rehabilitation technology, job search, placement assistance and job retention services are examples of services that are to be counted in this determination.

For vocational rehabilitation counseling and guidance to be counted as one of the multiple services, it means discrete therapeutic counseling and guidance services that are necessary for an individual to achieve an employment outcome, including personal adjustment counseling, counseling that addresses medical, family, or social issues, vocational counseling, and any other form of counseling and guidance that is necessary for an individual with a disability to achieve an employment outcome. This service is distinct from the general counseling and guidance relationship that exists between the counselor and the individual during the entire rehabilitation process.

### **C. Acceptable and Unacceptable Factors**

These regulations indicate that the order in which consumers are served may not be based on duration of residency, type of disability, age, gender, race, color or national origin, source of referral, type of expected employment outcome, the need for specific services or the income level of the consumer or their family. [OAC 3304-65 (g); Manual: 4.1]

## **III.IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Statewide Implementation**

Effective October 1, 2009, RSC will begin managing Order of Selection waiting list from a statewide level in accordance with federal requirements. The Code also requires that the Order of Selection is implemented on a statewide basis. [Manual: 4.1; chapter 5] The Bureau Director's office shall be responsible for releasing consumers off of the statewide waiting list as the VR program, including Pathways, has capacity to serve individuals who are waiting. This will be accomplished through review of Cognos reports that will list all consumers statewide in status 04. [Manual: 5.3]

## **B. Authority to Open and Close Priority Categories, as Needed [Manual: 5.1]**

RSC shall end an order of selection when (1) projections indicate there are sufficient resources in the current federal fiscal year to provide services to all individuals who are found eligible; or (2) projections for a new federal fiscal year indicate that there will be adequate resources to serve all individuals who are found eligible. [OAC 3304-65 (I)]

At any given time while RSC is on an Order of Selection, one of the following scenarios will be in effect:

- All consumers in all priority categories will wait.
- Consumers determined to have a Most-Significant Disability (MSD) are served immediately and consumers who have a Significant Disability (SD) and Other Eligible Individuals will wait.
- Consumers determined to have a Most-Significant Disability (MSD) and those with a Significant Disability (SD) are served immediately and Other Eligible Individuals will wait.
- No consumers are waiting and all consumers are served immediately

The Bureau Directors office shall be responsible for projecting which of the above stated scenarios is most appropriate given the available budget and staffing resources available to serve consumers. The goal of this structure shall be to keep consumers moving through the process as quickly as possible by only requiring waiting where necessary due to resource limitations. The Bureau Director's office will regularly communicate to the field, including Pathways projects, which of the above stated scenarios is in effect This communication will occur through email notifications and postings on the intranet.

The local field offices shall be responsible for maintaining a positive relationship with consumers who are waiting for services. Federal regulations prevent RSC from providing direct services to consumers who are on waiting lists. However, local staff will need to respond to routine inquiries from these consumers and shall provide information and referral services as needed. Contact with consumers shall be documented in the consumer case record. Field offices will also be responsible for sending out periodic updates to consumers who are waiting for services as outlined below.

## **C. Continuation of Services [Manual: 5.1]**

Upon implementation of an Order of Selection for vocational rehabilitation services or a change in the priority categories being served:

- Individuals who have an IPE which has been developed and signed prior to implementation of OOS or change in categories being served shall continue to receive services, including additional services subsequently identified as necessary, to complete their IPE.
- Individuals who were determined eligible prior to implementation of OOS or change in categories being served, but whose IPE has not been developed and approved/signed, shall be assigned to a priority category and move into services according to guidelines outlined in this document.



## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services [Manual: 4.2]**

Making the determination of the consumer's priority status for services is to be done

- As a collaborative effort on the part of the counselor and the consumer, and, as appropriate, his/her family, or advocates, or designated representative; and
- Based on information collected from a wide variety of sources; and
- Based on a review of the individual's daily life, including community, home, school, and work, considering an individual's ability to participate in major life activities, as they impact an employment outcome; and
- A consideration of the impact of an individual's impairment(s) in each of the functional capacity areas (communication, interpersonal skills, mobility, self-care, self-direction, work skills, and work tolerance).

If adequate information is contained in the case record to make the Order of Selection priority category assignment when the eligibility decision has been made, the counselor should make an OOS decision and document this decision in the case record as outlined in 4.3. If additional information is needed after eligibility, the counselor should gather additional diagnostic information or provide assessments that are necessary to make an accurate determination for the Order of Selection priority category. The counselor must continue gathering diagnostic information to make a final determination of whether the consumer meets the criteria for MSD, SD or Other. Once the determination is made the counselor needs to move the consumer into status 04. If additional information is needed to identify functional limitations for planning purposes that information is to be gathered in status 11.

Consumers may request a re-evaluation of their priority category assignment at anytime that they believe their situation has changed sufficiently to place themselves in a different priority category. The counselor shall conduct the re-evaluation in a timely fashion and shall notify the consumer of the results as soon as reasonably possible. If a change in priority category occurs, the counselor must inform the consumer using a new Order of Selection form (RSC-0019) and provide a copy to the consumer and a copy must be in the case record. [Manual: 4.7]

### **B. Notification of Eligible Individuals [OAC 3304-65 (F); Manual 4.6; 5.1]**

In order to comply with federal regulations requiring that we provide information to the consumer about their priority status for services and their right to appeal the decision, a copy of the Order of Selection form must be provided to the consumer along with a copy of the Eligibility and Order of Selection Consumer Fact Sheet (RSC-0048). If the determination of the consumer's priority status for Order of Selection is not made at the time of the eligibility determination, this Consumer Fact Sheet must be provided to the consumer again at the time of determination of their priority status. [Manual: 4.6]

Vocational Rehabilitation staff must maintain contact with consumers at a minimum of every **six months** when a consumer is on an Order of Selection waiting list (status 04). The consumer shall be contacted in writing to inform them of their status on the waiting list (i.e., the priority category to which he/she has been assigned, the priority category(ies) that are currently being served, and his/her waiting list status) in order to determine if he/she wishes to remain on the waiting list. If the consumer declines to remain on the waiting list, or if they can not be located, the case will be closed (status 38 – closure from statewide waiting list) and a copy of the closure form sent to the individual and to his/her designated representative, where appropriate. [Manual: 5.1]

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Upon implementation of an Order of Selection for vocational rehabilitation services or a change in the priority categories being served [Manual: 5.1]:

- Individuals who have an IPE which has been developed and signed prior to implementation of OOS or change in categories being served shall continue to receive services, including additional services subsequently identified as necessary, to complete their IPE.
- Individuals who were determined eligible prior to implementation of OOS or change in categories being served, but whose IPE has not been developed and approved/signed, shall be assigned to a priority category and move into services according to guidelines outlined in this document.

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Individuals with disabilities, including eligible individuals who do not meet the agency's order of selection criteria for receiving vocational rehabilitation services, when an order of selection is in effect, shall be provided vocational rehabilitation information and guidance, including referral to other components of the statewide workforce investment system and other appropriate federal and state programs. [OAC 3304-65 (H)]

If the consumer will wait for services on the statewide Order of Selection waiting list, the consumer also must be advised of this and provided information and referral services to assist him/her while he/she is waiting for services. The Code of Federal Regulations (34 CFR 361.37) requires that consumers be provided with information about and referral to other Federal and State programs including other components of the statewide workforce investment system (i.e., One Stops). It is required that we provide the consumers with information that identifies a specific point of contact within the agency to which they being referred. The counselor must

make a determination of the suitability of specific referral information being provided to the consumer. In other words, this must be made on an individualized basis and recorded in the case record. [Manual: 4.6]

#### **E. Maintenance of Records**

Once the counselor makes a determination of the consumer's priority status for Order of Selection, this decision must be documented in the case record. The counselor must document the decision on the Order of Selection form (RSC-0019). This must be completed at the time that the determination is made. A copy of the Order of Selection form must be provided to the consumer as soon as possible after the determination is made. [Manual: 4.4]

## **OKLAHOMA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Oklahoma's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The Department, in consultation with the Oklahoma Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations that it cannot serve all individuals who are determined eligible for DVR and DVS services.

Considerations in making this determination will include, but not be limited to, the projected outcomes, service goals, expenditures, and resources available for each priority group. Projected costs and resources for each priority group will be based upon costs of current Individualized Plans for Employment, anticipated referrals, availability of financial resources, and adequacy of staffing levels. The Director will implement actions under the order of selection through written notice to DVR and DVS staff.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Oklahoma.

#### **A. Establishment of Priority Categories**

Under the order of selection, the Department has established three priority groups on the basis of serving first those with the most significant disabilities.

(1) **Priority Group 1.** Eligible individuals with the most significant barrier to employment.

(2) **Priority Group 2.** Eligible individuals with significant barriers resulting in serious limitations in at least one, but not more than, two functional capacities and requiring multiple services over an extended period of time.

(3) **Priority Group 3.** Eligible individuals with disabilities not meeting the definition of individual with a significant barrier.

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **Individual with a disability [federal definition]**
2. **Individual with the most significant barrier to employment.**
  - a. A most significant barrier is one that includes a mental or physical disability resulting in serious limitations in three or more functional capacities and requiring multiple services over an extended period of time.
3. **Individual with a significant barrier to employment.**
  - a. Eligible individuals with significant barriers resulting in serious limitations in at least one, but not more than, two functional capacities and requiring multiple services over an extended period of time.
4. **Other eligibles** Eligible individuals with disabilities not meeting the definition of individual with a significant barrier.
5. **Serious functional limitations.**
  - a. The state does not define the term in its policy pronouncement. However, the term is understood in accordance with common usage (important, weighty, giving cause for concern, not trivial, etc.)
6. **Functional limitation areas include**
  - a. “Functional limitations” means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual’s functional capacities.
  - b. “Functional capacities” means a client’s assets, strengths, and resources which maintain or increase the individual’s ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.
7. **Multiple Vocational Rehabilitation Services.**
  - a. “Multiple services” means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

## **8. Extended Period of Time.**

- a. The term “extended period of time” means when appropriate services are provided in a timely and orderly manner, completion of the IPE will be expected to require a minimum of 6 months.

### **C. Acceptable and Unacceptable Factors**

Selection and placement in a priority group is based solely upon the significance of the eligible individual's disability, and is not based upon the type of disability, geographical area in which the individual lives, projected type of vocational outcome, age, sex, race, color, creed, religion, or national origin of the individual.

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

The Director may restrict the writing and initiation of new Individualized Plans for Employment within a priority group to cases having eligibility dates falling on or before a specified date providing that all consumers in higher priority groups are being served.

When all or part of a priority group is closed, designated cases within that priority group without a written IPE will be placed on a waiting list after the individual has been determined to be eligible. No IPE will be written for cases on the waiting list. Staff will continue to take applications, diagnose and evaluate all applicants to determine eligibility and vocational rehabilitation needs, find the individual eligible when documentation supports such a decision, then place each eligible individual's case in the appropriate priority group. If an eligible individual is placed in a closed priority group, his or her case will go on the waiting list and no IPE will be written or initiated. The DRS Director will notify DVR and DVS staff in writing when all or part of a closed priority group is opened. When this directive includes new applicants who are found eligible, individuals already on the waiting list within that same priority group will be given priority over new applicants.

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Authority to Open and Close Priority Categories, as Needed**

Prior to the start of each fiscal quarter, or when circumstances require, the DRS Director will determine in which priority groups new Individualized Plans for Employment will be written and initiated.

### **B. Continuation of Services**

Any individual with an IPE that existed prior to the date all or part of that individual's priority group was closed will continue to receive services as planned. Such an IPE may be amended if the changes are necessary for the individual to continue progress toward achieving an appropriate employment outcome, or are otherwise necessary within policy.

### **C. Funding Arrangements**

All clients services are directly authorize by Oklahoma DRS counselors based on IPE's in effect. The agency does not utilize third-party agreements that would allow expenditures of DRS funds for services to individuals on a waiting list due to implementation of an OOS.

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

Every individual determined to be eligible for DVR and DVS services is placed in the appropriate priority group based upon the documentation used to determine eligibility and/or vocational rehabilitation needs.

### **B. Notification of Eligible Individuals**

The written notice will specify the implementation date of the action and direct DVR and DVS staff on how to handle cases by priority group and application date. DVR and DVS staff will inform each eligible individual on their caseloads:

- (1) of the priority groups in the order of selection;
- (2) of the individual's assignment to a priority group; and

(3) of the individual's right to appeal that assignment.

When all or part of closed priority groups are opened, staff will contact individuals on the waiting list to develop and implement their Individualized Plans for Employment using the priorities in Paragraphs (1) - (3) of this Subsection:

(1) contact individuals within the highest open priority group first, Most Significant being the highest of all priority groups;

(2) within each opened priority group, staff will contact individuals on the waiting list in order of application date, earliest application date first; then

(3) staff will contact individuals whose cases will remain on the waiting list to explain how their cases will be handled.

#### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

It is the policy of DRS to provide vocational rehabilitation services to eligible individuals under an order of selection. Persons requiring post employment services will also be provided the necessary services regardless of priority group assignment.

#### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Information and referral services will remain available to eligible individuals who are not in an open priority group. These individuals will be given information and guidance, using appropriate modes of communication, to assist such individuals in preparing for, securing, retaining or regaining employment, and will be appropriately referred to Federal and State programs (other than the vocational rehabilitation program) including other components of the statewide workforce investment system in the state. No IPE will be written to provide such services to these individuals.

#### **E. Maintenance of Records**

When an OOS is implemented, the case management system (AWARE) maintains individuals in delayed status when their priority group is closed. Records are kept in this system and as a priority group is opened, individuals are moved from delayed status (waiting list) into an active status that signifies they are eligible for a plan to be written and services provided.

#### **F. Role of the State Rehabilitation Council**

The Department, in consultation with the Oklahoma Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations that it cannot serve all individuals who are determined eligible for DVR and DVS services. The Department consults with the Oklahoma Rehabilitation Council regarding the:



- (1) need to establish an order of selection, including any re-evaluation of the need;
- (2) priority categories of the particular order of selection;
- (3) criteria for determining individuals with the most significant disabilities; and
- (4) administration of the order of selection.

## **OREGON ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Oregon's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

When Oregon Office of Vocational Rehabilitation's (OVRs) projected fiscal and personnel resources are inadequate to provide the full range of services, as appropriate, to all eligible individuals, the Administrator of OVRs will implement OVRs' Order of Selection procedure. By law, this procedure must insure that individuals with the most significant disabilities are served first. The criteria used for determining the Order of Selection for services relies upon a determination of the number of functional capacity limitations that affect an individual's ability to work, the number of substantial vocational rehabilitation services required, and the need for these services over an extended period of time.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Oregon.

#### **A. Establishment of Priority Categories**

- 1) Priority One. Eligible persons who meet all three of the following criteria shall be served first, in the order of each individual's date of application:
  - a) The individual is classified with a Most Significant Disability consistent with OAR 582-001-0010(22); and
  - b) The individual has a severe mental or physical impairment that seriously limits three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and
  - c) The individual is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.
- 2) Priority Two. Eligible persons not qualifying as Priority One who meet all three of the following criteria shall be served second, in the order of each individual's date of application:
  - a) The individual is classified with a Most Significant Disability consistent with OAR 582-001-0010(22); and

- b) The individual has a severe mental or physical impairment that seriously limits two functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and
  - c) The individual is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.
- 3) Priority Three. Eligible persons classified with a significant disability consistent with OAR 582-001-0010(23) shall be served third, in the order of each individual's date of application;
  - 4) Priority Four. All other eligible persons shall be served fourth in the order of each individual's date of application.

Oregon's current policy places individuals in one of the following four priority categories:

- 1. Individuals who are limited in **at least three** functional capacity areas and who require **at least two** vocational rehabilitation services over an extended period of time.
- 2. Individuals who are limited in **two** functional capacity areas and who require **at least two** vocational rehabilitation services over an extended period of time.
- 3. Individuals with disabilities who are limited in **at least one** functional capacity area and who require **at least two** vocational rehabilitation services over an extended period of time, **or who are presumed eligible as an SSI/SSDI recipient.**<sup>1</sup>
- 4. All other individuals who are found eligible for vocational rehabilitation services but who do not meet the criteria for priorities One, Two or Three above.

### **SSI/SSDI Recipients—Presumed Eligibility and Setting Priority Level**

SSI/SSDI recipients continue to be presumed eligible under OOS and at a minimum will automatically be deemed a Priority Level 3, but may qualify for a higher priority level depending on the number of functional capacity limitations. Counselors will have to review medical documentation and other information to determine priority level based on the number of limitations present.

#### **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

##### **1. Individual with a disability**

"Individual with a disability" refers to an individual:

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<sup>1</sup> Note that an individual who is an SSI/SSDI recipient will be at least ranked as a Priority 3, but may be ranked higher if the number of functional capacity limitations places this individual in a higher priority category.

- (a) Who has a physical or mental impairment; and
- (b) Whose impairment constitutes or results in a substantial impediment to employment; and
- (c) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

## **2. Individual with a most significant disability**

"Individual with a most significant disability" refers to

- (a) An individual who meets the criteria for supported employment under OAR 582-001-0010(43); or
- (b) An eligible individual who:
  - (A) Has a severe mental or physical impairment that seriously limits two or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and
  - (B) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

## **3. Individual with a significant disability**

"Individual with a significant disability" refers to an eligible individual who does not qualify as an individual with a most significant disability as defined at OAR 582-001-0010(22); and

- (a) The individual is currently receiving SSI or SSDI or requires or required a Trial Work Experience or Extended Evaluation to determine if the individual is capable of benefiting from vocational rehabilitation services in terms of an employment outcome; or
- (b) The individual:
  - (A) Has a severe mental or physical impairment that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(B) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

#### **4. Serious functional limitations.**

Considering the consumer's current accommodations in place, a serious functional limitation is indicated when the consumer cannot perform function **due to disability**, the function is related to work, and is something general working population can do at work.

**Counselors are required to describe with particularity the exact manner in which a functional capacity limitation has seriously limited an individual's ability to work when determining eligibility.**

**Note:** In addition to the general definition for serious limitation, The OVRs Functional Limitation Guidelines include specific guidelines for each of the seven functional capacity areas. [See appendix]

5. **Functional limitation areas include** [**Note:** In addition to including a definition for each of the seven functional limitation areas, the OVRs Functional Limitation Guidelines includes documentation requirements and examples. See Appendix]

#### **Communication**

A serious limitation in communication is the inability to exchange thoughts, messages, or information with people resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related communication issues were unmanageable.

#### **Interpersonal Skills**

A serious limitation in interpersonal skills is the inability to interact in a socially acceptable and mature manner with co-workers, supervisors and others to facilitate normal flow of work or activities resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related interpersonal issues were unmanageable.

#### **Mobility**

A serious limitation in mobility is the inability to move from one place to another and/or physically manipulate environment resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related mobility issues were unmanageable.

### **Self-Care**

A serious limitation in self-care is the inability to perform tasks that involve caring for self and living environment, or the ability to manage physical, emotional and safety needs, resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related self-care issues were unmanageable.

### **Self-Direction**

A serious limitation in self-direction is the inability to plan, initiate, problem solve, organize, or independently carry out goal-directed activities as relates to independent living and work, resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related self-direction issues were unmanageable.

### **Work Skills**

A serious limitation in work skills is the inability to perform specific tasks required to carry out job functions or the inability to benefit from training in the necessary skills or practice the work habits needed to stay employed resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related work skills issues were unmanageable.

### **Work Tolerance**

A serious limitation in work tolerance is the inability to perform effectively and efficiently jobs that require various levels of physical, emotional, and psychological demands of work over a sustained period of time resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related work tolerance issues were unmanageable.

## **6. Multiple Vocational Rehabilitation Services.**

In order to be in Priority Levels 1, 2, or 3, an individual must require at least two vocational rehabilitation services over an extended period of time. For purposes of determining priority level, only substantial vocational rehabilitation services should be counted.

### **Substantial services include:**

- Training (including Work Adjustment Training, OJT, Supported Employment, Self-Employment);
- Specialized placement;
- Job development;
- Mobility aids or equipment;
- Assistive technology;

- Vehicle/worksite/home modifications;
- Physical or mental restoration;
- Long-term support planning (in Supported Employment); and
- Substantial counseling/guidance.

Secondary services are not counted as a substantial service. Secondary services are things such as child care, non-specialized job related services (i.e., additional clothing, advocacy for filing SSDI claim, pre-vocational services, etc.), car repair, transportation, increased maintenance, and referrals to other agencies.

## **7. Extended Period of Time.**

It is presumed that if the individual requires substantial services due to the severity of disability, these services will be required over an extended period of time. Therefore, counselors are not asked to consider exact length of time specific services may be needed unless it is clear that the services required are brief, in which case it is possible that the functional capacity limitations and priority level must be reassessed.

### **C. Acceptable and Unacceptable Factors**

Factors that **cannot** be considered in determining an Order of Selection priority category are:

- Type of disability
- Duration of residency, provided the individual is present in the state;
- Age, gender, race, color or national origin;
- Source of referral;
- Type of expected employment outcome;
- The need for specific services or anticipated cost of such services; or
- The income level of the individual or individual's family

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

Once eligibility and priority level has been determined, the individual is added to the statewide Order of Selection waitlist in the assigned priority level by date of application. The date of application is the date the application is signed and entered into the OVRs client database (ORCA).

Applications will be completed in the same manner as before the invocation of the Order of Selection. Applications are not deemed complete until three conditions are satisfied:

- 1) An individual has requested services, either verbally or in writing;
- 2) The counselor has received information sufficient to initiate the assessment for eligibility and priority for services; and
- 3) The individual is in fact available to participate in the assessment process. Only once all three conditions are met should an individual be placed in Application status.

A key element to the application process is sitting down with the assigned vocational rehabilitation counselor. Meeting with a counselor is necessary to ensure that OVRS has sufficient information to conduct an accurate and thorough eligibility assessment and priority level determination. Meeting one-on-one with a counselor is also a necessary step in determining whether an individual is in fact available to complete the assessment process and is committed to pursuing vocational rehabilitation services. Therefore, **individuals attending orientations who wish to complete the application form requesting services immediately, or otherwise complete an application requesting services prior to meeting with a counselor should be informed that they may do so, but their application date will be the date they meet individually with their assigned counselor and complete the application process.**

Once an individual is in Application status, the counselor has 60 days within which to determine eligibility and priority for services, or to verify SSI/SSDI status and determine priority level for those individuals who are presumed eligible.

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Authority to Open and Close Priority Categories, as Needed**

OVRS administration determines when resources are available to initiate Individualized Plans for Employment (IPEs) for individuals on the statewide Order of Selection waitlist. When resources are available, OVRS Administration notifies the Database Administrator of the number of participants to take from the waitlist by priority category and application date(s). Branch Managers then coordinate with the VR Counselors to transfer the corresponding cases from the state-wide waitlist to available counselors in corresponding offices.

A participant on the statewide Order of Selection waitlist may request that their case be transferred from one office to another. The request for transfer is submitted to the Branch Manager to coordinate.

Although individuals are on a statewide waitlist, each Branch will maintain responsibility for housing physical case files, conducting routine follow-up and case transfers. Each office is responsible for maintaining contact with those individuals on the waitlist who applied for services at that Branch. The Branch Manager is designated to manage cases in their office that are on the waitlist and to transfer cases from the Order of Selection waitlist to a VR Counselor when notified that resources are available to initiate services for individuals on the Order of Selection waitlist.



Individuals on the waitlist are to be contacted by branch staff at least once every 90 days to inform them of their status on the waitlist. An ORCA-generated letter will be available for this purpose.

The Branch Manager is responsible within his/her branch for ensuring Order of Selection policies and procedures are followed, for assuring the office maintain contact with persons on the state-wide waitlist who applied at their branch, and for verifying I & R is occurring.

The Branch Manager will verify that I & R has been conducted in an appropriately titled case note in the ORCA case management system and client file regarding the I & R service provided.

Upon receiving notification to initiate services for cases on the Order of Selection waitlist for the specified priority category and application dates, the Branch Manager will determine within 5 working days which counselor is available to take the case and transfer the case off the waitlist. The counselor is to be notified of the case transfer and is then authorized to contact the individual to determine availability for VR services.

If the Branch Manager determines that the person on the waitlist is no longer available for services, the file may be closed.

As soon as OVRS determines there are resources available to initiate new service plans, names of individuals who are in the priority level being served will be taken off the waiting list in the order in which their applications were received. ORCA has the capability of sorting clients by priority level and date of application. Administrative staff will be monitoring finances to determine when sufficient funds are available to release names from the waitlist. When names can be released, Branch Managers will receive an announcement of these names so that these clients can be notified regarding their removal from the waitlist and asked to contact OVRS if they are still interested in receiving services.

## **B. Continuation of Services**

During an Order of Selection, OVRS shall continue to provide all needed services to any individual who is in active plan status prior to the effective date of the order of selection, including client receiving or subsequently eligible for post employment services.

Order of Selection does not impact or alter the provision of Post-Employment services. Post-Employment services are considered an amendment of the IPE, and therefore, an individual who needs post employment services is not required to meet the highest priority category currently being served under an Order of Selection nor is the individual required to wait for services. The use of Post-Employment services must directly relate to a functional limitation addressed in the eligibility section of the original IPE. **Under the federal rules, Post-Employment services are intended to be limited in scope and duration and do not require a complex and comprehensive provision of services. If the services being sought address new or different functional capacity limitations than addressed in the previous plan, or if substantial**

services are required, the individual must reapply for services and will be subject to the Order of Selection waitlist procedures.

#### IV. ADMINISTRATION OF ORDER OF SELECTION

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

##### A. Assessment for Determining Eligibility and Priority for Services

The criteria for determining eligibility under Order of Selection are no different than when OVRs is not operating under an Order. Counselors will still look to the following criteria in determining whether an individual qualifies for vocational rehabilitation services:

- ✓ Does the individual have a physical or mental impairment?
- ✓ Does the physical or mental impairment constitute or result in a substantial impediment to employment?
- ✓ Does the individual require vocational rehabilitation services in order to prepare for, secure, retain, or regain employment?

The determination of whether an individual's physical or mental impairment constitutes a substantial impediment to employment will require an assessment of functional capacity limitations, ***determine eligibility for services first, priority level second***. Priority level will be determined based on:

- the number of functional capacity limitations found through the eligibility assessment
- the number of substantial services it is anticipated the individual will require, and
- whether the services will be required over an extended period of time.<sup>2</sup>

Eligibility determinations (or verification of SSI/SSDI status for consumers who are presumed eligible) must still be conducted within 60 days of the application date.

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<sup>2</sup> It is presumed that if the individual requires substantial services due to the severity of disability, these services will be required over an extended period of time. Therefore, counselors are not asked to consider exact length of time specific services may be needed unless it is clear that the services required are brief, in which case it is possible that the functional capacity limitations and priority level must be reassessed.

**Can OVRs pay for additional assessments to determine eligibility?**

Federal regulations and our state rules require that the eligibility and priority determination be conducted based on available information and that additional assessments be obtained only if available information is insufficient. Therefore, the expectation is that only in rare circumstances will additional assessments be necessary to determine whether an individual meets the basic eligibility criteria and to identify the scope of their functional capacity limitations and service needs.

**What about services needed as part of a Trial Work Experience?**

Counselors are advised to heed the federal presumption that an individual can benefit from VR services. Trial Work Experiences and Extended Evaluations are only necessary when clear and convincing evidence is needed to establish that an individual is too severe to benefit from vocational rehabilitation services. Expenditures required to facilitate trial work experiences and extended evaluations are allowable under an Order of Selection when necessary to complete the determination of eligibility.

**What if an individual needs accommodations during the eligibility determination process, or other disability-related accommodations?**

OVRs is still obligated to provide access to interpreter services, assistive technology or other disability-related accommodations needed to accommodate an individual's disability-related needs in the application/eligibility determination process, or to access OVRs' information and referral services.

**B. Notification of Eligible Individuals**

Upon receipt of a case transferred from the Order of Selection waitlist, the VR Counselor will make a good faith effort to contact the individual **within ten working days**. Telephone contact is acceptable; however, counselors need to consider the communication needs of the participant. An ORCA-generated letter notifying individuals of their removal from the waitlist and the availability of services will also be available for this purpose.

If the counselor is unable to establish contact with an individual taken off the waitlist within ten working days, the counselor will mail a certified letter within **three working days** asking the individual to contact their local office within **10 working days** if they are still interested in receiving VR services. This letter will explain that their case service record will be closed if the office does not receive contact within 10 working days. The letter will also include information regarding reapplying for services, and appeal rights.

If no contact is received after sending the certified letter, a final closure letter will be sent. Steps to contact each individual are documented in the case management system narrative and filed in the case service record.

Good faith efforts shall be made to verify or find updated telephone numbers and addresses, to contact the referral source, and/or to contact person(s) identified on the application or otherwise in the case service record.

If a VR Counselor contacts a participant to initiate services and he/she is not ready to begin working with OVRs, the VR Counselor needs to help the individual make an informed decision about how to proceed. OVRs cannot 'hold' a spot on the waitlist nor can an individual be put back at the top of the list. The VR Counselor needs to discuss the reasons the participant is not ready to proceed and whether a reasonable time frame can be agreed upon to resolve the issues. The VR Counselor and participant make plans to proceed with vocational planning and IPE development within a reasonable time period or to close the case. In some cases, closing the case and submitting a new application at a later date may be the most appropriate unless an exception is granted under this policy (see section above).

Any time an individual seeking VR services experiences a change in their condition, a re-evaluation of their eligibility and priority level may be conducted. Individuals will be notified in their initial eligibility/priority letter that if new information is available regarding their condition, they may provide it and seek a re-evaluation.

### **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Under an Order of Selection, OVRs is not permitted to purchase services other than those needed to determine eligibility for those individuals who are not already in plan status as of the effective date of the Order. Therefore, any OVRs-funded assessments and associated purchases of services must be restricted to those expenditures required to determine the eligibility, not in developing an individualized plan for employment.

Plan development expenditures, such as work experiences, training, college, and job development services, are not allowable expenses until OVRs Admin has authorized the initiation of plan services for individuals that can be taken off the waitlist.

When operating under Order of Selection, OVRs is required to offer Information and Referral (I & R) service to individuals who cannot be served and must wait for services because of the Order of Selection.

OVRs must document and retain information about referrals to other federal and state programs that provide employment-related services. The case note section of the case management system is used to record the required information and should be printed for the hard file.

### ***Information and Referral Requirements***

Federal regulations establish minimum requirements under I & R as follows. OVRs must:

- 1) Provide individuals with appropriate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) to prepare for, get, or keep a job.

- 2) Refer individuals with disabilities to other federal or state programs that are best suited to address their specific employment needs, including partners in the workforce investment system.
- 3) Initiate a notice of referral identifying:
  - a) The name of the program to which the individual is referred;
  - b) A point of contact in that program; and
  - c) Information about the most suitable services to assist the individual prepare for, get or keep a job.

### **Providing Counseling and Guidance—Scope of Services**

To provide individuals with appropriate VR information and guidance, which may include counseling and referral for job placement, a VR counseling staff member talks with the individual about his/her needs to prepare for, get or keep a job. The VR counseling staff member provides advice and guidance about how the individual might proceed, explains referral sources available, and offers to initiate a referral to another program, if appropriate. These interactions occur in the course of other activities, such as completing the application, intake and eligibility determination.

For individuals who choose not to apply for OVRS services because of the Order of Selection, a general guideline is to limit I & R services to one appointment. **The VR Counselor will NOT establish an on-going counseling relationship nor perform follow-up services regarding I & R. Services such as job placement/development or job search assistance will not be purchased under I & R.**

### **Providing Counseling and Guidance – Referrals**

Each office will maintain a list of federal and state programs with which OVRS has established a formal referral relationship. Individuals who either choose not to apply or are on a waitlist to receive OVRS services will be referred to other appropriate vocational rehabilitation, employment, and related resources. Other programs to be used in this capacity, as appropriate, include Tribal VR programs, the Veterans' Administration VR program and other community programs. Because of limited resources in some areas and the unique needs of some individuals with disabilities, there will not be an appropriate program available to every person. Branch offices should make an effort to identify appropriate resources in their specific geographic locations and to maintain updated and accurate information to make meaningful referrals whenever possible.

### **Providing Counseling and Guidance – Job Placement**

VR counseling staff may provide **brief** counseling for job placement. If the individual intends to engage in independent, self-directed job search or related activities, the VR Counselor may provide brief counseling to assist the individual in this effort. Examples of counseling and referral for job placement may include, but are not limited to:

- A. A single counseling session with the individual to discuss what efforts to find a job he or she has already tried and to offer other job search strategies and suggestions.
- B. Reviewing and giving advice on an individual's resume.
- C. Discussing reasonable accommodation issues and strategies for approaching an employer.
- D. Discussing and providing the individual with access to the Internet or another resource.
- E. Sharing information about the local labor market.

### **Documenting a Formal Referral**

All referrals to employment-related programs must be documented, including both the referrals for individuals who have applied and are waiting for services and the referrals for individuals who choose not to apply for services because of the Order of Selection. Each Branch Manager, or designee, will identify and maintain the list of regional referral sources that require a formal referral. **Each time an individual is referred to one of the listed organizations, the VR counseling staff member documents the referral in the I & R portion of the case management system.** Every case will have an entry in the I & R screen prior to transferring the case to the Branch Manager's Order of Selection caseload, and the case service record will include the ORCA I & R case note.

If an individual requests a referral, the VR counseling staff member prepares and sends a written referral to the organization. In addition, the VR counseling staff member provides the individual being referred with the following:

- A. A copy of the written referral notifying the other federal or state program about the referral.
- B. The point of contact (specific name of a person, whenever possible) in that organization to be contacted by the individual being referred.
- C. Information about the most suitable services to prepare for, secure, retain, or regain employment.

### **Informal Referrals**

VR Counselors routinely provide information to applicants and eligible individuals about a wide array of community assistance programs that may offer services or benefits to assist the individual meet a variety of needs (food or clothing banks, medical programs, counseling services, etc.). These types of referrals are considered informal referrals. OVRs staff are encouraged to continue providing individuals with information about other programs that offer services to assist them in meeting a variety of needs.

**What impact does Order of Selection have on YTP/youth in transition?**

Prior to invoking an Order of Selection, OVRs Admin is working closely with school districts to maintain our relationships and collaboration of transition services to youth with disabilities. Students with existing IPEs will be served as usual. Students who do not have an existing plan will be placed on the waitlist and their name will be released according to the established disability priority level and application date. VR Counselors will continue to serve the school population and provide information and referral services, in conjunction with the YTP specialists, for each youth on the caseload. **No IPE may be written until the student's name is released off the waitlist.**

OVRs is also exploring the use of non-federal vocational rehabilitation funds in order to further support the mission of the YTP collaboration so that transition services are not adversely affected by the Order of Selection.

**D. Maintenance of Records**

The counselor who determines eligibility is responsible for providing appropriate information and referral and documenting the Information and Referral (I & R) services provided in an appropriately titled case note in the ORCA case file and printed for the hard file. The I&R case note should explain efforts to locate information and referral sources or the reason(s) a referral was not provided. The counselor is responsible for notifying the Branch Manager that the case is ready for ORCA transfer to the Branch Manager's caseload.

**E. Monitoring**

By the end of January 2009, OVRs Admin will provide training to all counselors on the selection of functional limitations, eligibility determinations, and priority levels. Branch Managers will be asked to conduct random reviews of eligibility determinations to ensure that determinations are accurate and expenditures are kept within the parameters allowed while under Order of Selection.

## OVRS Functional Limitation Guidelines

### **Serious Limitation: General Definition**

Considering the consumer's current accommodations in place, a serious functional limitation is indicated when the consumer cannot perform function **due to disability**, the function is related to work, and is something general working population can do at work.

**Counselors are required to describe with particularity the exact manner in which a functional capacity limitation has seriously limited an individual's ability to work when determining eligibility.**

### **Serious Limitation: Communication**

Definition: A serious limitation in communication is the inability to exchange thoughts, messages, or information with people resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related communication issues were unmanageable.

Documentation: A serious limitation in communication must be documented in the following manner: Reports by physician, psychologist, speech therapist, audiologist, or other professionals as appropriate to the consumer's disability. Counselor may be able to document through observation when appropriate.

**Counselors are required to describe with particularity the exact manner in which a functional capacity limitation has seriously limited an individual's ability to work when determining eligibility.**

Examples (not an exhaustive list; staff may add more in narrative)

**Because of disability**, the individual:

- is unable to communicate verbally
- is unable to use formal language of any type (spoken or sign)
- cannot readily understand others
- is not readily understood by others
- is unable to converse via telephone
- is unable to initiate or sustain conversation
- is limited to single words or short phrases in conversation
- has speech which is rambling or illogical
- talks/interrupts excessively
- is unable to follow written instructions or interpret written materials

### **Serious Limitation: Interpersonal Skills**

Definition: A serious limitation in interpersonal skills is the inability to interact in a socially acceptable and mature manner with co-workers, supervisors and others to facilitate normal flow



of work or activities resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related interpersonal issues were unmanageable.

Documentation: A serious limitation in interpersonal skills must be documented in the following manner: Reports by physician, psychologist or other professionals as appropriate to the consumer's disability. Counselor may be able to document through observation when appropriate.

**Counselors are required to describe with particularity the exact manner in which a functional capacity limitation has seriously limited an individual's ability to work when determining eligibility.**

Examples (not an exhaustive list; staff may add more in narrative)

**Because of disability**, the individual:

- is unable to understand/demonstrate interaction or behavior appropriate to worksite
- is unable to determine appropriate social response to others
- is isolated/withdrawn from co-workers
- is unable to effectively resolve conflict with co-workers
- has a spotty, intermittent work history
- has had problems accepting supervisory monitoring and criticism

### **Serious Limitation: *Mobility***

Definition: A serious limitation in mobility is the inability to move from one place to another and/or physically manipulate environment resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related mobility issues were unmanageable.

Documentation: A serious limitation in mobility must be documented in the following manner: Reports by physician or other professionals as appropriate to the consumer's disability. Counselor may be able to document through observation when appropriate.

**Counselors are required to describe with particularity the exact manner in which a functional capacity limitation has seriously limited an individual's ability to work when determining eligibility.**

Examples (not an exhaustive list; staff may add more in narrative)

**Because of disability**, the individual:

- is unable to safely move about within common training or work settings without the help of others or using assistive devices (wheelchair, prosthesis, crutches, cane or walker)
- is significantly restricted or limited in the distance s/he can safely move within common training or work settings
- takes significantly longer than the average person to move about within common training or work environments

- cannot safely change body positions (get up, sit down, bend over, kneel down, crouch or crawl) without help of others or use of assistive devices
- requires Assistive Technology, modifications, adaptations, accommodations not typically made for others in order to move around within common training or work settings
- cannot drive
- requires specialized transportation services for travel within community

### **Serious Limitation: Self-Care**

Definition: A serious limitation in self-care is the inability to perform tasks that involve caring for self and living environment, or the ability to manage physical, emotional and safety needs, resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related self-care issues were unmanageable.

Documentation: A serious limitation in self-care must be documented in the following manner: Reports by physician or other professionals as appropriate to the consumer's disability. Counselor may be able to document through observation when appropriate.

**Counselors are required to describe with particularity the exact manner in which a functional capacity limitation has seriously limited an individual's ability to work when determining eligibility.**

Examples (not an exhaustive list; staff may add more in narrative)

**Because of disability,** the individual:

- needs monitoring to prevent injury
- has a history of poor decision-making or is unaware of consequences of behavior
- requires a personal care attendant
- is unable to manage money or finances
- requires Assistive Technology, modifications, adaptations, or accommodations not typically needed by others (i.e., button fastener, utensil gripper, modified work schedule, split work schedule, modified work station, etc.) to perform most self care or independent living activities necessary to obtain or maintain employment

### **Serious Limitation: Self-Direction**

Definition: A serious limitation in self-direction is the inability to plan, initiate, problem solve, organize, or independently carry out goal-directed activities as relates to independent living and work, resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related self-direction issues were unmanageable.

Documentation: A serious limitation in self-direction must be documented in the following manner: Reports by physician or other professionals as appropriate to the consumer's disability. Counselor may be able to document through observation when appropriate.

**Counselors are required to describe with particularity the exact manner in which a functional capacity limitation has seriously limited an individual's ability to work when determining eligibility.**

Examples (not an exhaustive list; staff may add more in narrative)

**Because of disability**, the individual:

- requires assistive technology, adaptations, modifications, or accommodations (such as detailed calendars, task reminders, electronic personal assistants) not typically made for others in order to start, do all the steps or finish tasks, or decide what to do next within common training or work settings
- is unable to organize information in a logical manner
- is unable to recognize and acknowledge problems, seek remedies, take corrective action and arrive at solutions
- is unable to effectively seek employment without direct intervention
- is unable to regulate maladaptive behavior to facilitate achievement of constructive goals.
- has serious difficulty working independently
- has serious difficulty shifting focus from one activity or task to the next without prompting
- has serious difficulty adjusting to new situations or changes to the daily routine due to a disability
- is easily distracted/has a short attention span leading to repeatedly poor task completion

**Serious Limitation: *Work Skills***

Definition: A serious limitation in work skills is the inability to perform specific tasks required to carry out job functions or the inability to benefit from training in the necessary skills or practice the work habits needed to stay employed resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related work skills issues were unmanageable.

Documentation: A serious limitation in work skills must be documented in the following manner: Reports by physician or other professionals as appropriate to the consumer's disability. Counselor may be able to document through observation when appropriate.

**Counselors are required to describe with particularity the exact manner in which a functional capacity limitation has seriously limited an individual's ability to work when determining eligibility.**

Examples (not an exhaustive list; staff may add more in narrative)

**Because of disability**, the individual:

- reads, spells, or has math skills at/below 5<sup>th</sup> grade level
- has difficulty learning new tasks
- has limited task sequence recall ability
- requires accommodations or rehab tech to perform work tasks

- performs at a significantly reduced speed
- is unable to plan/initiate/sequence/ recall/ process complex information needed on the job
- has not learned the work skills usually possessed by those of a comparable age, education, and experience which is necessary for employment
- requires continuing monitoring, continuing skill training, continuing behavior management, continuing support, assistive technology, or accommodations and adaptations not typically made for other employees to maintain work skills and stable job performance
- is unable to be consistent and reliable in his/her work habits

### **Serious Limitation: *Work Tolerance***

**Definition:** A serious limitation in work tolerance is the inability to perform effectively and efficiently jobs that require various levels of physical, emotional, and psychological demands of work over a sustained period of time resulting in loss of employment through termination, a pattern of job loss, or inability to obtain competitive employment because the disability-related work tolerance issues were unmanageable.

**Documentation:** A serious limitation in work tolerance must be documented in the following manner: Reports by physician or other professionals as appropriate to the consumer's disability. Counselor may be able to document through observation when appropriate.

**Examples** (not an exhaustive list; staff may add more in narrative)

#### **Because of disability,** the individual:

- is unable to lift and carry books or objects weighing less than 10 pounds
- is unable to sustain continuous or prolonged paced movement of the arms, hands or fingers required to perform the job over an eight hour day
- is unable to sustain continuous or prolonged standing or sitting required to perform the job over an eight hour day
- requires work in a controlled or specific working environment
- is unable to tolerate common psychological stresses found in work
- requires assistive technology, modifications or accommodations to the work schedule not typically made for other workers to meet essential strength, stamina and endurance requirements or to deal with environmental and/or psychological demands
- is unable to tolerate changes in routine and/or job tasks
- is unable to work at an acceptable pace
- has experienced job retention problems and/or a pattern of short-term jobs

## OVRS Order of Selection Purchase of Service Guidelines

**In an Order of Selection, counselors are only authorized to purchase those accommodations, support services and diagnostic and evaluation services required to assess individuals not already receiving services in plan status for eligibility and priority for services.** No additional diagnostic, assessment, evaluation services or related accommodations and support services may be purchased for individuals on the waitlist unless new medical documentation or information is received that warrants a reassessment of eligibility and priority level.

**No plan development services or services needed to eliminate or reduce the impediment to employment** (such as Assistive Technology assessments, home modification assessments, driver evaluations, vehicle modification assessments, trial college semesters, vocational evaluations, PASS assessments, etc.) may be purchased until an individual is taken off the waitlist and plan development is authorized in accordance with the procedures set forth in this manual.

Similarly, **“no cost” services** (such as job placement, certification for deferment for student loans, rehab engineering) **may NOT** be provided to individuals on the waitlist. These are services that would otherwise be provided in the development of an employment plan and therefore are not authorized prior to an individual being taken off the waitlist.

**Maintenance services** (Assistive Technology devices, hearing aids, eyeglasses, wheelchairs, prescription co-pays) cannot be provided to individuals on the waitlist.

**Reasonable accommodations** for individuals completing assessment for eligibility and for those on the waitlist receiving I & R services must be provided. When determining whether an accommodation is reasonable, consider what alternatives and comparable services and benefits may be available to assist the individual in participating in the assessment process or to effectively receive the information and referral services we can offer.

Consider the difference between what services may be provided to assist an individual in achieving an employment outcome (services that are provided to individuals in plan status) versus what is needed to determine eligibility and priority for services (the assessment services that we must provide to all individuals seeking our services). **Under Order of Selection, we are required to reserve our resources to provide substantial vocational rehabilitation services only to individuals in plan status and to conduct basic eligibility screening and I & R activities for individuals seeking our services and on the waitlist.**

**Example:** A hard of hearing individual seeks VR services. The hearing impairment constitutes a substantial impediment to employment. A hearing aid would enable the individual to hear and would remove this impediment to employment. The provision of the hearing aid would be a service provided to this individual in plan status. The hearing aid would not be provided as part of the assessment process or in order to provide appropriate I & R services to that individual once he or she was on the waitlist. In order to accommodate the hearing impaired individual during the assessment process and during delivery of I & R services, consider what alternative modes of communication can reasonably accommodate the individual’s communication needs.

## **PENNSYLVANIA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Pennsylvania's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. The policies described below are set out in Program Policies, Procedures, and Guidelines 08-200.01 (May 19, 2008).

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Pennsylvania.

The Rehabilitation Act requires that in the event vocational rehabilitation services cannot be provided to all eligible individuals who apply for services, the State shall establish and follow an Order to be followed in selecting individuals to receive services. The Order of Selection must assure that individuals with the most significant disabilities be given the highest priority.

The Pennsylvania State Board of Vocational Rehabilitation, in consultation with the State Rehabilitation Council, directs the agency to establish and implement an Order of Selection. Since March 1, 1994, the Office of Vocational Rehabilitation (OVR) has operated on an Order of Selection. OVR has provided vocational rehabilitation services only to individuals classified as Most Significantly (formerly Severely) Disabled (MSD). Individuals who applied for services on or after March 1, 1994 and are classified as Significantly Disabled (SD) or Non-Significantly Disabled (NSD) may be provided diagnostic services only.

The Pennsylvania Office of Vocational Rehabilitation (OVR) is a combined state agency as a result of the transfer of the Bureau of Blindness and Visual Services (BBVS) on July 1, 1999. The State Board of Vocational Rehabilitation, as the designated state agency must adopt consistent vocational rehabilitation programs policies, guidelines and practices. Therefore, the State Board establishes these program procedures as the policy of Order of Selection for eligible individuals applying for services.

## **A. Establishment of Priority Categories**

In keeping with federal mandates, it is the policy of the Office of Vocational Rehabilitation to operate on an Order of Selection when the agency is unable to provide services to all eligible individuals in the same state who apply for services. The Order of Selection in Pennsylvania gives priority:

**First** to individuals with the Most Significant Disabilities (MSD);

**Secondly**, to individuals with Significant Disabilities (SD); and

**Third** to individuals with Non-Significant Disabilities (NSD).

Significance of disability is defined based on the presence of functional capacities and the requirement of multiple vocational rehabilitation services.

## **B. Terminology**

The following definitions are used for purposes of the order of selection policy.

### **1. Individual with a disability**

### **2. Most Significantly Disabled**

- The physical, mental, or sensory impairments must seriously limit three or more of the individual's functional capacities, and
- The individual must be expected to require multiple vocational rehabilitation services over an extended period of time.

### **3. Significantly Disabled**

- The physical, mental, or sensory impairments must seriously limit one or more of the individual's functional capacities, and
- The individual must be expected to require multiple vocational rehabilitation services over an extended period of time.

### **4. Non-Significantly Disabled.**

- The individual has a physical, mental, or sensory impairment that does not meet the definitions for MSD or SD.

## **5. Functional limitation areas include**

### **Mobility**

Mobility refers to the capability of moving efficiently from place to place. It can include limited personal mobility, physical mobility, such as ambulation, transportation, and/or accessibility, as well as the impact of cognitive disabilities on mobility.

### **Self-Care**

The term “self care” refers to the skills necessary to fulfill basic needs such as those related to health, safety, food preparation and nutrition, hygiene and grooming, and money management. For most individuals, self-care competencies are mastered throughout the various developmental stages in their lives.

### **Work Tolerance**

Work tolerance refers to the ability to carry out required physical and cognitive work tasks in an efficient and effective manner over a sustained period of time. Assessment of individual work tolerance can best be carried out by gathering information through work trials or interviews with persons such as family members, teachers or employers who have observed the individual’s capacity to sustain physical or cognitive activities over a period of time.

### **Interpersonal Skills**

The term “interpersonal skills” refers to the ability of the individual to interact in a socially acceptable and mature manner with co-workers, supervisors, the public, and others to facilitate the normal flow of work activities.

### **Work Skills**

The term “work skills” refers to the specific job skills required to carry out work functions as well as the capacity for an individual to benefit from training in these work functions. It is important to determine whether the deficits impact a major or critical function of a specific job and/or the individual’s general capacity to learn and carry out any work task. Useful assessment strategies to gather this information are paper and pencil tests, vocational tests, vocational evaluations, work trials, individual self-report and interviews with persons who have seen the individual perform tasks in school, at home or at work.



### **Communication**

Communication refers to accurate and efficient transmission and/or reception of information, either verbally (spoken or written) or non-verbally. Possible assessment strategies may be standardized tests of receptive and expressive language, role-plays and interviews with the individual and persons who know the individual well, vocational evaluations, and situational assessment.

### **Self-Direction**

The term “self-direction” describes the capacity to organize, structure and manage activities in a manner that best serves the objectives of the individual. Adequate self-direction requires that an individual be able to plan, initiate and monitor behavior with respect to an identified outcome. A person may experience great difficulty formulating and/or implementing plans dealing with employment, living arrangements, or the direction of one’s own life. Also includes but not limited to, limited ability concerning reality adjustment, quality assessment of available choices, and/or thinking through choices to a logical conclusion and/or understanding the consequences of choices made and actions taken.

## **C. Acceptable and Unacceptable Factors**

A State VR agency develops criteria for determining an “individual with a most significant disability” by refining criteria in the definition of “individual with a significant disability” (Section 101(a)(5)(C) of the Act; 34 CFR 361.5(b)(30) and 361.36(d). The criteria to be refined are the number and degree of functional limitations, the amount of time needed for VR services, and the number of VR services needed (Federal Register, Vol. 61, No. 94, May 14, 1996, page 24395). Individuals with the most significant disabilities are given first priority for receiving VR services if a State VR agency must implement an order of selection because it does not have enough fiscal or personnel resources to serve all eligible persons (Section 101(a)(5)(C) of the Act).

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. Authority to Open and Close Priority Categories, as Needed**

A case may leave Status 11 either through case closure or by changing the Order of Selection, documenting additional functional limitations, and creating an IPE. For case closure, a case is converted to a 30 from 10 closure.

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

After determination of eligibility for vocational rehabilitation services, each individual will then be classified by placement into one of the three priority categories described above. The Order of Selection assures that individuals with the Most Significantly disabled received priority for vocational rehabilitation services.

All individuals eligible for vocational rehabilitation services shall be classified by Priority Category at the time of their certification of eligibility or as soon thereafter as possible.

The VR counselor determines the significance of the individual's disability based on a review of the data developed to make the eligibility determination and, to the extent necessary, an assessment of additional data (34 CFR 361.42(g)). Education records and information used by education officials are included in the data to be reviewed (34 CFR 361.42(d)(1)(i)). Central to the task of determining the significance of an individual's disability is obtaining a clear understanding of how the disability affects or impacts vocational functioning. To obtain such an understanding, the VR counselor needs to analyze assessment data within the context of the seven functional capacities in the definition of an "individual with a significant disability" in order to identify the individual's functional limitations.

Each of the following sections describes one of the functional capacities listed in the definition of "individual with a significant disability," identifies possible assessment strategies for verifying functional limitations, and describes the possible impact of various disability related impacts on

the individual's ability to perform in an employment setting. The following information may be useful to State agencies in developing policies, procedures, and training materials to assist VR counselors in identifying functional limitations or may be useful to counselors in using State agency materials.

## **Mobility**

Mobility refers to the capability of moving efficiently from place to place. It can include limited personal mobility, physical mobility, such as ambulation, transportation, and/or accessibility, as well as the impact of cognitive disabilities on mobility.

Assessment of mobility limitations is most effectively done through direct observation of the individual in the environment. Obtaining information from the individual, the individual's family, teacher, previous employers or supervisors may also be helpful. Additionally, specialty evaluations such as driver evaluations or assessment by a travel trainer in the community may be required. Mobility limitations may become apparent if the counselor observes the customer frequently arriving late to meetings and upon questioning learns that the customer frequently gets lost while traveling.

There are also many ways that cognitive disabilities can limit an individual's mobility. Reading problems may interfere with the ability to read a bus or train schedule, to determine how to transfer, or to read road signs and maps to navigate from place to place. Calculation and number concept problems may interfere with the ability to pay for public transportation or budget for transportation.

Spatial orientation and perceptual problems influencing directional sense may result in frequently getting lost and an inability to navigate within the environment, be it traveling within the community or finding one's way around the inside of a building, plant or complex. Time sense deficits may result in chronic lateness or serious problems in planning and/or comprehending public transportation schedules. Directional confusion may also pose significant safety problems because of the individual's difficulties in the integration of visual information

Limitations in organization, sequencing, and planning resulting from deficits in attention and higher-level conceptual deficits may preclude an individual's ability to make arrangements for transportation, particularly if these involve modification of simple routines, one or more transfers, or coordination of connections. Also, problems with comprehension or attention may result in errors such as taking the wrong bus or getting off at the wrong stop, consistently taking wrong turns while driving and/or accident proneness. Memory difficulties may interfere with the individual's ability to navigate due to the inability to recall landmarks and directions. In addition, language deficits related to SLD (significant learning disability) may interfere with the ability to understand spoken directions.

Limitations in balance and gross motor coordination may result in physical clumsiness or accident proneness in driving and walking and may cause marked difficulties when using escalators, elevators, and people movers.

## **Self-Care**

The term “self care” refers to the skills necessary to fulfill basic needs such as those related to health, safety, food preparation and nutrition, hygiene and grooming, and money management. For most individuals, self-care competencies are mastered throughout the various developmental stages in their lives.

The most effective way to assess the individual’s self-care limitations is through interviews with the individual, the individual’s family, teachers and employers, and by review of the individual’s history. The VR counselor may also identify self-care deficits while interviewing and working with the individual. In this regard, it may be helpful to use a checklist and/or a questionnaire designed to identify self-care deficits that are typically found in individuals with SLD (significant learning disability).

([http://son.uth.tmc.edu/coa/FDGN\\_1/RESOURCES/ADLandIADL.pdf](http://son.uth.tmc.edu/coa/FDGN_1/RESOURCES/ADLandIADL.pdf)) and  
(<http://www.abramsoncenter.org/PRI/documents/IADL.pdf>)

### List of ADL’s

#### Basic ADL’s

- Bathing
- Dressing and undressing
- Eating
- Transferring from bed to chair and back
- Voluntary control of urinary and fecal discharge
- Using the toilet
- Walking (not bedridden)

Instrumental ADL’s – Instrumental activities of daily living are not necessary for fundamental functioning, but enable the individual to live independently within a community.

- Light housework
- Preparing meals
- Taking medications
- Shopping for groceries or clothing
- Using the telephone
- Managing money
- Care of others (including selecting and supervising caregivers)
- Care of pets
- Child rearing
- Communication device use
- Community mobility

- Financial management
- Health management and maintenance
- Meal preparation and clean-up
- Safety procedures and emergency responses
- Shopping

Deficits in attention, reasoning, memory, academics, communications and coordination can affect the individual's ability to perform self-care activities at home, in the community, and the work site. Examples of self-care activities related to employment include, but are not limited to:

- problems with reasoning, processing, and cognition that may cause the individual to repeatedly make poor decisions about basic necessities of life (health, safety, grooming, dressing, nutrition, money management, etc.) and frequently engage in questionable, dangerous, or illegal activities without considering their possible consequences;
- academic deficits, particularly reading, writing and arithmetic, that may severely limit an individual in the management of finances and in self-care activities that require following written directions;
- language deficits that may cause the individual serious difficulties in carrying out basic everyday functions such as shopping and banking that involve communication with others;
- memory deficits that may lead to forgetting to observe job-related safety precautions while on the job or in the community or to take prescribed medication dosage at the designated intervals;
- motor deficits that may cause clumsiness, balance problems and reduced response times resulting in accident proneness or injury;
- attention deficits that heighten distractibility, as well as behavioral deficits such as impulsive and/or explosive behaviors or the apparent disregard for rules and safety procedures that may result in accidents or unrealized consequences; and
- physical inability to perform common activities of daily living such as bathing, grooming, cooking, cleaning, or dressing independently.

### **Work Tolerance**

Work tolerance refers to the ability to carry out required physical and cognitive work tasks in an efficient and effective manner over a sustained period of time. Assessment of individual work tolerance can best be carried out by gathering information through work trials or interviews with

persons such as family members, teachers or employers who have observed the individual's capacity to sustain physical or cognitive activities over a period of time.

These deficits may be evident in a variety of ways including: difficulties in concentrating and focusing on the task at hand; frequent shifting from one uncompleted activity to another; or the inability to physically remain in the same location for an extended period of time without fidgeting, feeling restless, or even fleeing the site. The individual may be unable to “tune out” normal background noise and general conversation present in most workplaces, and as a result, may become distracted, even agitated, and unable to work effectively.

Persons with motor coordination and balance deficits or problems in processing sensory stimuli that must be coordinated with motor functions may experience serious limitations in the physical endurance and stamina requirements for many jobs. Individuals who have deficits in processing, attention, memory, reasoning, or communication may experience a serious degree of cognitive fatigue as a result of expending additional effort and energy to compensate for these deficits.

Physical and cognitive fatigue may result in a general decline in overall functioning as the work period progresses, demonstrated by lower productivity, decreased frustration tolerance, decreased ability to get along with others, increased mistakes, and an increased injury rate.

### **Interpersonal Skills**

The term “interpersonal skills” refers to the ability of the individual to interact in a socially acceptable and mature manner with co-workers, supervisors, the public, and others to facilitate the normal flow of work activities.

The assessment of interpersonal skill functioning can be carried out in a variety of ways. Useful sources of information are interviews with reliable informers such as family members, teachers and employers, or observation in situational assessments or work trials, particularly those involving interaction with others and teamwork. In many instances, the VR counselor may observe interpersonal skill deficits during the initial and subsequent interviews.

In addition, interpersonal skill limitations may be related to social competency and emotional maturity. These deficits may manifest themselves as inappropriate behaviors and language, lack of inhibitions, explosiveness, withdrawal, sudden shifts in mood and attitudes, low frustration tolerance, task avoidance, and unpredictability. Frequently, these types of limitations are the most devastating in their impact on successful work adjustment.

## **Work Skills**

The term “work skills” refers to the specific job skills required to carry out work functions as well as the capacity for an individual to benefit from training in these work functions. It is important to determine whether the deficits impact a major or critical function of a specific job and/or the individual’s general capacity to learn and carry out any work task. Useful assessment strategies to gather this information are paper and pencil tests, vocational tests, vocational evaluations, work trials, individual self-report and interviews with persons who have seen the individual perform tasks in school, at home or at work.

Deficits in reading, writing, spelling or arithmetic can seriously impair an individual’s ability to perform job tasks that primarily depend on skills such as legible handwriting; accurate handling of information; filling out forms and applications; calculating and manipulating numbers or money; and writing, preparing and proofreading documents that are error free.

Motor coordination deficits can pose serious limitations for job tasks that depend primarily on motor functions that require gross or fine motor control, efficiency and speed. Depending on the type of motor deficits, the individual may have serious limitations in performing jobs that require fine motor skills or the operation of machines and tools, in handling multiple items as on an assembly line, or in doing jobs that require manual labor, physical agility and balance, or the operation of heavy equipment.

Deficits in processing, reasoning, communication and memory may seriously limit an individual’s ability to organize, plan and problem solve, resulting in difficulties in learning new job tasks or adapting to changes in work requirements, particularly if they involve changes in task sequence, procedures, tools or working environments.

Problems with spoken or written language may adversely affect performance of specific work tasks such as taking orders or messages by phone, developing written reports, or performance of any work task that relies on oral instructions or printed materials.

## **Communication**

Communication refers to accurate and efficient transmission and/or reception of information, either verbally (spoken or written) or non-verbally. Possible assessment strategies may be standardized tests of receptive and expressive language, role-plays and interviews with the individual and persons who know the individual well, vocational evaluations, and situational assessment.

Some examples of receptive communication problems in work-related environment are difficulties with respect to: following oral and written instructions; interpreting written materials, particularly job manuals, work orders, diagrams and signs; understanding complex sentences and/or language subtleties in work-related items; completing job applications; learning new tasks or procedures from written materials or verbal instructions.

Some examples of expressive communication problems are: the tendency to transpose words or to delete less concrete parts of language such as prepositions, articles and connectors; illegible handwriting; inability to prepare a written report or letter due to spelling, grammatical or organizational difficulties; lack of organized development and focus in describing a topic; inadequately describing skills, work and educational experiences on a job application or during employment interviews; difficulties in using the telephone; and the inability to repeat or relay instructions to co-workers and others.

### **Self-Direction**

The term “self-direction” describes the capacity to organize, structure and manage activities in a manner that best serves the objectives of the individual. Adequate self-direction requires that an individual be able to plan, initiate and monitor behavior with respect to an identified outcome. A person may experience great difficulty formulating and/or implementing plans dealing with employment, living arrangements, or the direction of one’s own life. Also includes but not limited to, limited ability concerning reality adjustment, quality assessment of available choices, and/or thinking through choices to a logical conclusion and/or understanding the consequences of choices made and actions taken.

Limitations in self-direction are often evident in problems related to time management, such as understanding the time, effort, and resources needed to complete work assignments, causing other responsibilities to be neglected; missing or being late for appointments and meetings; and making decisions impulsively without considering previous plans, experiences, or consequences.

### **Determining Significance of Disability: Assessing Service Needs**

Determining the extent of an individual’s functional limitations is the first step in determining significance of disability. As described above, it is essential significance of disability. Furthermore, it is essential that the VR counselor determine an individual’s service needs based on assessment of all the functional capacities and all limitations within those capacities, not just limitations related to academic deficits.

The second step is determining the need for services based on the assessment of the individual’s functional limitations. Determining the need for services establishes whether the individual



meets the other criterion within the definition of “individual with a significant disability”- the criterion that the individual’s vocational rehabilitation can be “expected to require multiple VR services over an extended period of time.” State VR agencies may develop definitions for “multiple VR services” and for “extended period of time” or may provide guidelines to help counselors make these decisions.

Once the VR counselor has assessed the individual’s limitations in the functional capacity areas and identified the VR services needed to address the functional limitations and the time period over which services will need to be provided, the counselor will then have the information necessary to determine the level of significance of the individual’s disability.

Any eligible person may request mediation, an administrative review, or fair hearing to appeal his/her classification by Priority Category. This request must be made within thirty (30) days after notification of classification by Priority Category.

The determination of the level of significance may be made at acceptance on the Application Details screen; however, level of significance must be made prior to the development of the Individualized Plan for Employment (IPE) and to move the case above Status 10. Staff should use caution when making a determination of level of significance at Application unless they are comfortable with the detail and accuracy of information obtained during the initial interview. If there is doubt, then staff should obtain additional remarks or schedule additional assessments prior to determining the level of significance.

The level of significance will be documented in the Comprehensive Commonwealth Workforce Development System (CWDS) on the Order of Selection screen. The case file must support the determination of the level of significance including the functional limitation factors on which a level of significance is based. Functional limitation factors should be documented on the Certificate of Eligibility section B in narrative form or on the Employment Barrier Information screen for all Non-Social Security Administration (SSA) eligible cases.

For all SSA eligible cases, functional limitation factors can be documented on the Certificate of Eligibility in Section B in narrative form, on the Employment Barrier Information screen, in a Case Progress Note, or contained within the medical/psychological /other documentation that has been received.

Staff may use the “Other” functional limitation factors as appropriate to document limitations that are not currently indicated. Staff may continue to use the functional limitation factor “Severity of impairment caused repeat hospitalizations” and/or “Other medical interventions” as supplements to the seven stand alone functional limitation factors described above. Clear evidence of this type of limitation must be present within the case file.

On the Application Details\_screen the “Significance of Disability Indicator” (SDI) needs to be completed when a case is opened using the codes listed below.

Description	Significance of Disability Indicator (SDI)	Case Status
Undetermined	U	Status 00 to 11
Most Severely Disabled	MSD	Status 02 or Higher
Severely Disabled	SD	Status 02 to 11
Non-Severely Disabled	NSD	Status 02 to 11

At referral (Status 00), SDI can be set U, NSD, SD, or MSD on the Application Details screen. If an individual is determined eligible AND meets the MSD criteria, the case is placed into Status 10 by completing the Certificate of Eligibility and Order of Selection process. Proceed with the Individual Plan for Employment (IPE) development and fiscal authorization(s) per customer and counselor agreement.

#### **B. Notification of Eligible Individuals**

All new applicants for services must be notified about the Order of Selection.

#### **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Status 11 is used to identify cases accepted for VR services coded as Significantly Disabled and Non Significantly Disabled. Federal Dollars can only be used for NSD and SD cases to determine the level of the significance of the disability using the following Service Codes:

01-Diagnostics and

04- Maintenance & Transportation but only in support of diagnostics services.

#### **D. Maintenance of Records**

Proper documentation is required to change the level of significance of the disability in the case file. A new Order of Selection screen needs to be completed to change the level of significance and additional documentation indicating the increased level of significance must be created.

#### **E. Role of the State Rehabilitation Council**

The Pennsylvania State Board of Vocational Rehabilitation, in consultation with the State Rehabilitation Council, directs the agency to establish and implement an Order of Selection.

## **RHODE ISLAND ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Rhode Island's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The ORS Administrator or her/his designee will announce publicly the date, level, and rationale for the imposition of an Order of Selection for services. [Policy and Procedures Manual]

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Rhode Island.

The Office of Rehabilitation Services intends to evaluate all applicants without delay to determine eligibility for services and to provide services to all eligible persons until such time that a reduction in services must be imposed due to a shortage of resources (funds, community rehabilitation programs, staff, or other resources). In the event such a shortage should occur, it is required that ORS implement the Order of Selection for services. [Policy and Procedures Manual]

#### **A. Establishment of Priority Categories**

Categories of Order of Selection for Services [Policy and Procedures Manual]:

1. Individuals with the most significant disabilities.
2. Individuals with significant disabilities.
3. All other individuals with disabilities who cannot be classified in a higher category.

#### **B. Terminology**

The following definitions are used for purposes of the order of selection policy. [Policy and Procedures Manual]

##### **1. Individual with a disability**

- a. An "individual with a disability" means any individual:

- i. Who has a physical or mental impairment which, for that individual, constitutes or results in a substantial impediment to employment; and
  - ii. Who can benefit in terms of an employment outcome from vocational rehabilitation services.
- b. The term "disability" means a physical or mental impairment that constitutes or results in a substantial impediment to employment.

## **2. Individual with a most significant disability**

- a. The term "individual with a most significant disability" means an individual:
  - i. Who has a severe physical or mental impairment which seriously limits three (3) or more functional capacities (e.g., mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and
  - ii. Whose vocational rehabilitation can be expected to require multiple VR services over an extended period of time; and
  - iii. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disabilities, end-stage renal disease or another disability or combination of disabilities based on an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

## **3. Individual with a significant disability**

- a. The term "individual with significant disability" means an individual:
  - i. Who has a severe physical or mental impairment which seriously limits one or more functional capacities (e.g., mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and
  - ii. Whose vocational rehabilitation can be expected to require multiple VR services over an extended period of time; and
  - iii. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal

disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disabilities, end-stage renal disease or another disability or combination of disabilities based on an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

#### **4. Primary rehabilitation services.**

The term "primary VR services" means those services which reduce the impact of functional limitations on employment outcome (physical and mental restoration services, vocational and other training services, placement services, interpreter and reader services, recruitment and training in public service, rehabilitation teaching, orientation and mobility services, occupational licenses, tools, equipment, and initial stocks and supplies, rehabilitation technology, telecommunication, sensory, and other technological aids and devices, referral services, and supported employment services) as opposed to supportive services which complement the provision of primary services (transportation, including van modification; maintenance; services to family members; personal assistance services (on or off the job) provided while an individual with a disability is receiving primary services.

#### **5. Multiple Vocational Rehabilitation Services.**

The term "multiple VR services" means two (2) or more primary services (except assessment for determining eligibility and vocational rehabilitation needs and the customary guidance and counseling provided during the management of VR cases).

#### **6. Extended Period of Time.**

The term "extended period of time" means, as a guideline, six (6) months or more.

#### **7. Ranking Individuals Within a Priority (Waiting Lists)**

A statewide waiting list will be maintained by category and by application date of all those eligible individuals who do not meet Order of Selection priorities. [Policy and Procedures Manual]

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order

of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Authority to Open and Close Priority Categories, as Needed**

The ORS Administrator or her/his designee will announce publically the date, level, and rationale for the imposition of an Order of Selection for services. [Policy and Procedures Manual]

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

Upon a finding of eligibility and completion of the certification of eligibility, the VR counselor will determine the appropriate Order of Selection category for the eligible individual. If the priority category to which the individual is assigned is one which is currently being served by ORS, case status "10" is utilized on the MIS. If it is a category not currently being served, case status "04" is utilized in MIS. [Policy and Procedures Manual]

When information which is relevant to an Order of Selection classification is obtained about an individual subsequent to a classification decision, the VR counselor must promptly reassess all relevant data to the extent necessary to assure an accurate decision. [Policy and Procedures Manual]

#### **B. Notification of Eligible Individuals**

Whenever the Order of Selection is imposed, all applicants for VR services will receive both an oral and written explanation about the Order of Selection as part of their explanation about Agency services and processes. [Policy and Procedures Manual]

A letter of explanation including a notice of due process rights is sent to all individuals who are eligible but who do not meet Order of Selection priority categories currently being served. These individuals are placed on a waiting list for services. In addition, they are informed of the availability and scope of Information and Referral Services. Included with this letter is a referral, specific points of contact, and information about the most suitable services that will assist the

individual to prepare, secure, retain, or regain employment. Copies of the letters are filed in the case record. [Policy and Procedures Manual]

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Requests for Post-Employment services are not subject to the Order of Selection. [Policy and Procedures Manual]

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

ORS will also provide to all individuals assigned to a waiting list access to Information and Referral Services as described below. The term "information and referral services" means vocational rehabilitation information, advice, and guidance to assist individuals in achieving employment. It includes appropriately referring individuals to Federal, State, and other programs such as the one-stop career centers that are best suited to meet the individual's specific employment needs. [Policy and Procedures Manual]

### **E. Maintenance of Records**

The case record must include the rationale for the Order of Selection classification of the individual and relevant documentation. To support a determination of either significant or most significant disability, the counselor should clearly describe and quantify, as much as possible, the functional limitations caused by the individual's disability or disabilities, the condition(s) under which the limitations occur, and the employment-related consequences for the individual. [Policy and Procedures Manual]



## **SOUTH DAKOTA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes South Dakota's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. The policies described in this section are set out in an Attachment to the State plan, the Counselor Manual, and Certification of Severity of Disability form.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

With the continued increase in consumers and case service costs, it was not possible to provide the full range of vocational rehabilitation services in a timely manner to all eligible individuals with disabilities who apply and are found eligible for such services. Beginning 10/1/2006, the Division of Rehabilitation Services (DRS or Division) implemented this Order of Selection Policy. Procedures for implementing an order of selection for the provision of vocational rehabilitation services were determined on the basis of first serving those eligible individuals who meet the definition established by the State of an "individual with the most significant disabilities," followed by individuals with significant disabilities, then individuals with disabilities. [2010 State Plan Attachment]

On October 1, 2006, the Division of Rehabilitation Services implemented an Order of Selection to the extent of all new eligibilities determined in Category II and III were placed on the waiting list. However during the course of the following 12 months, all the individuals in category II were taken off the waiting list and could begin the IPE development. All remaining individuals in category III were taken of the waiting list on 1/1/2008. [2010 State Plan Attachment]

As of 10/1/2008, all categories of individuals are being served with no eligible individuals being placed on a waiting list. When an order of selection is in effect, DRS will provide all eligible individuals with disabilities who are placed on the waiting list with information about, and referral to, other Federal or State programs (including other components of the statewide workforce investment system) that can assist them in preparing for, securing, retaining, or regaining employment. [2010 State Plan Attachment]

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of South Dakota.

**A. Establishment of Priority Categories** [2010 State Plan Attachment; Manual 1.4.7]

**PRIORITY CATEGORY I-** Are individuals who meet the definition of individuals with the most significant disabilities which seriously limits them in two or more functional capacities.

**PRIORITY CATEGORY II-** Are individuals who meet the definition of individuals with significant disabilities which seriously limits them in one functional capacity.

**PRIORITY CATEGORY III-** Individuals with disabilities.

**B. Terminology** [2010 State Plan Attachment; Manual 1.4.9]

The following definitions are used for purposes of the order of selection policy.

1. **Individual with a disability** means an individual
  - Who has a physical or mental impairment;
  - Whose impairment constitutes or results in a substantial impediment to employment and;
  - Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.
2. **Individual with a most significant disability**  
means an individual with a disability who meets the criteria for having a significant disability and *in addition* has serious limits in two or more functional capacities (such as, but not limited to, mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome. Individuals who meet the criteria for Priority Level I are determined to be individuals with the “Most Significant Disability”.
3. **Individual with a significant disability** means an individual with a disability—
  - Who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
  - Whose vocational rehabilitation can be expected to require *multiple vocational rehabilitation services* over an *extended period of time*; and
  - Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the

basis of an assessment for determining eligibility and vocational rehabilitation needs described in subparagraphs (A) and (B) of paragraph (2) to cause comparable substantial functional limitation.

- Individuals who are Social Security recipients are determined to have a significant disability and would be classified at a minimum in Priority Category II. The situation may occur where the VR agency is on an Order Of Selection category where eligible individuals in priority category II are being put on the waiting list. The presumptive eligibility should be done but the situation may occur where there are inadequate records to determine the individual in priority category I. When this situation occurs, the “OOS Presumed Eligible Letter” from the VR FACES should be mailed to the individual. [Manual, 1.4.13]

#### **4. Seriously limits or substantial impediment to employment**

means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

#### **5. Functional limitation areas include**

- a. **Mobility** - refers to the capability of moving efficiently from place to place.
- b. **Communication** - refers to accurate and efficient transmission and/or reception of information, either verbally (spoken or written) or non-verbally.
- c. **Self-care** - refers to the skills necessary to fulfill basic needs such as those related to health, safety, food preparation and nutrition, hygiene and grooming, and money management.
- d. **Self Direction** - describes the capacity to organize, structure and manage activities in a manner that best serves the objectives of the individual. Adequate self-direction requires that an individual be able to plan, initiate and monitor behavior with respect to an identified outcome.
- e. **Interpersonal Skills** - refers to the ability of the individual to interact in a socially acceptable and mature manner with co-workers, supervisors, and others to facilitate the normal flow of work activities.
- f. **Work Tolerance** – refers to the ability to carry out required physical and cognitive work tasks in an efficient and effective manner over a sustained period of time.
- g. **Work Skills** – refers to the specific job skills required to carry out work functions as well as the capacity for an individual to benefit from training in these work functions.

#### **6. Multiple Vocational Rehabilitation Services**

means three or more services as listed under Section 103 (a) of the Rehabilitation Act, as Amended in 1998.

**7. Extended Period of Time**

means that the active eligible status of the case is projected to be six months or more.

**C. Acceptable and Unacceptable Factors**

Assignment of individuals to priority categories shall be determined solely on the severity of the disability and how it seriously limits the functional capacities. [2010 State Plan Attachment]

The following factors **shall not** be used as criteria for establishing selection priorities:

- Type of disability.
- Age, sex, race, color, creed, or national origin.
- Type of expected employment outcome.
- Income level of the individual or the individual's family.
- The need for specific services or anticipated costs of services required by the individual. [2010 State Plan Attachment; Manual 1.4.6]

**D. Ranking Individuals Within a Priority (Waiting Lists)**

When the Director of DRS has invoked an order of selection to prioritize the provision of VR services, each eligible individual will be assigned into one of the three (3) priority categories listed above based on how their disability(ies) meet the criteria for each priority category. If necessary, further prioritization within each priority categories will be done by placing all individuals who have been assigned to a particular category in an order that lists each individual according to the actual time that a completed application was submitted to DRS. [2010 State Plan Attachment; Manual 1.4.8]

**III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

**A. Authority to Open and Close Priority Categories, as Needed**

If the Director of DRS determines that resources are further limited to where the Order of Selection must be restricted to a higher priority, the field offices will be notified immediately in writing of the closure of the appropriate category (ies) and the date that this action becomes effective. All other procedures such as applicant/client notification of the new priority level, continuity of services that have begun for those individuals with IPEs, assessments, etc. shall continue as they did with the initial implementation of the Order of Selection. [2010 State Plan Attachment]

If the Director of DRS determines that additional resources are available but are not sufficient to serve an entire category, individuals will be given written notice that their case may be activated from the Order of Selection Deferred Status in the category that was opened, in the order of their date of application. If additional resources are identified which are sufficient to serve all eligible individuals, the field offices will be notified immediately of the date that the order of selection will no longer be effective. [2010 State Plan Attachment]

If the situation arises that resources become available, part or all of a priority category that was on a waiting list could be opened up to receive services. If only part of the category is opened up, individuals selected to begin the development of their IPE will be selected upon their application date. The Division Director will notify staff if this change occurs and if only a portion of the individuals are to be served. The State Office will provide the list of the individuals who will be transferred off the list and back on the previous counselor's caseload to begin their IPE development. The VR Counselor will contact the individuals on their list and determine if they want to begin their IPE development. The case management activities in 1.14.12 will be followed with sending the individual the "OOS Remove Off Waiting List Letter". It is important to modify this letter to reflect the priority classification. [Manual, 1.4.14]

#### **B. Continuation of Services**

The State agency shall continue providing services that began under IPEs of eligible individuals developed prior to the effective date of the Order of Selection. [2010 State Plan Attachment]

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

**Assessment, in general** [2010 State Plan Attachment]

The State agency shall continue to accept applications and make determinations of eligibility while notifying all eligible individuals of the priority categories, their assignment to a particular category, and their right to appeal this assignment.

When setting up the Order of Selection, DRS shall take into consideration all eligible individuals and prioritize their order of receiving services based solely on the criteria established for each priority category and on the time that they applied for services

The Order of Selection shall be implemented statewide. The same criteria for assigning all eligible individuals to priority categories shall be used in all areas of the state.

Assessment services necessary to determine eligibility (including services in trial work and extended evaluation) and priority for services shall not be impacted by the Order of Selection.

NOTE: If the individual's appeal results in their case moving to a more significant disability priority level and that level is eligible to receive services under the order of selection criteria, the individual shall be served at that level.

The counselor must have sufficient data, either through existing information or purchased assessments to assign a priority category for each individual determined to be eligible.

The counselor shall determine the eligible individual's priority category *before* the development of an IPE. This decision will be based solely on the documentation of severity of the disability and the documentation of functional limitations that clearly show that the individual meets the criteria to be classified as having disabilities that are most significant, significant or non-significant).

The case record shall contain sufficient documentation and rationale, which would support the individual's assignment to a particular priority category.

In instances where it is felt that the significance of the disability has increased or the individual's disability has improved to the point that a counselor or client believes a change in priority categories is justified, a reassessment will be implemented.

When an order of selection is implemented, it is anticipated that some individuals will be in the application status on that date. If the information to determine eligibility is in the file prior to the implementation date of the OOS, the VR Counselor should proceed with the eligibility decision. If the information to determine eligibility is not in the file prior to the implementation date of the OOS, then these individuals should receive the "Current Applicants Letter" found in the VR FACES. When the information becomes available, these individuals will need to follow the procedures of the order of selection as described in 1.4.5 below. [ Manual, 1.4.3 Impact for individuals in application status at the time of implementation]

#### **Assessment in general (Manual 1.4.10]**

At the time of eligibility or as part of the comprehensive assessment, all eligible individuals will be categorized into one of the three priority categories based. The individual shall be classified into the highest priority category for which she/he qualifies. The case file will contain a [Certification of Severity of Disability](#) form to document the priority category classification. [See Appendix]

If an individual's circumstances change or when it has been determined that an individual has been misclassified while he/she is in a deferred status, the priority classification shall be changed accordingly. The case file must contain the revised [Certification of Severity of Disability](#) with a new date. The old certification must stay in the file.

### **Assessment regarding serious limits in functional capacity due to disability [Manual, 1.4.9]**

#### **1. Mobility** - refers to the capability of moving efficiently from place to place.

Assessment of mobility limitations is most effectively done through direct observation of the individual in the environment. Obtaining information from the individual, the individual's family, teachers, previous employers or supervisors may also be helpful. Additionally, specialty evaluations such as driver evaluations or assessment by a travel trainer in the community may be considered. Mobility limitations may also be revealed during inquiries about other limitations. For example, the individual may reveal that he or she becomes lost on the way to the VR counselor's office if the counselor asks the individual why he or she is consistently late for appointments.

Note: limited financial resources to own or operate a personal vehicle is not considered a mobility limitation due to the person's disability.

#### **2. Communication** - refers to accurate and efficient transmission and/or reception of information, either verbally (spoken or written) or non-verbally.

Assessment strategies may be standardized tests of receptive and expressive language, assessments strategies for visual impairments, role-plays and interviews with the individual and persons who know the individual well, vocational evaluations, and situational assessments.

Note: Communication barriers as a result of foreign language are not considered disability related and are not considered as an impediment in this category.

#### **3. Self-care** - refers to the skills necessary to fulfill basic needs such as those related to health, safety, food preparation and nutrition, hygiene and grooming, and money management.

The most effective way to assess the individual's self-care limitations is through interviews with the individual, the individual's family, teachers and employers, and by review of the individual's history. The VR counselor may also identify self-care limitations while interviewing and working with the individual. The VR Counselor may also consider utilizing information from an independent living assessment.

#### **4. Self Direction** - describes the capacity to organize, structure, and manage activities in a manner that best serves the objectives of the individual. Adequate self-direction requires that an individual be able to plan, initiate and monitor behavior with respect to an identified outcome.

Problems in executive functioning can be inferred from performance on specific neuropsychological tests. The impact of such problems on self-direction capacities can be confirmed by interviews with the individual and informed respondents, such as family members, teachers or employers. VR counselors may also observe the impact of limitations in self-direction as they begin to work on vocational planning tasks with individuals

**5. Interpersonal Skills** - refers to the ability of the individual to interact in a socially acceptable and mature manner with co-workers, supervisors, and others to facilitate the normal flow of work activities.

The assessment of interpersonal skill functioning can be carried out in a variety of ways. Useful sources of information are interviews with reliable informers such as family members, teachers and employers, or observation in situational assessments or work trials, particularly those involving interaction with others and teamwork. In many instances, the VR counselor may observe interpersonal skill limitations during the initial and subsequent interviews. Various behavior assessment instruments may be useful for the VR counselor as clinical tools in the identification and assessment of behaviors that may adversely impact the vocational functioning of the individual.

**6. Work Tolerance** – refers to the ability to carry out required physical and cognitive work tasks in an efficient and effective manner over a sustained period of time.

Assessment of an individual's work tolerance can best be carried out by gathering information through work trials or interviews with persons such as family members, teachers or employers who have observed the individual's capacity to sustain physical or cognitive activities over an extended period of time.

**7. Work Skills** – refers to the specific job skills required to carry out work functions as well as the capacity for an individual to benefit from training in these work functions.

In assessing the type and degree of the work skill limitations caused by a disability, it is important to determine whether the limitations impact a major or critical function of a specific job and/or the individual's general capacity to learn and carry out any work task. Useful assessment strategies to gather this information are paper and pencil tests, vocational tests, vocational evaluations, work trials, individual self-report and interviews with persons who have seen the individual perform tasks in school, at home or at work.

#### **B. Notification of Eligible Individuals [2010 State Plan Attachment]**

All applicants and eligible individuals impacted by the Order of Selection shall be notified in writing of the Order of Selection and their subsequent assignment to a particular priority classification. Included in the written notification will be their right to appeal the determination of their priority classification and the availability of the Client Assistance Program (CAP).

Individuals who are found to be eligible but whose category is closed at the time of eligibility determination shall be placed in an Order of Selection Deferred Status. These individuals will be



given written notification of this placement. Procedures have been developed for initially notifying individuals of their “deferred status” and maintaining regular contact with these individuals to keep them apprised when or if circumstances change concerning their assigned category.

The priority category and the justification for that determination shall be communicated in writing or in another mode of communication that may be required by the eligible individual with documentation in the case file. This would include:

- Original notification of priority category.
- Reclassification notification as a result of changes in the consumer’s circumstances.
- Notification of non-reclassification following a review of the assignment to a priority category.

Each notification shall include the right to appeal and the availability of CAP.

Individuals in Order of Selection Deferred Status shall be contacted at least once in the first 90 days after being placed in deferred status and counselors shall make a reasonable attempt to annually contact these individuals as long as they remain in that status. A record of these contacts will be kept in the case service records.

Individuals not wanting to be in Order of Selection deferred status after being informed that their priority category is currently not open or individuals no longer interested in remaining in deferred status after the first 90 days or subsequent contact, will be closed from Order of Selection Deferred Status after they have been sent written notification of the agency’s intent to close their case and their right to appeal the agency’s decision to do so, including information on how to contact CAP. In addition, the individual will be informed that they may reapply for services in the future if circumstances that caused DRS to implement an order of selection change or to close their assigned priority category.

**Below is guidance in the Manual [1.4.12 Individuals Determined in a Priority Category not high enough to receive VR Services]**

When an eligible individual is determined to be in an OOS Priority Category classification that is not high enough to receive services, the individual will be placed on an Order Of Selection waiting list. The following case management procedures need to be used for these situations.

- Individuals will have the [Certification of Severity of Disability](#) form in the case file to document the priority category classification
- Individuals receive “OOS Eligible and Waiting List Letter” found in the VR FACES. It is important to modify this letter to inform the individuals of their priority classification. This letter also informs the individuals of their right to due process and the Client Assistance Program to appeal their classification. This letter should include the referral sources as described below.
- All eligible individuals on an order of selection waiting list shall be provided information and guidance about goods or services provided by other components of the state wide

workforce investment system and other Federal and state programs which can be of assistance to individuals with disabilities in preparing for, securing, retaining, or regaining employment. A list of potential referral sources has been developed for various communities in South Dakota. The District Supervisors are responsible for updating this list for the communities in their area.

- The case file will be transferred to the appropriate state-wide caseload. Caseloads of Priority III and Priority II have been created for this purpose.
- The VR Counselor or Counselor Aide (if designated by the Supervisor) should diary the date of 90 days after the eligibility determination to contact the individual. This should be a phone contact if possible. The purpose of the contact will be to inform the individual that they are still on a waiting list. The individual should be asked if they still want to remain on a waiting list or have their case closed. If they choose to have their case closed, then the counselor should proceed with closing the case and sending out the OOS Closure Letter.
- The VR Counselor should diary the date of one year after the eligibility determination to contact the individual. This should be by letter. The purpose of the contact will be to inform the individual that they are still available and still want to be on a waiting list. The "OOS and Still on Waiting List letter will inquire if they still want to remain on a waiting list or have their case closed. If they choose to have their case closed, then the counselor should proceed with closing the case and sending out the OOS Closure Letter. If after 2 attempts, the individual can no longer be contacted, the case can be closed with documentation of unable to contact.
- These individuals should not receive the eligibility letter at this time

#### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

The State agency shall ensure that sufficient resources are available to meet obligations to provide all services set out in the individual's IPE. [2010 State Plan Attachment]

When an order of selection is implemented, individuals who are currently eligible will not be impacted with their current vocational rehabilitation case. They should proceed with the development of their employment plan and services as determined necessary. Future IPE amendments and future services (including post employment services) for current eligible consumers are also not impacted. The VR Counselor should inform current consumers of this if they have questions. [Manual, 1.4.4 Impact for individuals who are already eligible at the time of implementation]

#### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection** [2010 State Plan Attachment]

The State agency shall provide eligible individuals who do not meet the order of selection with information about, and referral to, other Federal and State programs that can assist them in achieving an employment goal.

DRS will provide only information and referral services to all individuals in an Order of Selection Deferred Status. No other services, including no-cost IPE services, shall be provided to individuals in this status.

When an order of selection is in effect, DRS will provide all eligible individuals with disabilities who do not meet the order of selection criteria with information about, and referral to other Federal or State programs (including other components of the statewide workforce investment system) that can assist them in preparing for, securing, retaining, or regaining employment. An appropriate referral made through the system shall include, for each of these programs, provision to the individual of—

- a. a notice of the referral by DRS to the agency carrying out the program;
- b. information identifying a specific point of contact within the agency carrying out the program; and
- c. Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

#### **E. Maintenance of Records [2010 State Plan Attachment]**

The priority category and the justification for that determination shall be communicated in writing or in another mode of communication that may be required by the eligible individual with documentation in the case file. This would include:

- Original notification of priority category.
- Reclassification notification as a result of changes in the consumer's circumstances.
- Notification of non-reclassification following a review of the assignment to a priority category.

When an eligible individual is determined to be in an OOS Priority Category classification that is not high enough to receive services, the individual will be placed on an Order Of Selection waiting list. The following case management procedures need to be used for these situations.

- Individuals will have the [Certification of Severity of Disability](#) form in the case file to document the priority category classification. [Manual 1.4.12]

#### **F. Role of the State Rehabilitation Council**

DRS, in consultation with the State Rehabilitation Council (SRC), shall describe and explain its order of selection policy and disseminate this policy to the public for review and comment prior to implementation. This State Plan Attachment was presented to the constituency as part of mandated requirements in the preparation of this state plan. Full public input was provided at public meetings and the State Rehabilitation Council was consulted. [2010 State Plan Attachment]

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## ATTACHMENT

### Certification of Severity of Disability

**Consumer:**

**SSN:**

**Caseload:**

**Primary Disability:**

**Secondary Disability:**

**Identify in each of the categories (Mobility, Communication, Self-Care, Self Direction, Interpersonal Skills, Work Tolerance, and Work Skills) if the severity of the disability seriously limits the functional capacities. A category remaining blank refers to no serious limits in this area.**

**Yes\_\_\_ No\_\_\_ Mobility**

<b>Refers to the capability of moving efficiently from place to place.</b>	
Requires assistive devices (cane, canes for the blind, crutches, prosthesis, walker, wheelchair) to be mobile.	
Has significant spatial orientation and perceptual problems influencing directional sense.	
Has significant memory or cognitive limitations that would interfere with the individual's ability to navigate due to the inability to recall or recognize landmarks.	
Has significant limitations in balance and motor coordination that may result in physical clumsiness or being accident prone in driving or difficulty walking that may cause difficulties when using escalators, elevators, and people movers.	

Requires assistance from another individual to travel from place to place because of the disability.	
Has significant physical limitations that affect the person's ability to climb stairs and walk distances such as 100 yards.	
Is unable to obtain a driver's license because of their disability such as seizures.	
Is unable to tell time or has time sense limitations that result in lateness or difficulty comprehending public transportation schedules.	
<b>Other (describe):</b>	

Note: limited financial resources to own or operate a personal vehicle are not considered a mobility limitation due to the person's disability.

## Yes\_\_\_ No\_\_\_ **Communication**

<b>Refers to accurate and efficient transmission and/or reception of information, either verbally (spoken or written) or non-verbally.</b>	
Has significant difficulty following written instructions such as understanding written materials like job manuals, work orders, diagrams, or signs.	
Has significant difficulty communicating due to visual or hearing limitations. Does not demonstrate understanding of simple requests or is unable to understand one-to-two step instructions including instructions given through an interpreter for an individual who is deaf.	
Expressive and receptive primary mode of communication is unintelligible to non-family members.	
Thought process and/or mood extremely impaired as evidenced by symptoms such as hallucinations, delusions, extreme mood swings, depression and/or severe deficit in attention span.	
Has significant difficulties in using the telephone.	
Inability to repeat or relay instructions to co-workers or others.	
<b>Other (describe):</b>	

Note: Communication barriers as a result of foreign language are not considered disability related and are not considered as an impediment in this category.

**Yes\_\_\_ No\_\_\_ Self-Care**

<b>Refers to the skills necessary to fulfill basic needs such as those related to health, safety, food preparation and nutrition, hygiene and grooming, and money management.</b>	
Has significant problems with reasoning, processing and cognition that may cause the individual to repeatedly make poor decisions about basic necessities of life (health, safety, grooming, dressing, nutrition, etc.) or frequently engage in dangerous activities without considering their possible consequences.	
Has significant memory limitations that may lead to forgetting to observe job-related safety precautions or to take prescribed medications at the designated intervals.	
Is unable to perform activities of daily living without assistance or assistive technology or a personal attendant.	
Has significant attention deficits that heighten distractibility, as well as behavioral limitations such as impulsive and/or explosive behaviors or the apparent disregard for rules and safety procedures that may result in accidents.	
Is unable to understand money/change making.	
<b>Other (describe):</b>	

**Yes\_\_\_ No\_\_\_ Self Direction**

<b>Describes the capacity to organize, structure and manage activities in a manner that best serves the objectives of the individual. Adequate self-direction requires that an individual be able to plan, initiate and monitor behavior with respect to an identified outcome.</b>	
Is significantly limited by lack of insight, i.e., inadequate awareness of their strengths and weaknesses, an inability to monitor their performance to detect if it is meeting the demands of the environment, and inability to adjust behaviors and activities if the current performance is not adequate.	
Shifts from one activity to another without purpose.	
Fails to follow through with and complete assignments.	
Inability to set up and implement a study schedule or job search.	
Has significant difficulty in adapting to new circumstances when there are changes in work requirements or conditions, particularly in settings that require job sharing or teamwork.	
Requires intensive supervision and direction on an on-going or episodic basis in order to solve problems and maintain behaviors necessary to work.	

Places self or job at risk due to poor decision-making, reasoning, and/or judgment.	
Behavior is typically in contradiction to preparing for, securing, retaining, or regaining employment.	
<b>Other (describe):</b>	

**Yes\_\_\_ No\_\_\_ Interpersonal Skills**

<b>The ability of the individual to interact in a socially acceptable and mature manner with co-workers, supervisors, and others to facilitate the normal flow of work activities.</b>	
Has significant limitations related to job-related interpersonal skills, such as; inappropriate interactions with peers or supervisors; working collaboratively with others; accepting supervisory monitoring and criticism; and understanding acceptable types and levels of personal interaction.	
Has significant limitations related to social competency and emotional maturity. These limitations may manifest themselves as inappropriate behaviors, language, lack of inhibitions, explosiveness, withdrawal, sudden shifts in mood and attitudes, low frustration tolerance, task avoidance, and unpredictability.	
Has significant disfigurement or deformity so pronounced as to cause social rejection.	
Is unable to develop social support systems in a natural environment.	
Has demonstrated behavior that is a danger to self or others without supervision.	
Has a negative self concept which seriously limits ability to interact with others.	
<b>Other (describe):</b>	

**Yes\_\_\_ No\_\_\_ Work Tolerance**

<b>The ability to carry out required physical and cognitive work tasks in an efficient and effective manner over a sustained period of time.</b>	
Has significant physical and/or cognitive fatigue that may result in a general decline in overall functioning as the work period progresses, demonstrated by lower productivity, increased mistakes, and increased injury rate.	
Does not have the capacity to sustain an adequate level of work performance in pressure situations such as increased production schedules, shortened time lines, or unexpected changes in job duties.	
Is unable to sustain work for more than 4 hours per day.	
Is unable to perform work longer than 6 months due to cyclical nature of their disability.	
Is restricted to sedentary or light duty activities and occupations as classified by the DOL.	
Is typically adversely affected by environmental conditions in the work place, such as, heat, cold, fumes, etc.	
<b>Other (describe):</b>	

**Yes\_\_\_ No\_\_\_ Work Skills**

<b>Ability to do specific job skills required to carry out work functions as well as the capacity for an individual to benefit from training in these work functions.</b>	
Has a significant inability to learn new work skills and requires intensive and/or specialized training not required by the average worker to learn and perform job tasks.	
Has significant academic limitations in math that seriously limit ability to perform job tasks that primarily depend on skills such as accurate handling of information, filling out forms, and calculating and manipulating numbers or money.	
Has significant motor coordination limitations which pose serious limitations for job tasks that depend primarily on motor functions that require control, efficiency, and speed.	
Has significant motor coordination limitations that seriously limit performing jobs that require fine motor skills or the operation of machines	



and tools in handling multiple items such as in an assembly line or in jobs that require manual labor, physical agility and balance, such as the operation of heavy equipment.

**Other (describe):**

## Certification of Severity of Disability

I hereby certify that the individual:	
<b>Priority Category I</b> – Meets the definition of individuals with the most significant disabilities which seriously limits them in two or more functional capabilities.	
<b>Priority Category II</b> – Meets the definition of individuals with significant disabilities which seriously limits them in one functional capacity.	
<b>Priority Category III</b> – Meets the definition of individuals with disabilities.	

\_\_\_\_\_  
Name of Person Completing Form

\_\_\_\_\_  
Date

## TENNESSEE ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Tennessee’s policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

#### A. Establishment of Priority Categories

The major purpose of an order of selection is to provide an organized, equitable method of serving individuals with disabilities if all eligible persons who apply cannot be served. The first priority is given to individuals with the most significant disabilities. [2001.02]

The following priority categories are established as a means of determining which individuals may be served. [2001.05]

**PRIORITY CATEGORY 1**– Eligible individuals who are most significantly disabled.

**PRIORITY CATEGORY 2** – Eligible individuals who are significantly disabled.

**PRIORITY CATEGORY 3**– Eligible individuals who are not significantly disabled whose vocational rehabilitation is expected to require multiple services.

**PRIORITY CATEGORY 4** – Eligible individuals who are not significantly disabled and who cannot be classified into a higher priority category.

#### B. Terminology [2001.06]

The following definitions are used for purposes of the order of selection policy.

1. **“Individual with a most significant disability”** means an individual who meets the criteria for “individual with a significant disability” but whose physical or mental

impairment seriously limits two or more functional capacities in terms of an employment outcome.

2. **“Individual with a significant disability”** means an individual who meets the following three criteria:
  - a. The individual has a severe physical or mental impairment which seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome, and
  - b. The individual has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations, and
  - c. The individual’s vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

Any individual who is receiving Social Security Disability Insurance benefits (SSDI) or Supplemental Security Insurance benefits (SSI) as a result of disability or blindness is presumed to satisfy **ALL** of the criteria for having a significant disability and is also presumed to meet all of the eligibility criteria for vocational rehabilitation services, **provided the individual intends to achieve an employment outcome.**

**NOTE:** If an individual who is documented as receiving or having received SSI/SSDI based on disability is over age 65 at the time of application, do not presume eligibility. Since disability benefits are converted to Social Security retirement benefits at age 65, we cannot presume eligibility.

3. **“Seriously limits functional capacities in terms of employment outcome”** means serious limitations due to or attributable to the individual’s disability as follows:
  - a. **Mobility**—Unable to use available public transportation because of a physical disability; **OR** unable to operate a motor vehicle because of a physical disability; **OR** has limited or no independent mobility (e.g. requires use of a wheelchair, walker, prosthesis, etc.).

Documentation: A mobility impairment will, under most circumstances, require documentation from a physician or other medical source. If the seriousness of the

mobility impairment is readily apparent (for example, the individual uses a wheelchair and the limbs are atrophied, a prosthesis is evident, etc.), the Counselor may document the mobility impairment by outlining the basis for the observation in Part 2 of the eligibility determination. [3003.09]

- b. **Communication**—Has severely impaired expressive and/or receptive communication, either oral or written; **OR** has speech that is unintelligible to non-family members.

Documentation: A communication impairment must be documented through a report by a physician, psychologist, speech therapist, audiologist, or other appropriate professional, depending on the nature of the disability. If the individual has a specific learning disability (SLD) involving communication, there must be documentation of severe deficits in 3 of the communication (not math) areas. Under certain circumstances, the Counselor may be able to document through observation (for example, the individual is deaf and communicates through sign language only, or the individual has had a stroke or brain injury and is unable to speak). However, in most of these cases, there will be medical or related documentation in the file to document the disabling condition. [3005.09]

- c. **Self-Care**—Restricted to the extent that he/she is unable to carry out most activities of daily living; **OR** lacks basic skills of managing personal resources or planning for self-sufficiency; **OR places self at risk** because of poor impulse control, poor judgment, or decision-making skills.

Documentation: The inability to carry out activities of daily living (ADL's) because of mental retardation must be documented through a psychological report that includes a Vineland, AAMR (American Association of Mental Retardation Adaptive Behavior Scale), Independent Living Scales (ILS) and/or Street Survival Skills Questionnaire (SSSQ). Inability to carry out ADL's because of severe mental illness may be documented in the mental status portion of the psychological report or in a separate description of the range and sufficiency of the client's daily activities. Inability to carry out ADL's because of a physical disability is documented through medical reports, which may include a physical therapy or occupational therapy report, indicating that personal care assistance or adaptive equipment are required for ADL's. [3005.09]

The lack of skills of managing resources or planning for self-sufficiency; or placing self at risk because of poor impulse control, poor judgment, or poor decision-making skills may be documented through a vocational evaluation, situational assessment, existing psychological report, or school records. In addition, the lack of skills of managing resources or planning for self-sufficiency may be documented through evidence that the individual has a court-appointed conservator or guardian. [3005.09]

- d. **Self-Direction**–Has limited ability to set vocational goals or choose appropriate/realistic employment; AND lacks job seeking skills.

Documentation: Limitations in setting vocational goals or choosing realistic employment may be documented through a vocational evaluation, a testing instrument such as the A.A.M.R. (American Association of Mental Retardation Adaptive Behavior Scale), or existing psychological report. The lack of job-seeking skills should be documented through a vocational evaluation. [3005.09]

- e. **Interpersonal Skills**–Has limited ability to interact with others in a socially acceptable manner or is unable to relate to peers or co-workers without exhibiting inappropriate behaviors.

Documentation: Limitations may be documented through a vocational evaluation, situational assessment, school records, or psychological evaluation. [3005.09]

- f. **Work Tolerance**–Unable to perform sustained work activity for 4 hours; **OR** unable to sit or stand for more than 3 hours.

Documentation: Must be substantiated by medical documentation. [3005.09]

- g. **Work Skills** –Has limited or minimal work experience due to the disability; **OR** has minimal or no marketable skills due to the disability; **OR** has poor work habits due to the disability; **OR** is unable to retain employment or sustain an employment routine without special supervision.

Documentation: Limited or minimal work experience may be documented on the application, backed up by the Tennessee Clearinghouse report. The issue of the limited or minimal work experience being related to the disability would be evidenced by medical reports, existing psychological reports, or other objective documentation, depending on the nature of the disability. Minimal or no marketable skills, poor work habits, or being unable to work without special supervision may be documented through a vocational evaluation or situational assessment. Minimal or no marketable skills would not be an appropriate determination if the individual has transferable skills as determined through a vocational evaluation. Documentation that the client receives SSI or SSDI-based on his/her own disability or blindness may also be accepted as evidence that the individual has minimal or no marketable skills due to the disability, since the Social Security Administration has determined that these individuals meet the disability listing requirement that precludes them from working for at least 12 months. [3005.09]

**NOTE: Limitations to functional capacities must be documented. See VRPM [3005.09](#)(3) – (6) for documentation requirements.**

4. **“Multiple Vocational Rehabilitation Services”** means two or more major vocational rehabilitation services, i.e. physical or mental restoration, training, counseling and guidance, or placement. Excluded are support services such as transportation, maintenance, and the routine counseling and guidance that should take place in every case.
5. **“Extended period of time”** means 6 months or more from the date that services are initiated. These 6 months of service encompass Statuses 16 through 20 only, unless significant services such as job coaching are anticipated in Status 22.

### **C. Acceptable and Unacceptable Factors**

#### **1. Basis for order of selection**

An order of selection must be based on a refinement of the three criteria in the definition of “individual with a significant disability”.

#### **2. 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—

- a. Any duration of residency requirement, provided the individual is present in the state;
- b. Type of disability;
- c. Age, gender, race, color, or national origin;
- d. Source of referral;
- e. Type of expected employment outcome;
- f. The need for specific services or anticipated cost of services required by an individual; or
- g. The income level of an individual or an individual's family.

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

If the Division cannot continue to serve all new Priority Category 1 cases, services will be provided to new PC 1 cases based on the date of application for services. Likewise, if the Division is able to open a closed Priority Category, but is not able to serve all cases awaiting services in the category, services will be provided based on the date of application for services. [2001.03]

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority

categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **A. In General**

The Agency director shall determine when and if an order of selection will be implemented, and which priority categories are open and may be served.

If an order of selection is implemented, individuals who are already receiving services under an IPE shall continue to receive services. The order of selection shall not affect the provision of diagnostic services to determine eligibility or the provision of post-employment services.

Upon implementation of an order of selection:

1. The Agency will continue to accept referrals and applications;
2. All eligibility determinations shall be made on a timely basis;
3. Individuals placed in a closed priority category must be referred to other federal and state programs to assist the individual in efforts to prepare for, secure, retain, or regain employment;
4. An appropriate referral must be made to the federal or state programs, including other components of the statewide workforce investment system, best suited to address the specific employment needs of the individual with a disability.
5. Required procedures include:
  - Notification to the individual of the referral;
  - Notification of the specific contact person or point of contact within the agency receiving the referral; and
  - Information and guidance regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.
6. The counselor must assign a priority category at the time that the individual is determined eligible and placed into Status 10.

### **B. Statewide Basis**

The order of selection shall be implemented on a statewide basis.

### **C. Authority to Open and Close Priority Categories, as Needed**

The Agency director shall determine when and if an order of selection will be implemented, and which priority categories are open and may be served. [2001.03]

#### **D. Continuation of Services**

The order of selection will ensure that services are continued for cases already receiving services under an Individualized Plan for Employment (IPE), as well as provide services to new clients in an open priority category. It will also ensure that adequate funds are conserved to provide diagnostic services for all new applicants to determine their eligibility. [2001.02]

If an order of selection is implemented, individuals who are already receiving services under an IPE shall continue to receive services. The order of selection shall not affect the provision of diagnostic services to determine eligibility or the provision of post-employment services. [2001.03]

#### **E. Funding Arrangements**

The funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority, must be consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the Division of Rehabilitation Services must renegotiate these funding arrangements so that they are consistent with the order of selection.

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

Upon implementation of an order of selection, the Agency will continue to accept referrals and applications and all eligibility determinations shall be made on a timely basis. [2001.03]

Counselors are required to complete the Client Master Record—Part 3—Acceptance Data which includes, among other things, narrative explanation of both the nature of the disability and how it impedes employment, whether the individual has a significant disability or a most significant disability, and documentation explaining how a person's disability seriously limits functional capacities in terms of employment. [3005.09]

Each case determined eligible must be classified into a priority category prior to development of an IPE. A client must be assigned the highest priority category that is justifiable. A client should be reclassified into a higher priority category any time circumstances justify the reclassification. However, a client may not be reclassified into a lower priority category once the IPE has been developed and signed. [2001.04]



## **B. Notification of Eligible Individuals**

Clients assigned to a closed priority category will be notified in writing (See Attachment A). [2001.03] Clients whose cases have been placed in a closed priority category will be informed through Attachment A that they should contact the counselor if [2001.03]:

- Their condition has changed and they would like a re-evaluation to determine if they can be reclassified into a higher priority category.
- They have been determined eligible for SSI or SSDI benefits, after determination of eligibility and assignment to a priority category.
- They have changed their address or telephone number.
- They no longer need or want Vocational Rehabilitation services and want their case to be closed.

## **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

If the priority category is open, services may be provided. [2001.03]

## **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

If the priority category is closed, the case will be held open in Status 10, with no IPE completed, until the priority category is opened, the order of selection is lifted, the individual no longer needs services, or the individual requests that the case be closed. [2001.03]

Individuals placed in a closed priority category must be referred to other federal and state programs to assist the individual in efforts to prepare for, secure, retain, or regain employment. An appropriate referral must be made to the federal or state programs, including other components of the statewide workforce investment system, best suited to address the specific employment needs of the individual with a disability. Required procedures include [2001.03]:

- Notification to the individual of the referral;
- Notification of the specific contact person or point of contact within the agency receiving the referral; and
- Information and guidance regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.
- The information and referral efforts must be documented in the case file through use of Attachment A, found at the end of this section.

All clients whose cases are placed in a closed priority category must be referred to other Federal and State programs for assistance in preparing for or entering employment. Attachment A, which follows, serves as a referral letter. Attachment A is to be printed on office letterhead on one page (front and back). It must be completed on both sides and must be signed and dated by the counselor. It should be given to the client in person when possible and should be explained in a manner that is understandable to the client. A copy must be retained in the file. [2001.07]

The Agency is required to give specific agency addresses and telephone numbers. Each office will develop a list of local agency addresses and telephone numbers based on the list as shown on the reverse of Attachment A. A specific contact person should be shown whenever possible. [2001.07]

#### **E. Case Closure and Maintenance of Records**

The information and referral efforts must be documented in the case file through use of Attachment A, found at the end of this section. [2001.03]

#### **F. Role of the State Rehabilitation Council**

The state Agency must consult with the State Rehabilitation Council regarding the:

1. Need to establish an order of selection, including any reevaluation of the need;
2. Priority categories of the particular order of selection;
3. Criteria for determining individuals with the most significant disabilities; and
4. Administration of the order of selection.

## **UTAH ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Utah's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

In the event that vocational rehabilitation services cannot be provided to all individuals with disabilities who apply and are found to be eligible for such services, the State Agency must show and provide the justification for the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided.

The order of selection for the provision of vocational rehabilitation services shall be determined on the basis of serving first individuals with the most significant disabilities in accordance with criteria established by the state.

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Utah.

#### **A. Establishment of Priority Categories**

**Priority 1** - Eligible individuals with the most significant disabilities.

**Priority 2** - Eligible individuals with significant disabilities.

**Priority 3** - All other eligible individuals with disabilities which are not significant.

#### **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

##### **1. Individual with a disability**

An individual with a disability means an individual who:

- 1) has a physical or mental impairment which for that individual constitutes or results in a substantial impediment to employment;
- 2) can benefit in terms of an employment outcome after receiving vocational rehabilitation services; and
- 3) requires vocational rehabilitation services to prepare for, enter, engage in or

retain gainful employment.

## **2. Individual with a most significant disability**

An individual with the most significant disabilities means a person who exhibits serious limitations as a result of the disability(ies), in two or more functional categories such as: mobility, communication, self care, self direction, interpersonal skills, work tolerance, or work skills **and** the individual will require multiple VR services over an extended period of time.

**NOTE:** Individuals who are allowed SSI/SSDI disability benefits from the Social Security Administration MAY or MAY NOT be considered Most Significantly Disabled. To be considered Most Significant there must be two or more functional limitations or a determination from another agency as described under 24.3(A)(2)(a-c)

## **3. Individual with a significant disability**

A significantly disabled person is one who can be classified in any one of the following three categories at any time while he or she is in the vocational rehabilitation process:

**Category 1.** An individual who:

- a. has a significant physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self care, self direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome (for examples of such on functional limitations see CSM 24.3 A 2); **and**
- b. whose vocational rehabilitation is expected to require multiple services over an extended period of time; **and**
- c. who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined to cause comparable substantial functional limitation.

**Category 2.** A recipient of a Social Security Disability Insurance benefits (SSDI) who requires multiple vocational rehabilitation services over an extended period of time.

**Category 3.** A recipient of a Supplemental Security Income (SSI) payment by reason of blindness or disability who requires multiple vocational rehabilitation services over an extended period of time.

**NOTE:** Individuals who are allowed SSI/SSDI disability benefits from the Social Security Administration are considered to be at least Significantly Disabled.

4. **Functional limitation areas include [see below under serious functional limitations.**

5. **Serious functional limitations.**

**Examples of serious limitations under functional categories include but are not limited to:**

- a. Mobility
  - i. Requires assistive devices (cane, canes for the blind, crutches, prosthesis, walker, wheelchair) to be mobile.
  - ii. Is unable to climb one flight of stairs without pause.
  - iii. Is unable to walk 100 meters without pause.
  - iv. Cannot evacuate from a building in less than three minutes without assistance.
  - v. Unable to travel to and from worksite (including accessing public transportation) without assistance.
  - vi. Other similar mobility deficits.
- b. Communication
  - i. Expressive and receptive primary mode of communication is unintelligible to non-family members.
  - ii. Does not demonstrate understanding of simple requests or is unable to understand one-to-two step instructions including instructions given through an interpreter.
  - iii. Is unable to read or understand any written material or instructions due to disabling condition
  - iv. Other similar communication deficits.
- c. Self-care

Is unable to perform activities of daily living without assistance (ie loss of manual dexterity or coordination sufficient that he/she cannot perform personal hygiene tasks, dress self, prepare own meals etc. without assistance)
- d. Self direction
  - i. 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.

- ii. Is unable to understand rights or responsibilities in judicial or other proceedings even with utilization of an interpreter.
  - iii. Is unable to perform work in an integrated setting without support because is unable to tell time, manage time, and/or stay on task without assistance.
  - iv. Is unable to perform work outside sheltered environment.
  - v. Other similar deficits in self-direction.
- e. Interpersonal Skills
  - i. Has disfigurement or deformity so pronounced as to cause social rejection.
  - ii. Has demonstrated behavior such that the individual is a danger to self and others without supervision.
  - iii. Is unable to respond appropriately to supervision or to respond appropriately to co-workers or the public.
  - iv. Consistently demonstrates behavior toward others which is considered offensive, unpredictable or explosive.
  - v. Other similar interpersonal skill deficits.
- f. Work Tolerance
  - Is unable to perform sustained work for more than 4 hours per day.
- g. Work Skills
  - i. Is unable to perform work tasks outside sheltered environment.
  - ii. Is unable to perform several types of work tasks (regardless of training) due to disabling condition.
  - iii. Other similar work skill deficits.

## **6. Multiple Vocational Rehabilitation Services.**

Multiple VR services means - three or more services as listed under Section 103 of the Act.

## **7. Extended Period of Time.**

Extended Period of time means - the life span of the case is projected to be six months or more.

## **C. Acceptable and Unacceptable Factors**

The following factors must **not** be used as criteria for establishing selection priorities:

1. Type of disability
2. Age, sex, race, color, creed, or national origin.
3. Vocational expectation
4. Income level

5. Duration of residency requirement
6. Source of referral or cooperative agreements with other agencies/programs
7. Cost of services or availability of comparable services and benefits

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Statewide; Authority to Open and Close Priority Categories, as Needed**

The Order of Selection must be implemented statewide with the same priority levels in all areas of the state. The Order of Selection must be implemented statewide with the same priority levels in all areas of the state.

If the Executive Director of USOR determines that resources are further limited to where the Order of Selection must be restricted to a higher priority, the field will be notified in writing of the level and the implementation date. All other procedures such as applicant/client notification of the new priority level, continuity of services of those with IPEs, diagnostics, etc. shall continue as they did with the initial implementation of the Order of Selection.

If the Executive Director of USOR determines that additional resources are available but are not sufficient to serve an entire category, individuals will be pulled out of Status (04) in the category that was opened, in the order of application date.

#### **B. Continuation of Services**

During the implementation of an order of selection, the State VR Agency must:

1. Continue to accept applications and make determinations of eligibility.
2. Reserve sufficient resources to meet these obligations, and
3. Continue providing needed services to eligible individuals with IPEs implemented prior to the effective date of the Order of Selection.

**NOTE: Continuity of Service in all areas is subject to the availability of funding.**

#### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

##### **A. Assessment for Determining Eligibility and Priority for Services**

While Federal Regulations prohibit assigning Order of Selection categories by disability type or automatically assigning categories, determinations made by other agencies may be utilized to assist the counselor in documenting the priority category as they give a counselor information about functional limitations. For example, the Utah State Office of Rehabilitation (USOR) may receive documentation that the individual is:

- a. Eligible for services from the Division of Services for People with Disabilities; or (see Appendix 24 A)
- b. Determined Seriously and Persistently Mentally Ill (SPMI) by the Mental Health System, a duly licensed physician, licensed psychologist, other qualified provider under the Mental Health Professional Practice Act, the Judicial System in accordance with DSM-IV-TR; or (see Appendix 24 B)
- c. Found to be permanently and totally disabled by the State Labor Commission; (see Appendix 24 C).

In such cases the counselor can be assured that the individual has demonstrated limitations in some functional areas as listed in the appropriate appendices above. Regardless of the client's eligibility for other programs, however, the counselor must still document the specific functional deficits.

When the Executive Director of USOR invokes an order of selection to prioritize the provision of VR services, each eligible individual will be classified into one of the three priority categories listed above based on the determination of the significance/severity of their disability. If necessary, further prioritization within a category will be done by application date.

The priority classification shall be determined solely on the significance/severity of the disability.

All applicants, including individuals in trial work exploration status (06) and eligible without IPE status (10), shall be notified in writing of the Order of Selection and their subsequent priority



classification. Included in the written notification will be their right to appeal the determination of their priority classification and the availability of the Client Assistance Program (CAP).

Diagnostic services necessary to determine eligibility, including services in extended evaluation, shall not be impacted by the Order of Selection.

Each eligible individual shall be classified in the highest priority level for which he/she is qualified.

Once classified, that individual shall remain in the highest priority achieved regardless of improvement through restoration, therapy, or spontaneous recovery.

In instances where it is felt that the severity of the disability has increased to the point that a counselor or client believes a change in priority categories is justified, a reassessment may be implemented.

#### **B. Notification of Eligible Individuals**

The priority level and the justification for that determination shall be communicated to each eligible individual with documentation in the case file. This would include:

1. Original notification of priority level.
2. Notification of reclassification as a result of changes in client circumstances.

or

3. Notification of non-reclassification following a requested review.
- Each notification shall include the right to appeal and the availability of the CAP.

**NOTE: ALL INFORMATION REGARDING NOTIFICATION OF ORDER OF SELECTION PRIORITY LEVELS SHALL BE AVAILABLE IN ALTERNATIVE FORMATS.**

#### **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

An individual who is found to be eligible but whose priority category is closed at the time of eligibility determination shall be placed in Order of Selection Deferred Status (04). No services, including non-paid IPE services, shall be provided to individuals in status (04).

#### **D. Maintenance of Records**

The case record must contain the documentation and rationale which would support the priority level given.

### **E. Monitoring**

Individuals in Order of Selection Deferred Status (04) shall be contacted at least once in the first 90 days after being placed in deferred status and periodically monitored as long as they remain in that status if they request follow up.

Contact and monitoring lists will be computer generated with minimal efforts required of staff.

### **F. Role of the State Rehabilitation Council**

The State Agency, in consultation with the State Rehabilitation Council (SRC), must describe and explain its order of selection and this decision must be disseminated to the public for review and comment prior to implementation.

## VERMONT ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Vermont's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection. The state's OOS policy is set out in Chapter 106 of the Policy and Procedures Manual.

### I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

### II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Vermont.

The Rehabilitation Act places emphasis on vocational rehabilitation services for persons with the most significant disabilities and assigns priority to meeting the needs of that group. This requirement is to assure that, in the event that vocational rehabilitation services cannot be promptly provided to all eligible persons, the needs of those with the most significant disabilities, due to their probable costs and complexity, will not be deferred but rather will be given priority. [Policy and Procedures Manual, Chapter 106, Section II]

**"Order of Selection for Services" (OSS)** means, if the Division cannot serve all eligible persons, the order in which a person will receive services. [Policy and Procedures Manual, Chapter 106, Section I]

**"Priority category"** means a classification of eligible persons listed according to priority for receiving vocational rehabilitation services under an Order of Selection for Services. [Policy and Procedures Manual, Chapter 106, Section I]

#### A. Establishment of Priority Categories [Policy and Procedures Manual, Chapter 106, Section III]

**Priority Category I:** Individuals who have been determined by DVR to have the most significant disabilities are those who have two or more areas of functional loss requiring multiple services over a period of six months or more, either for the provision of the required service, or for the duration of the use of a provided good.

**Priority Category II:** Individuals who have been determined by DVR to have significant

disabilities are those who have one area of functional loss requiring multiple services over a period of six months or more, either for the provision of a required service, or for the duration of the use of a provided good.

**Priority Category III:** Eligible persons determined by the Division to have one or more areas of functional loss not requiring multiple services over an extended period of time shall be classified in Priority Category III as having less-significant disabilities.

## **B. Terminology**

The following definitions are used for purposes of the order of selection policy.

### **1. Individual with a disability**

### **2. Individual with a most significant disability**

Individuals who have been determined by DVR to have the most significant disabilities are those who have two or more areas of functional loss requiring multiple services over a period of six months or more, either for the provision of the required service, or for the duration of the use of a provided good. [Policy and Procedures Manual, Chapter 106, Section III]

### **3. Individual with a significant disability**

Individuals who have been determined by DVR to have significant disabilities are those who have one area of functional loss requiring multiple services over a period of six months or more, either for the provision of a required service, or for the duration of the use of a provided good. [Policy and Procedures Manual, Chapter 106, Section III]

### **4. Multiple Vocational Rehabilitation Services.**

means vocational rehabilitation counseling, guidance and placement services plus at least one other service such as health services, training, and adaptive aids as part of a vocational rehabilitation program. These services do not have to be provided by the Division. [Policy and Procedures Manual, Chapter 106, Section I]

### **5. Extended Period of Time.**

means six (6) months or longer. [Policy and Procedures Manual, Chapter 106, Section I]

## **C. Ranking Individuals Within a Priority (Waiting Lists)**

Whenever it is determined that Division resources for services are available for eligible persons in a restricted Priority Category, such eligible persons shall receive services in the order in which they were referred to the Division. [Policy and Procedures Manual, Chapter 106, Section VII]

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Authority to Open and Close Priority Categories, as Needed**

The Division reserves the right to determine how many Priority Categories shall receive vocational rehabilitation services at any given time. [Policy and Procedures Manual, Chapter 106, Section VII]

A decision to provide services to less than all Priority Categories shall be reviewed by the Division at least quarterly. [Policy and Procedures Manual, Chapter 106, Section VII]

The Division reserves the right to determine how many eligible persons within a restricted Priority Category may receive services at any given time. This number will be determined by reviewing available resources and anticipated costs. As many persons will be served as resources allow. [Policy and Procedures Manual, Chapter 106, Section VII]

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agency's information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

#### **A. Assessment for Determining Eligibility and Priority for Services**

All eligible persons shall, after determination of eligibility, be classified by Priority Category. The OSS will have no effect upon the eligibility of the persons but only upon the order in which such persons may receive vocational rehabilitation services. [Policy and Procedures Manual, Chapter 106, Section IV]

All applicants are to receive whatever diagnostic services are necessary for the determination of eligibility and significance of disability without regard to the OSS. [Policy and Procedures Manual, Chapter 106, Section IV]

In determining the Priority Category, persons are to be placed in the highest category for which they are eligible. [Policy and Procedures Manual, Chapter 106, Section IV]

Although a person's circumstances may change so that s/he is no longer eligible for a particular Priority Category, the person will remain in that category unless the change favors him/her. This will not apply to misclassification; a misclassified person, if moved to a less favorable Priority Category, will be advised of the change in writing and provided with appeal rights and information on the Client Assistance Program. [Policy and Procedures Manual, Chapter 106, Section IV]

All persons eligible for Division services shall be classified by Priority Category at the time of their certification of eligibility or as soon thereafter as possible. [Policy and Procedures Manual, Chapter 106, Section VI]

**"Referral date"** means the earliest date that a person becomes known to the Division as a person who may benefit from its services; it becomes the date on which the person's name is registered as being in the vocational rehabilitation system. [Policy and Procedures Manual, Chapter 106, Section I]

#### **B. Notification of Eligible Individuals**

If an applicant is placed in a restricted Priority Category, s/he must be notified in writing of [Policy and Procedures Manual, Chapter 106, Section V]:

- A. Eligibility for services;
- B. The Priority Category in which he or she has been placed; and
- C. The Priority Categories within the OSS which are open for services.

Such written notification shall include information on procedures to appeal a Priority Category classification, the Client Assistance Program and, if applicable, written referral to other possible resources. [Policy and Procedures Manual, Chapter 106, Section V]

Any eligible person may request mediation, an administrative review, or fair hearing to appeal his/her classification by Priority Category. This request must be made within fifteen (15) days after notification of classification by Priority Category. [Policy and Procedures Manual, Chapter 106, Section VI]

If a request for mediation, an administrative review, or fair hearing is made, priority classification shall not be changed pending completion of the appeals process. [Policy and Procedures Manual, Chapter 106, Section VI]

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Persons requesting post-employment services and for whom post-employment services are appropriate may be served in post-employment status without regard to OSS Priority Categories. [Policy and Procedures Manual, Chapter 106, Section IV]

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

**"Restricted Priority Category"** means a category of persons who have been determined to be eligible for but who are unable to receive services in accordance with the rules herein.

### **E. Role of the State Rehabilitation Council**

A full review of the OSS, with input from the State Rehabilitation Council, shall take place at least annually. [Policy and Procedures Manual, Chapter 106, Section VII]

## **VIRGINIA ORDER OF SELECTION POLICY**

This section of the paper describes Virginia's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The state Plan for Vocational Rehabilitation Services indicates whether or not the VR agency is under an order of selection. [*Chapter 2.2 ORDER OF SELECTION, POLICY 1. Order of Selection Status*]

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

#### **A. Establishment of Priority Categories**

When the full range of vocational rehabilitation services cannot be provided to all individuals determined eligible for the VR program, the agency, under the direction of the DRS Commissioner and in consultation with the State Rehabilitation Council, shall implement the order of selection policy and procedures as is the state's option under federal regulations. [*Chapter 2.2 ORDER OF SELECTION, POLICY 1. Order of Selection Status*]

If the agency is operating under an order of selection, the counselor shall assign individuals determined eligible to one of the priority categories, shall document the placement rationale in the case record, and shall explain to the individual through appropriate modes of communication (per 2001 federal regulation [34 CFR § 361.57\(e\)](#)) the placement and avenues to appeal the placement. Only those assigned to an open category will be served. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, A2*]

If an individual no longer meets the criteria for the priority category to which he or she is currently assigned, the counselor may reassign the individual to a higher/lower category and must document the rationale for the new assignment in the case record.



Criteria for the following priority categories are consistent with federal requirements and prohibitions. If the agency is operating under order of selection, the priority categories, from highest to lowest, shall be [*Chapter 2.2 ORDER OF SELECTION, Policy 2, A2*]:

**PRIORITY I:** An individual with the most significant disability in accordance with the DRS definition of most significant disability.

**PRIORITY II:** An individual with a significant disability that results in serious functional limitations in two (2) functional areas and who requires two (2) or more substantial vocational rehabilitation services for at least six (6) months.

**PRIORITY III:** An individual with a significant disability that results in a serious function limitation in one (1) functional area and who requires two (2) or more substantial vocational rehabilitation services for at least six (6) months.

**PRIORITY IV:** All other individuals determined eligible for the VR program.

The counselor must classify individuals determined eligible who receive Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) in either Priority I, II, or III, since they are presumed to have a significant disability that results in serious functional limitations in one or more functional areas (per 2001 federal regulation [34 CFR § 361.42\(a\)\(3\)](#)). They must be assigned to at least Priority III. They may be assigned to Priority I or II only if they meet all the criteria for that category. [*Chapter 2.2 ORDER OF SELECTION, Policy 2, A2*]

## **B. Terminology**

The following definitions are used for purposes of the order of selection policy [*Chapter 3. DISABILITY CRITERIA*].

### **1. Criteria for Most Significant Disability**

The individual's disability shall be considered to be most significant when the counselor documents that the individual meets all three (3) of the following criteria:

- i. Is an individual with a significant disability, and
- ii. Has a physical or mental impairment that seriously limits three (3) or more functional capacities in terms of an employment outcome, and
- iii. Whose vocational rehabilitation can be expected to require multiple core vocational rehabilitation services for six months or more.

Note 1: This definition is used to establish the need for Supported Employment services (and priority category if DRS is on an order of selection).

## **2. Criteria for Significant Disability.**

The counselor shall code the individual's disability as significant when the individual with a disability meets all three (3) of the following criteria (per 2001 federal regulation [34 CFR § 361.5\(b\)\(31\)](#)):

- i) Severe physical or mental impairment that seriously limits one or more functional capacities in terms of an employment outcome,
- ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time, and
- iii) Who has one or more physical or mental disabilities determined on the basis of an eligibility determination assessment and needs assessment to cause comparable substantial functional limitation).

The counselor shall automatically code as significant (versus not significant) disability the cases of all individuals who receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), since they are presumed to meet all three criteria for significant disability (per 2001 federal regulation [34 CFR § 361.42](#)). The counselor shall code the disability of SSI and SSDI recipients as most significant only when the counselor documents that the individual meets the criteria for most significant disability.

## **3. Physical or mental impairment**

means i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine, or ii) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities (per 2001 federal regulation [34 CFR § 361.5\(b\)\(41\)](#)).

## **4. Serious functional limitation**

means a reduction in the capacity of the individual to the degree that the person requires services or accommodations not typically made for other individuals in order to prepare for, enter, engage in, or retain employment.

**5. Requires Multiple VR Services over Extended Period of Time**

DRS defines **multiple vocational rehabilitation services** to mean ongoing guidance and counseling, placement assistance, and other services which address the substantial loss of functional capacity. DRS defines **extended period of time** to mean longer than six (6) months from the date of Employment Plan initiation. The services provided may extend beyond DRS case closure and may be provided through auspices other than the DRS Vocational Rehabilitation program.

**6. One or More Physical or Mental Disabilities Determined By Assessment to Cause Comparable Substantial Functional Limitation**

Physical or mental disabilities means disability resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegic, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, (including stroke and epilepsy), spinal cord conditions, (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an eligibility determination assessment and needs assessment to cause comparable substantial functional limitation (per 2001 federal regulation [34 CFR § 361.5\(b\)\(31\)](#)).

**7. Functional Areas and Serious Functional Limitation.**

Functional areas include: mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills.

**Mobility.** The physical, cognitive and psychological ability to move from place to place inside and outside the home.

Definition of serious functional limitation: A serious limitation exists if, due to a disability, the person is unable to get around in the community, home, or workplace without assistance from others; or failed attempts to prepare for or obtain a driver's license without special adaptations, accommodations, or special training; or requires specialized transportation; or is unable to learn to use or access public transportation needed for employment; or is dependent on adaptive equipment.

**Self-Direction.** The ability to plan, initiate, problem-solve, organize, or independently carry out goal-directed activities as relates to independent living and work.

Definition of serious functional limitation: A serious limitation exists if, due to a disability, the individual requires supervision on a constant basis; or requires supervision to begin and finish tasks, monitor own behavior, or make decisions; or has serious difficulty working independently resulting in job loss; or has serious difficulty shifting focus from one activity or task to the next without prompting, or

has serious difficulty adjusting to new situations or changes to the daily routine; or is easily distracted/short attention span leading to repeatedly poor task completion; or is unaware of negative consequences of decisions resulting in repeated poor task completion or job loss.

**Self Care (Independent Living Skills).** The physical, cognitive, and emotional ability to manage self or living environment as they affect the individual's ability to participate in training or work-related activities.

Definition of serious functional limitation: A serious limitation exists if, due to a disability, the individual cannot perform hygiene functions without assistance from others; or needs reinforcement or reminders to maintain appropriate personal hygiene; or cannot dress without assistance; or cannot feed self without assistance; or cannot comply with meds/treatment without assistance or prompting; or cannot handle money or budgeting without assistance; or requires attendant care, assistive technology, or other devices for self care; or cannot live independently without supports.

**Interpersonal Skills.** The individual's ability to establish and maintain personal, family, and community relationships.

Definition of a serious functional limitation: A serious limitation exists when, due to a disability, the individual has significant social withdrawal that has resulted in an inability to prepare for or succeed in work; or has significantly poor relationships, in appropriate behaviors, or frequent conflicts with peers, co-workers, supervisors, and others leading to the inability to prepare for or succeed in work; or has serious problems interpreting and responding appropriately to behavior/communication of others or fails to understand obvious social cues; or does not understand acceptable levels and types of interaction appropriate to the worksite; or requires frequent intervention from a teacher or supervisor in order to manage behavior; or personal behaviors have led to frequent legal problems; or deformity, disfigurement, or disability related behavior causes others to avoid relationships or interactions..

**Communication.** The ability to effectively exchange information through words or concepts (writing, speaking, listening, sign language, or other adaptive methods). The emphasis is on limitations resulting from a disability-related communication difficulty, not from a communication problem resulting from a language or cultural difference.

Definition of serious functional limitation: A serious limitation exists if, due to a disability, the individual has severely impaired expressive or receptive communication, either oral or written; or has serious difficulty conversing without speech-reading, sign language, or other visual cues; or is dependent upon adaptive technology to communicate effectively; or has difficulty engaging in telephone conversations even with amplification; or is not readily understood by others on first contact.

**Work Tolerance.** Capacity to perform effectively and efficiently jobs that require various levels of physical, emotional, and/or psychological demands of work..

Definition of serious functional limitation: A serious limitation exists when, due to a disability, the individual does not have the capacity or endurance to perform duties without modifications, adaptive technology, and/or accommodations not typically made for others; or cannot perform at a consistent pace as required to meet production/quality standards; or needs frequent breaks to compose and organize self in order to maintain work; or cannot tolerate sitting/standing/bending/reaching to do a job which others without a disability could tolerate.

**Work Skills.** The ability to perform specific tasks required to carry out job functions, the capacity to benefit from training in the necessary skills, and the capacity to practice the work habits needed to stay employed.

Definition of serious functional limitation: A serious limitation exists when, due to a disability, the individual needs significantly more support or supervision to learn and perform a job than normally required of persons of equivalent age, education, training, or experience; or cannot learn work skills without rehabilitation technology, accommodations, or modifications; or exhibits poor work habits resulting in a history of job loss (problems with attendance, timeliness, following instructions, etc.).

### **C. Acceptable and Unacceptable Factors**

For purposes of determining whether an individual has a significant disability under order of selection, while serious functional limitations may result from or be compounded by external factors such as geographical location, poor public transportation, or lack of training, these factors are not a basis for determining that an individual has a serious functional limitation. [*Chapter 3. DISABILITY CRITERIA*]

### **D. Ranking Individuals Within a Priority (Waiting Lists)**

Individuals who are placed in an open category may be served by date of application. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C*]

## **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

## **A. In General**

If the agency is operating under an order of selection, all cases assigned to a closed priority category shall be placed on a waiting list within its priority category. [*Chapter 2.2 ORDER OF SELECTION, Policy 2. Order of Selection Criteria and Procedures and Scope of Services, C1*]

## **B. Statewide Basis**

If the state agency's status changes regarding order of selection, the DRS commissioner or a designee will provide written notification to all field offices indicating the date on which to implement (or discontinue) the order of selection. [*Chapter 2.2 ORDER OF SELECTION, POLICY 1. Order of Selection Status*]

## **C. Authority to Open and Close Priority Categories, as Needed**

The DRS commissioner or designee may close one or more priority categories at any time. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C*]

## **D. Continuation of Services**

The DRS commissioner or designee may close one or more priority categories at any time. Individuals who have begun services under an Employment Plan (case in Service status in AWARE) before the closure date of the priority category will continue to receive services until case closure. Individuals assigned to an open category will continue to receive services until case closure. All other existing or new cases assigned to the closed priority category shall be moved into Delayed status in AWARE. **Example:** DRS had been serving priority categories I, II, and III. Due to lack of resources the DRS Commissioner closes category III. The counselor shall continue to serve cases in category III in Eligible Status. The counselor shall follow order of selection waiting list procedures for all new cases of applicants who are determined eligible but who do not meet the criteria for priority categories I or II. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C*]

The DRS commissioner or designee may open one or more priority categories at any time. Individuals who are placed in an open category may be served by date of application. Cases that are moved from Delayed status to Eligible status are processed the same as other Eligible status cases. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C*]

Employment Plans may be developed for cases that were placed into Eligible status prior to the closing of their priority category. Cases in Service status or higher shall continue to be served under the Employment Plan and any amendments made after the order of selection implementation date. [*Chapter 2.2 ORDER OF SELECTION, Policy 2, Order of Selection Criteria and Procedures and Scope of Services, A2*]

#### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the state Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

##### **A. Assessment for Determining Eligibility and Priority for Services**

All applicants shall receive diagnostic and evaluation services necessary to determine eligibility for the Vocational Rehabilitation program (and to assign the priority category when DRS is operating under order of selection). [*Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, B*]

While on the waiting list, if the individual provides medical or other evidence that the disability has become more severe, the counselor shall reassess the priority category assignment. If warranted, the counselor shall update the Disability and Eligibility Determination screens in AWARE. If the disability has not changed, the case may remain on the waiting list in Delayed status or may be closed at the individual's request. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C*]

##### **B. Notification of Eligible Individuals**

If the agency is operating under an order of selection, the counselor shall document the placement rationale in the case record, and shall explain to the individual through appropriate modes of communication (per 2001 federal regulation [34 CFR § 361.57\(e\)](#)) the placement and avenues to appeal the placement. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2, A2*]

After 12 months in Delayed status, the counselor shall notify the individual in writing of the opportunity to remain on the waiting list and provide information on agencies and organizations (including the One Stop Centers) that may be best suited to address the individual's specific employment needs, and describe the avenues to appeal case closure (including the Client Assistance Program). If the individual contacts the counselor and requests the case be closed, the counselor closes the case in Closed – Other status with closure reason “refused VR services” (or “cannot locate” if the waiting list closure letter is undeliverable). The counselor does not send the RS-5c. After a case is closed in "Closed– Other status", the individual may reapply for vocational rehabilitation services at any time. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, C*]

The counselor shall use the Order of Selection letters, brochure, and regional list of One Stops to notify the client that the case is on the waiting list, the priority category assignment, avenues to appeal the category assignment (including the Client Assistance Program), and information on

other agencies and organizations, including the One Stop Centers, that may be best suited to address the individual's specific employment needs (per Rehabilitation Act of 1973 as amended in 1998 and 2001 federal regulation [34 CFR § 361.37](#) [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, C*])

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Only those assigned to an open category will be served. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2,A2*] Post-employment services are exempt from order of selection. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, B*]

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

After 12 months in Delayed status, the counselor shall provide information on agencies and organizations (including the One Stop Centers) that may be best suited to address the individual's specific employment needs. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, C*]

While a case is in Delayed status, counselors are limited to providing only additional diagnostic, assessment, and evaluation services needed to reevaluate the priority category assignment. If needed to access diagnostic services, the counselor may provide support services (transportation, child care, personal assistance services) and interpreter for the deaf. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, B*]

Any services not specifically allowed in the above paragraph are prohibited in Delayed status 04. The counselor shall not provide services needed to develop the Employment Plan or services needed to eliminate or reduce the impediment to employment (i.e., AT assessment, home modification assessment, driver evaluation, vehicle modification assessment, trial college semester, vocational evaluation, PAS assessment, etc.) since the Employment Plan will not be developed. This includes "no cost" services (e.g., job placement, rehabilitation engineering, vocational counseling and guidance, certification for deferment of a student loan, etc.) The counselor shall not provide maintenance and goods (i.e. AT devices, hearing aids, eyeglasses, wheelchairs, etc.). [*Chapter 2.2 ORDER OF SELECTION, POLICY 2.m Order of Selection Criteria and Procedures and Scope of Services, B*]

If the agency is operating under an order of selection, the counselor shall document the placement rationale in the case record. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2,A2*]

### **E. Role of the State Rehabilitation Council**

The criteria for most significant were established by DRS in consultation with the State Rehabilitation Council as required by federal regulations [34 CFR § 361.5\(b\)\(30\)](#) and [34 CFR § 361.36\(d\)](#). When the full range of vocational rehabilitation services cannot be provided to all individuals determined eligible for the VR program, the agency, under the direction of the DRS



Commissioner and in consultation with the State Rehabilitation Council, shall implement the order of selection policy and procedures as is the state's option under federal regulations.  
[Chapter 2.2 ORDER OF SELECTION, POLICY 1. Order of Selection Status]

# **WASHINGTON ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes the state of Washington's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

## **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

## **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Washington.

### **A. Establishment of Priority Categories**

#### **Priority Category 1: Individuals with Most Severe Disabilities**

An individual is included in Priority Category 1 if he or she is determined eligible for vocational rehabilitation services and meets the following criteria:

- Requires two or more VR services over an extended period of time (12 months or more); and
- Experiences serious functional losses in four or more of the following areas in terms of an employment outcome:
  - Mobility;
  - Communication;
  - Self-care;
  - Cognition and learning (Self-direction);
  - Interpersonal Skills;
  - Work Tolerance; or
  - Work Skills.

#### **Priority Category 2: Individuals with Severe Disability**

An individual is included in Priority Category 2 if he or she is determined eligible for vocational rehabilitation services and meets the following criteria:

- Requires two or more VR services over an extended period of time (12 months or more); and
- Experiences serious functional losses in one to three of the following areas in terms of an employment outcome:
  - Mobility;
  - Communication;

- Self-care;
- Cognition and learning (Self-direction);
- Interpersonal Skills;
- Work Tolerance; or
- Work Skills.

### **Priority Category 3: Individuals with Disabilities**

An individual is included in Priority Category 3 if he or she is determined eligible for vocational rehabilitation services but does not meet the criteria for Priority Category 1 or Priority Category 2.

## **B. Terminology**

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **Individual with a disability See above**
2. **Individual with a most significant disability See above**
3. **Individual with a significant disability See above**
4. **Serious functional limitations.**

A serious limitation means an individual's capacity is affected to the degree that successful employment is not likely to occur unless substantial VR service(s) to address the limitation are provided under an IPE.

5. **Functional limitation areas include**

Areas of functional loss include the following:

**Mobility:** Mobility is the ability to move about from place to place inside and outside the home compared to people who don't have mobility limitations. Mobility limitations impact an individual's ability to travel between work and home (using either private or public transportation), to get around within the work environment and/or to travel to meetings, training, or other job requirements. Mobility limitations may result in the need for a personal assistant, assistive technology or other specialized transportation services or may limit the range of an individual's travel.

**Work tolerance:** Work tolerance is the ability to meet the typical demands and working conditions of a job. Work tolerance relates primarily to an individual's ability to tolerate conditions routinely expected in an employment setting, such as following an established work schedule, working continuously for a number of hours, the number and interval of breaks, the work setting and a typical amount of sitting, standing, lifting, etc. Work tolerance can also involve an individual's ability to work under typical environmental conditions such as noise, heat, cold or the presence of everyday chemicals, dust or other

substances. Work tolerance can impact how long or how fast an individual can work due to stamina and endurance. Work tolerance limitations result from disability-related fatigue, not from cognitive limitations (see cognition and learning).

**Communication:** Communication is the ability to effectively exchange information through expressive or receptive methods, spoken words or concepts (writing, speaking, listening, sign language, adaptive methods). A functional loss in communications can impact an individual's ability to get information and instructions from a supervisor or co-worker, to follow new directions or procedures, to ask questions and get clarification on assignments, to give information verbally, to answer a telephone, use e-mail or use other typical modes of communication. Communication limitations often require the use of an interpreter or assistive technology device to facilitate communication.

**Self-care:** Self-care is the ability to independently perform activities of daily living at a level which allows an individual to participate in work. An individual experiencing a functional loss in self-care often requires personal assistance from another individual to accomplish routine personal care, such as bathing, using a bathroom, dressing, meals, medications, etc.

**Interpersonal:** Interpersonal is the ability to establish and maintain personal, family, community and other relationships likely to affect job performance and security. A functional loss in interpersonal is present if an individual exhibits persistent behavior that results in exclusion, discipline, frequent conflict, or other negative consequences or has a persistent pattern of social avoidance, isolation or withdrawal. Individuals are sometimes extremely suspicious and/or have difficulty managing anger or aggressive behavior.

**Cognition and learning (self-direction):** Cognition and learning is the ability to independently plan, initiate, learn, problem solve, and organize activities related to self, health, safety, socialization, recreation and work. A functional loss in cognition and learning is present if an individual cannot independently plan and organize tasks, remember or follow instructions, analyze and solve relatively simple problems, perform basic skills in reading or math, or judge the quality or accuracy of work they have completed. Individuals with cognition and learning impairments often require constant or nearly constant supervision to manage and organize tasks and/or intensive or specialized training to learn tasks.

**Work skills:** Work skills is an individual's ability to perform tasks required to carry out job functions. Work skills related to this functional area are those routinely involved in typical work settings, such as the ability to keyboard, operate machinery or electronic equipment, such as a cash register, copy machine, telephone; write with pencil or pen; open doors, drawers or file cabinets; manipulate papers, folders, and files; pick things up, carry them or move them from place to place. Work skills limitations relate to an individual's capability to perform tasks and not from the individual's ability to learn or remember (see cognition and learning).

## **6. Multiple Vocational Rehabilitation Services.**

Means 2 or more vocational rehabilitation services.

#### **7. Extended Period of Time.**

No specific time frame for “extended period of time” is defined in statute or regulation. The VR Counselor must consider each person’s unique circumstances to determine whether the needed services can reasonably be expected to require an extended period of time. For this purpose, 12 months may be used as a general benchmark, but not applied as an absolute limit, since each individual’s circumstances must be uniquely considered.

#### **C. Acceptable and Unacceptable Factors**

Work-related limitations may result from or be compounded by external factors such as geographic location, poor public transportation, language, culture or lack of training. These factors do not relate to a disability and are not factors in determining a serious functional loss.

#### **D. Ranking Individuals Within a Priority (Waiting Lists)**

Within a priority category, the date you applied for VR services determines the order in which you are selected from the waiting list.

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE’s will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

A VR counselor determines the level of significance of an individual's disability based on:

- A review of the information gathered to determine eligibility, and
- An assessment of the individual's functional losses

A VR counselor determines the level of severity of an individual's disability based on a review of the information gathered to determine eligibility. If additional information is necessary to make the determination, a VR counselor may:

- Obtain information from the individual, the individual's family, an outside professional and/or another public agency; or (if necessary)
- Purchase diagnostics from a qualified service provider

A VR counselor reviews the data to determine:

1. The number of serious functional losses present as a result of a disability;
2. Whether an individual may need multiple VR services to achieve an employment outcome in supported employment or other integrated employment; and
3. Whether services are needed for an extended period of time. **NOTE:** No specific time frame is defined in statute or regulation for "an extended period of time." The VR counselor must consider each individual's unique circumstances to determine whether services are needed over an extended period of time. For this purpose, 12 months may be used as a general guideline, but not applied as an absolute limit.

### Significance of Disability Matrix

Significance Level	Meet Definition of Significantly Disabled	Categories of Functional Loss	Duration of Service	Number of Services
Level 1: Most Significantly Disabled	Yes	4 or more	Requires VR services over an extended period of time**	Requires multiple services
Level 2: Significantly Disabled	Yes	1 or more	Requires VR services over an extended period of time**	Requires multiple services
Level 3: Disabled	No	1 or More	No duration of service requirement	Multiple services NOT required

To assure a complete and comprehensive assessment, the VR counselor considers the data and information about an individual's disability as it applies to each of the seven areas of functional loss for each individual.

When considering each area of functional loss, the VR counselor determines whether:

1. A functional loss that results from a disability is present.
2. The functional loss presents a barrier to employment, and
3. The functional loss meets the definition of a serious limitation (see definition in Serious Limitation below) and the individual requires substantial VR services or intervention in the individualized plan for employment to address the limitation and achieve employment.

Only one "serious limitation" within a functional loss category (mobility, work tolerance, communication, self-care, interpersonal, cognition and learning (self-direction), and work skills) is needed to determine a serious functional loss is present in that category.

The VR counselor completes the Significance of disability form in STARS.

A VR counselor may identify a functional loss based on an individual's self-report, information provided by family members, school representatives or others, or based on observations made by the counselor during interviews with the individual.

If a counselor identifies a functional loss that is not consistent with or not supported by disability-related documentation and determines additional information is necessary to understand and address the functional loss, the counselor and individual discuss and reach agreement on how to get the information.

### **Documenting a Self-Reported or Observed Functional Loss**

To ensure the case service record explains and supports a self-reported or observed functional loss, the VR counselor documents that a loss was observed, a summary of the observations, and how the functional loss affects the applicant. The basis and rationale for any functional loss that is not clearly supported by medical documentation in the case service record needs to be documented by the VR counselor.

**EXAMPLE:** While interviewing an applicant who is hard of hearing, a VR counselor observes that the individual is not able to effectively communicate verbally. Medical records clearly establish a hearing impairment, but do not address verbal limitations. Because a functional loss in verbal communication is consistent with and commonly associated with a hearing loss, the VR counselor may determine, based on his or her observations, that a serious functional loss is present.

During this interview, the counselor also observed that the applicant would not make eye contact, did not engage with the counselor and was unusually withdrawn. After the interview and with the consent of the individual, the counselor followed up with family members and referral sources. The VR counselor learned that this is typical behavior and that this individual does not interact with others and tends to remain isolated and withdrawn. Family members confirmed that the behavior started when the hearing impairment was discovered and occurred with anyone outside the immediate family.

The VR counselor determined that the individual experienced serious functional losses in communications and interpersonal because employment success was not likely without substantial VR services (i.e., assistive technology, substantial counseling and guidance) to address the losses in both areas. The VR counselor documented that these two serious functional losses were observed and confirmed by family members and others, provided a summary of the observations, and described how the functional loss affects the applicant.



## **Functional Loss Not Described in the Significance of Disability Form**

If the individual experiences a functional loss that is not described on the Prioritization for Services form, the VR counselor documents the functional loss by entering a description in the space provided under "other."

A serious limitation means an individual's capacity is affected to the degree that successful employment is not likely to occur unless substantial VR service(s) to address the limitation are provided under an IPE.

Once the VR counselor determines a disability-related functional loss is present, he or she considers whether the functional loss meets the definition of a "serious limitation" contained in the Functional Loss Definitions. If the functional loss meets the definition of a "serious limitation," the counselor checks the appropriate indicator on the Significance of Disability form.

The VR counselor completes and signs a [Certification of Significance of Disability](#) for each individual as soon as sufficient information is available, but no later than 60 days from the date of application (unless an extension has been agreed upon).

### **B. Notification of Eligible Individuals**

The I & R Caseload in STARS is designed to assist counseling staff in identifying customers on the Order of Selection Waiting List in order to:

- Maintain contact with customers;
- Inform customers of the likelihood of being served in the foreseeable future;
- Ask customer if they want to keep their name on the waiting list; and
- Update customer contact and medical information.

#### **Eligibility Letters in I & R Caseload**

The View Action Due screen in STARS notifies the counseling staff that there are customers on the caseload who require I & R contact. Eligibility letters are available in the Customer's Letters Catalog. The counseling staff prints two copies of the letter (one to file, one to mail to the customer). The system allows staff member to enter a small paragraph into the text of the letter. At the time the letter is printed, STARS will insert a case note automatically, including the optional paragraph.

Counseling Staff needs to choose the best contact method

Although contact letters are available in STARS, the counseling staff determine the most appropriate method of contacting each customer, based upon the, customer's circumstances, or

accommodation needs. If a method not identified in STARS is selected, write a case note and "I & R Contact" checkbox in the case note.

#### [Information provided at Application](#)

### **Purpose of Contact**

The Counseling Staff contacts a wait list customer to:

Determine if a customer still wants VR services;

- [Close the case service record](#) if the customer does not want services or does not respond to letter and other appropriate method of contact.

### **Methods of Contact**

The counseling staff contacts a customer by one or more of the following methods:

- Letter;
- E-mail;
- Telephone; or
- Another mutually agreed up method.

### **Frequency of Required Contact**

The counseling staff is responsible for maintaining contact on a routine basis with a customer assigned to his or her Information and Referral (I & R) caseload. The frequency of contact is based on the waiting list priority group of the customer.

1. Each customer on the MSD list is contacted at least once 90 days after eligibility is determined and at least once every 90 days thereafter.
2. Each customer on the SD list is contacted at least once per 12 month period after eligibility is determined and at least once every 12 months thereafter.
3. Each customer on the NSD list is contacted at least once per 12 month period after eligibility is determined and at least once every 12 months thereafter.

### **Contact Information and Appropriate Methods**

Prior to contacting a customer on the wait list, the counseling staff reviews the customer's contact information on the customer's case narrative and/or the vocational information form in STARS. The VR counselor is responsible to use the most current contact information and appropriate methods to contact the customer.

## **Case Service Record Documentation to Determine Type of Communication**

If the type of communication for contacting the customer is not clearly described on the vocational information form or case narrative, the counseling staff uses other information in the case service record such as medical or education documentation to determine the most [appropriate method](#) to contact the customer. For example, if documentation in the customer's case service record indicates that the customer may have difficulty responding to written communication, the counseling staff selects an appropriate method to contact the customer such as a telephone call.

If a single method of contact does not work, the counseling staff uses other available and appropriate methods to contact the customer and documents the results of the contacts and conversations in the case narrative of the case service record.

## **Customer Listed with DSHS Client Registry**

If a customer is listed in the DSHS Client Registry, the counseling staff contacts the program(s) identified in the Client Registry to determine whether the other program has contact information more current than DVR. The following is an example:

If the customer has a developmental disability, the Counseling Staff contacts the DSHS Division of Developmental Disabilities (DDD) to determine whether the customer is a client of DDD. If the customer is a DDD client, the counseling staff contacts the DD case manager to determine the most current contact information and whether there is a preferred method of contact. The counseling staff documents the contact made with the DD case service manager and any new contact information in the case narrative of the customer's DVR case service record.

The I & R Caseload in STARS is designed to assist counseling staff in identifying customers on the Order of Selection Waiting List in order to:

- Maintain contact with customers;
- Inform customers of the likelihood of being served in the foreseeable future;
- Ask customer if they want to keep their name on the waiting list; and
- Update customer contact and medical information.

## **Eligibility Letters in I & R Caseload**

The View Action Due screen in STARS notifies the counseling staff that there are customers on the caseload who require I & R contact. Eligibility letters are available in the Customer's Letters Catalog. The counseling staff prints two copies of the letter (one to file, one to mail to the customer). The system allows staff member to enter a small paragraph into the text of the letter. At the time the letter is printed, STARS will insert a case note automatically, including the optional paragraph.

## **Counseling Staff needs to choose the best contact method**

Although contact letters are available in STARS, the counseling staff determine the most appropriate method of contacting each customer, based upon the, customer's circumstances, or accommodation needs. If a method not identified in STARS is selected, write a case note and "I & R Contact" checkbox in the case note.

### Information provided at Application

#### Purpose of Contact

The Counseling Staff contacts a wait list customer to:

- Determine if a customer still wants VR services;
- [Close the case service record](#) if the customer does not want services or does not respond to letter and other appropriate method of contact.

#### Methods of Contact

The counseling staff contacts a customer by one or more of the following methods:

- Letter;
- E-mail;
- Telephone; or
- Another mutually agreed up method.

#### Frequency of Required Contact

The counseling staff is responsible for maintaining contact on a routine basis with a customer assigned to his or her Information and Referral (I & R) caseload. The frequency of contact is based on the waiting list priority group of the customer.

1. Each customer on the MSD list is contacted at least once 90 days after eligibility is determined and at least once every 90 days thereafter.
2. Each customer on the SD list is contacted at least once per 12 month period after eligibility is determined and at least once every 12 months thereafter.
3. Each customer on the NSD list is contacted at least once per 12 month period after eligibility is determined and at least once every 12 months thereafter.

#### Contact Information and Appropriate Methods

Prior to contacting a customer on the wait list, the counseling staff reviews the customer's contact information on the customer's case narrative and/or the vocational information form in STARS. The VR counselor is responsible to use the most current contact information and appropriate methods to contact the customer.

## **Case Service Record Documentation to Determine Type of Communication**

If the type of communication for contacting the customer is not clearly described on the vocational information form or case narrative, the counseling staff uses other information in the case service record such as medical or education documentation to determine the most [appropriate method](#) to contact the customer. For example, if documentation in the customer's case service record indicates that the customer may have difficulty responding to written communication, the counseling staff selects an appropriate method to contact the customer such as a telephone call.

If a single method of contact does not work, the counseling staff uses other available and appropriate methods to contact the customer and documents the results of the contacts and conversations in the case narrative of the case service record.

## **Customer Listed with DSHS Client Registry**

If a customer is listed in the DSHS Client Registry, the counseling staff contacts the program(s) identified in the Client Registry to determine whether the other program has contact information more current than DVR. The following is an example:

If the customer has a developmental disability, the Counseling Staff contacts the DSHS Division of Developmental Disabilities (DDD) to determine whether the customer is a client of DDD. If the customer is a DDD client, the counseling staff contacts the DD case manager to determine the most current contact information and whether there is a preferred method of contact. The counseling staff documents the contact made with the DD case service manager and any new contact information in the case narrative of the customer's DVR case service record.

### **C. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

When operating under order of selection, DVR is required to offer a formal, discreet Information and Referral (I&R) service to individuals who cannot be served because of the order of selection

### **D. Maintenance of Records**

**See above.**

# **WEST VIRGINIA ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes West Virginia's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

## **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The agency must preserve enough funds to assure that it can continue to provide services to all individuals who are already receiving services under an individualized plan for employment (IPE) and must assure that it can determine eligibility and assess VR needs for all individuals expected to apply for services during a fiscal year. [*Order of Selection; Director's Letter 2006-19 (June 23, 2006)*]

## **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

### **A. Establishment of Priority Categories**

The Division's Director will determine whether resources are going to be available to provide vocational rehabilitation (VR) services to all eligible individuals throughout the program year. If not, consistent with state and federal law and regulation, the Director will establish restrictions regarding priority categories for selecting the order in which otherwise eligible individuals may be served. Only the Director may establish an order of selection (OS). [2601]

Following are the order of selection categories currently applicable to the Division's VR program [2603]:

**PRIORITY CATEGORY 1:** Eligible applicants with the most significant disabilities.

**PRIORITY CATEGORY 2:** Eligible applicants with significant disabilities.

**PRIORITY CATEGORY 3:** Eligible applicants with non-significant disabilities which result in permanent functional limitations.

**PRIORITY CATEGORY 4:** Eligible applicants with non-significant disabilities which

do not result in permanent functional limitations.

## **B. Terminology**

The following definitions are used for purposes of the order of selection policy.

### **1. Significant disability**—An individual with a disability:

- i. Who has a significant physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self care, self direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and,
- ii. Whose VR can be expected to require multiple VR services over an extended period of time (six months or more); and,
- iii. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and VR needs to cause comparable substantial functional limitation; or,
- iv. Who is a Social Security Disability Income (SSDI) beneficiary; or,
- v. Who is a Supplemental Security Income (SSI) recipient.

### **2. Most significant disability**

An individual who has a significant physical or mental disability that seriously limits two or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and whose vocational rehabilitation can be expected to require multiple services (two or more core services) over an extended period of time (nine months or more).

### **3. Functional limitations**

that include the following are addressed on the Eligibility Certificate with examples of limitations that constitute the different categories and must be addressed before a determination of significant or most significant disability can be determined.

- a. Mobility
- b. Communications
- c. Self-care
- d. Self-direction
- e. Interpersonal skills
- f. Work tolerance
- g. Work skills

#### **4. Permanent Functional limitation**

An impairment of physical or mental activities or functions which either is not amenable to or is not likely to be eliminated through the provision of surgical or other medical services. This use of the term seeks to differentiate between those physical or mental conditions that usually are remedied through the provision of physical or mental health services and those other conditions that impose, or are likely to impose, a permanent loss or substantial reduction in activities or functions regardless of medical intervention. Sometimes, of course, it is not possible to ascertain the probable result(s) of future medical intervention(s). Therefore, an impairment should be considered as being permanent whenever the Rehabilitation Counselor determines that there is substantial doubt about whether or not the impairment is amenable to and/or likely to be eliminated through medical intervention. Examples of permanent functional limitations might include those resulting from amputations of body extremities, most significant visual disorders, and mental retardation. Examples of conditions resulting in functional limitations which, with medical treatment, usually are not permanent might include simple myopia, inguinal hernia, and gall stones.

#### **5. Multiple Vocational Rehabilitation Services**

The term “multiple vocational rehabilitation services” is defined as two or more core services that include physical restoration, mental health services, rehabilitation training, counseling, placement, rehabilitation technology and assessment.

#### **6. Extended Period of Time**

An “extended period of time” is defined as six months or more for designation as a significant disability and nine months or more for designation as a most significant disability.

### **C. Acceptable and Unacceptable Factors.**

In implementing the OOS, the Division complies with all requirements of the federal regulations pertaining to factors that may not be considered in determining the establishment of a waiting list.



#### **D. Ranking Individuals Within a Priority (Waiting Lists)**

The Division has established a policy for ranking individuals within a priority category based on the individual's date of application. This provides a method of selecting individuals from a waiting list for a priority when the agency has enough resources to service some, but not all, individuals in that priority category. [*Order of Selection*]

### **III. IMPLEMENTATION OF ORDER OF SELECTION**

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

#### **A. Statewide Basis**

The Division's Director will determine whether resources are going to be available to provide vocational rehabilitation (VR) services to all eligible individuals throughout the program year. [2601]

#### **B. Authority to Open and Close Priority Categories, as Needed**

The DRS Director has the authority to open and close priority categories as needed, so long as the order of the categories is maintained, and continuity of services to all individuals selected for services is assured. In determining whether to open priority categories, an agency should ensure that sufficient resources are available throughout the year to serve individuals in higher priority categories. [*Order of Selection*]

#### **C. Continuation of Services**

The order of selection provides a management tool for preventing the depletion of agency resources before the end of the fiscal year, assuring that once an individual begins to receive VR services under an IPE, sufficient resources will be available to continue to serve that individual. For example, an individual who is receiving college assistance as part of his or her preparation for employment will continue to receive assistance. However, individuals with disabilities needing assistance from DRS who have not developed a plan for employment with the Division prior to a specified date will be placed on a waiting list for services if determined eligible. [*Order of Selection; Director's Letter 2006-19 (June 23, 2006)*]

Any individual notified by the Rehabilitation Counselor of classification as a member of an open priority category shall be exempted should that category later be closed. [2602]

## **D. Funding Arrangements**

An agency that receives third-party funding to serve individuals from a particular disability group or referral source may not serve any of those individuals that fall outside of the priority categories being served under the order of selection and must renegotiate any funding arrangements that are not consistent with the order of selection requirements. [*Order of Selection*]

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

The Rehabilitation Counselor will determine the appropriate order of selection priority classification for each applicant at the earliest practical time in case development. [2605]

*When Required.* The determination may be completed at any time prior to eligibility determination. However, the Rehabilitation Counselor will complete the determination and assign the individual to the highest appropriate priority category prior to moving the case record into Status 10. In those instances where trial work experience is required prior to eligibility determination, priority classification may be deferred pending completion of the requisite services.

*Basis.* The assessment for eligibility determination usually will yield sufficient information to support an appropriate priority classification. As a minimum, the basis for priority classification should include an initial interview, an assessment of current health using the *Health Assessment Questionnaire*, and if appropriate, medical or psychological confirmation of the disability.

*Reclassification.* An individual whom the Rehabilitation Counselor determines has been misclassified may be reclassified into the highest appropriate priority classification at any time. However, any individual notified by the Rehabilitation Counselor of classification as a member of an open priority category shall be exempted from later reclassification into a closed category. In such instances, the Rehabilitation Counselor will note the circumstances in the *Counselor Comments* section of the case record, but the initial classification shall remain unchanged.

*Documentation.* The Rehabilitation Counselor will complete the appropriate block on the Eligibility Certificate based on the determination of priority classification or reclassification.

Cases placed into Status 04 may be reviewed at the request of the individual or the individual's representative but will be reviewed after twelve months. During the review, the individual or the individual's representative will be contacted to ascertain whether any change of the individual's disability or functional limitations indicate that the current classification may no longer be appropriate. [2606]

## **B. Notification of Eligible Individuals**

The Rehabilitation Counselor shall provide both written notice and an oral explanation of the order of selection to each applicant, including a copy of the form *Information About the Order of Selection*. The *Application for Rehabilitation Services* will include a certification by the applicant that information about the order of selection was received and explained. [2604]

If the classification has been reviewed and continues to be appropriate after twelve months, the Rehabilitation Counselor will notify the individual in writing and close the case record into Status 38 by completing the *Status Change Report*. The written notice of case closure should encourage the individual to reapply for rehabilitation services should his/her disability or functional limitations become more significant. [2606]

An individual may be classified into a closed category which is later declared open. If this occurs while the case is in Status 04, and the individual desires to pursue rehabilitation services, then the Rehabilitation Counselor will notify the individual in writing and immediately move the case to Status 10 by completing the *Status Change Report*. [2606]

## **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

Eligible individuals with disabilities who meet open categories must receive VR services specified in their IPEs.

## **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

When an individual is classified into a closed category of the order of selection, the Rehabilitation Counselor will notify the individual and place the case record into the Pre-Service Listing, Status 04, by completing the *Status Change Report*. Members of closed categories do not receive rehabilitation services, regardless of whether provision of such services requires expenditure of funds. [2606]

Services necessary for determination of eligibility, assessment of rehabilitation needs, and post-employment services are exempted from the Division's OOS. No administrative exemption from the OOS shall be approved except by the Director or his/her designee. [2602]

Agencies implementing an order of selection must ensure that an eligible individual who does not meet the criteria for the open categories of the order of selection has access to services provided under the information and referral system (Section 101(a)(5)(D) of the Act). Information and referral services include: (a) providing vocational rehabilitation information

and guidance to assist the individuals in achieving employment; and (b) appropriately referring individuals to other federal and state programs, including other statewide workforce investment programs, that are best suited to meet the individual's specific employment needs (Section 101 (a)(20)(A) of the Act). [*Order of Selection*]

When making a referral, the agency must provide the individual with:

- a notice of the referral;
- information about a specific point of contact within the program to which the individual is being referred; and
- information and advice about the most suitable service for assisting the individual to prepare for, secure, retain, or regain employment (Section 101 (a)(20)(B)(ii) or the Act and 34 CFR 361.37(b)(2)).

The individual's service record must include documentation on the nature and scope of the information and referral services provided by the State VR agency to the individual and documentation on the referral itself (34 DFR 361.47(a)(13)).

#### **E. Maintenance of Records**

The *Application for Rehabilitation Services* must include a certification by the applicant that information about the order of selection was received and explained. [2604]

The Rehabilitation Counselor will complete the appropriate block on the eligibility statement based on the determination of priority classification or reclassification. [2605]

## **WISCONSIN ORDER OF SELECTION POLICY FRAMEWORK**

This section of the paper describes Wisconsin's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

### **I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION**

Under the federal policy framework regarding order of selection, a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The State of Wisconsin completes an annual estimate of individuals to be served and costs of services. The assessment includes an estimate of the number of individuals in the state eligible for VR services, the number of eligible individuals who will receive services, and the costs of services for each priority category within the order of selection. [*WDVR State Plan FFY 2009, Attachment 4.11(c)(3)*; See also memorandum from Manuel Lugo to All DVR Staff re Directive—Changes to the DVR OOS Process (March 14, 2003), updated January 9, 2007]

### **II. ESTABLISHMENT OF ORDER OF SELECTION**

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

#### **A. Establishment of Priority Categories**

At any time that the Wisconsin Division of Vocational Rehabilitation (DVR) resources do not permit all eligible consumers to be served, an order of selection for services shall be implemented. [*WDVR State Plan FFY 2009, Attachment 4.11(c)(3)*; see also *DVR Policy Manual at page 11*]

**PRIORITY 1:** First priority will be given to consumers with the **most significant disabilities**.

**PRIORITY 2:** Second priority shall be given to consumers with **significant disabilities**.

**PRIORITY 3:** Third priority will be given to **other eligible consumers**.

#### **B. Terminology**

The following definitions are used for purposes of the order of selection policy. [*WDVR State Plan FFY 2009, Attachment 4.11(c)(3)*; see also *DVR Policy Manual at page 11*]

1. **Most significant disability**—A consumer has a most significant disability if a severe mental or physical impairment exists that seriously limits **three or more functional capacities** in terms of an employment outcome and whose vocational rehabilitation requires multiple services over an extended period of time.
2. **Significant disability**--A consumer has a **significant disability** if a severe mental or physical impairment exists that seriously limits **one or more functional capacities** in terms of an employment outcome and whose vocational rehabilitation requires multiple services over an extended period of time. An allowed SSDI or SSI recipient is automatically considered to be, at least, an individual with a significant disability.
3. **Other eligible consumers** include consumers who do not have a disability that seriously limits one or more functional capacities and do not require multiple services over an extended period of time.
4. **Functional areas** include mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills.
  - **Mobility** means the physical, cognitive, and psychological ability to get to work from home and to move around a worksite or participate in work activity.
  - **Communications** means the physical, cognitive, and psychological ability to exchange information effectively when participating in work related activities.
  - **Self-care** means a physical, cognitive, and psychological ability to perform activities of daily living at a level which allows the individual to participate in work-related activities.
  - **Self-direction** means the physical, cognitive, and psychological ability to initiate, organize and make decisions in one's own best interest at a level allowing the individual to participate in work-related activities.
  - **Interpersonal skills** mean the physical, cognitive, and psychological ability to establish and maintain relationships with others at a level which allows the individual to participate in work-related activities.
  - **Work tolerance** means the physical, cognitive, and psychological ability to meet the demands of participating in work-related activities e.g., how long and under what circumstances can the individual work.
  - **Work skills** mean the physical, cognitive, and psychological ability to meet employment expectations for entry-level workers (or in the case of someone who is already employed, the expectations of employers for someone at that level of employment). In other words, is there a reasonable expectation that this person could obtain some kind of work or participate in work-related activities without training?
5. **Functional limitation.** Functional limitations are determined with the consumer's current accommodations in place. For example, if the consumer wears a hearing aid, the functioning with the hearing aid is the basis for determining which functional limitation currently exists. A functional limitation is an activity which the consumer cannot perform which meets the following criteria: is caused by the disability, is related to work, and is

something the general working population can do at work. [*Policy Definition—Functional Limitation (March 1, 2002) Tab18*]

6. **Severe functional limitation** meets all of the above criteria for functional limitation and in addition is something the general working population must do to obtain, maintain, or advance in employment. [*Policy Definition—Functional Limitation (March 1, 2002) Tab18*]
7. **Multiple Vocational Rehabilitation Services**—The term “multiple vocational rehabilitation services” means **two or more primary services** needed to achieve a successful rehabilitation outcome. [*WDVR State Plan FFY 2009, Attachment 4.11(c)(3)*]
8. **Extended Period of Time**—The term “over an extended period of time” means needing VR services for a duration of **six months or more** with a 90 day follow-up after achieving a successful outcome. [*WDVR State Plan FFY 2009, Attachment 4.11(c)(3)*]

### C. Acceptable and Unacceptable Factors

State policies incorporate by reference federal regulations regarding acceptable and unacceptable factors in determining order of selection. [*Policy Definition—Functional Limitation (March 1, 2002) Tab18*]

### D. Ranking Individuals Within a Priority (Waiting Lists)

DVR establishes a wait list of individuals who are eligible, but cannot be served due to lack of resources. When DVR determines it has adequate resources to serve more individuals on the waiting list, an individual may receive services depending on the individual’s category and date of application. [*Understanding Order of Selection, Tab 7*]

## III. IMPLEMENTATION OF ORDER OF SELECTION

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

### A. In General [*WDVR State Plan FFY 2009, Attachment 4.11(c)(3); See also memorandum from Manual Lugo to All DVR Staff re Directive—Changes to the DVR OOS Process (March 14, 2003), updated January 9, 2007*]

At least once a month, the Bureau of Consumers Services (BCS) and the Senior Leadership Team completes a statewide analysis of the resources available to DVR and determines the

number of eligible consumers that can be supported for IPE development. The resource analysis is based on current and the previous two year pattern of activations, closures and case aids spending, and projected forward 2 years with anticipated increases in revenue and costs. The 2 year prospective analysis is to account for the average period of IPE expenditure obligation for cases activated from the OOS wait list.

When current and projected resources make it possible, the Director of BCS will send a list of eligible consumers to be contacted to start IPE development activities. This list contains the names of consumers who have been determined eligible for DVR services on or before the date specified on the list. Consumer names are listed starting with those with the most significant disabilities (OOS Category 1) and **in the order that they applied** for DVR services.

If more consumers can be contacted for IPE development than the number of consumers in OOS Category 1, the IPE development contact list will include OOS Category 2 consumers, **by order of application date**. The same will be done with OOS Category 3 consumers, if we exhaust the names of OOS Category 2 consumers. The list also contains a due date by which staff are to contact and take action on each case.

This process automatically and seamlessly moves to the next OOS Category on the DVR Waiting List depending on how many consumers can be served with the resources available at the time.

## **B. Statewide Basis**

DVR is a statewide program. All offices will serve the same open categories under order of selection. [*Understanding Order of Selection, Tab 7*]

## **C. Authority to Open and Close Priority Categories, as Needed**

DVR establishes a wait list of individuals who are eligible, but cannot be served due to lack of resources. When DVR determines it has adequate resources to serve more individuals on the waiting list, an individual may receive services depending on the individual's category and date of application. [*Understanding Order of Selection, Tab 7*]

## **D. Continuation of Services**

A consumer who has begun to receive services under an approved individualized plan for employment prior to the implementation date of order of selection, must continue to receive the services described in the IPE, including post-employment services.

In other words, if an individual is receiving VR services under an approved IPE when DVR suspends the individual's category, the individual will continue to receive services outlined in the IPE. [*Understanding Order of Selection, Tab 7*]



## **E. Funding Arrangements**

The DVR is primarily responsible for assuring that services within the scope of VR services are available to assist eligible individuals with an IPE in achieving their employment goals. As needed to assure the timely and continuous provision of IPE services, the agency's financial responsibility priority will be to expend Title I-B operational and discretionary case aid funds to assure the timely and continuous availability and delivery of services to these individuals. In FFY 2009, a period where the DSU's Order of Selection actions will impact persons with significant disabilities, a minimum of 98% of the Title I-B funds, exclusive of carryover, the IPE obligation reserve, and funds allocated to operations shall be designated to the discretionary case aids budget to support IPE services and to develop and activate employment plans for eligible individuals with significant and most significant disabilities from the DVR wait list in a continuous and timely manner.

After the Division is assured that eligible individuals are adequately supported in their annual plan costs, and that Title I-B funds have been used to activate individuals with significant and most significant disabilities from the Order of Selection wait list in a timely manner, up to 2% of Title I-B funds may be used for other allowable purposes, if such purposes are funded under an interagency mechanism in accordance with the minimum financial responsibilities of a public or private partner. *[WDVR State Plan FFY 2009, Attachment 4.8(a), (b), (c) (d), & (e)] at page 3 of 11]*

## **IV. ADMINISTRATION OF ORDER OF SELECTION**

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

### **A. Assessment for Determining Eligibility and Priority for Services**

*[ORDER OF SELECTION—FUNCTIONAL LIMITATIONS AREAS (GUIDANCE FOR COUNSELORS; See Also Order of Selection Background Paper, Attachment B (May 21, 2003)]*

#### **1. In General.**

After a consumer is found eligible for VR services, an order of selection determination is completed. Additional evaluations or assessments to make this determination may be needed. The VR counselor and consumer jointly determine the consumer's order of selection priority category by evaluating the consumer's functional limitations, anticipated services needed and the duration those services.

The focus and purpose of the eligibility determination and the order of selection determination are different. To assess whether someone needs VR services because of a disability, the counselor needs to assess the impact of the disability on that individual's life. To determine whether one individual's functional limitations are more significant than the functional limitations of another individual, the counselor needs an entirely different perspective. To make the order of selection category placement determination, the counselor is no longer looking at the impact of the disability on the vocational potential of the individual. Now, the counselor is looking at how the person can function (functional assessment) given their disability, compared to the working population at large. In other words, compared to everyone else, how functionally impaired is the individual.

Each functional limitation can be considered in only one of the functional areas (mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills) for each consumer. However, a single disabling condition can cause multiple functional limitations. *[See Order of Selection Background Paper, Attachment B (May 21, 2003)] [Tab 9]*

When considering whether a functional limitation exists in each of the functional areas, the counselor must assess the limitation with current accommodations and mitigating factors in place and limitations must derive from the disability and must also relate to work. In other words, the counselor must determine what problems does the individual have or is expected to have at work because of the disability with current accommodations/mitigating factors in place. For example if an individual's vision is 20/200 without glasses but the individual's vision with glasses is 20/20, DVR considers for OOS purposes that the individual's vision is 20/20.

This policy is fair because the whole purpose of order of selection is to identify those who need services most—the person who does not have a wheelchair needs services more than the person who does; the person who does not have parents to drive him/her back and forth to work needs services more than the person who does. *[See Order of Selection Background Paper, Attachment B (May 21, 2003)] [Tab 9]*

An individual may request a review of his or her assigned OOS category whenever new evidence is available by submitting the new evidence with a written request for a functional limitations review.

## **2. Special Issues in Eligibility Determinations and Order of Selection Category Placements [April 2001]**

### **a. Temporary Disabilities**

If the consumer is eligible for vocational rehabilitation services, functional limitations should be assessed based on current functioning, regardless of possible increased functioning as healing progresses.

**b. Cyclic Disability (pattern of cyclic exacerbations)**

If a review of the applicant's history over the past two years reveals a pattern of cyclic exacerbations, and this can be predicted to be an attribute of the disability, then any functional limitations which exist during these periods of exacerbation may be considered. If, however, the functional limitations are accommodated already, then they may not be considered.

**c. Progressive Disability (applicant may be exhibiting few symptoms and limitations at the time of application, but the progression of the disease can be anticipated)**

If the consumer is eligible for vocational rehabilitation services, functional limitations should be assessed based on current functioning. However, the psychological impact of the predictable progression of the disability on the consumer may create a functional limitation.

**d. Legacy of Disability (applicant is not now exhibiting problems directly related to disability symptomology, but who has a history of problems related to the disability)**

If the consumer is eligible for vocational rehabilitation services, functional limitations should be assessed based on current functioning. Regardless of the consumer's individual situation, the determination of the existence and severity of the limitations must be based on a comparison to the general working population.

**e. Transition (School to Work) Without Significant Work History**

If the consumer is eligible for vocational rehabilitation services, functional limitations should be based on current functioning. The determination of whether functional limitations exist and whether they are severe is generally based on a comparison to the general working population. The purpose of this comparison is to "level the playing field." In the case of transition students, however, the fairest comparison is to other students leaving high school. Therefore, the lack of a significant work history is not a major limitation to a high school student, because all high school students are at a place in their lives when they are not expected by employers to have much of a work history.

**B. Notification of Eligible Individuals**

All consumers must be officially notified of their individual order of selection determination. A notification letter is completed and sent to every consumer at the time the eligibility and OOS Category determination is made. DVR will contact each individual in a closed category at least annually to find out if his or her conditions have changed and if he or she is still interested in services. [*Understanding Order of Selection, Tab 7*]

[See Tab 8 for a copy of letter sent to eligible consumers not in OOS category for whom IPE's may be developed.]

### **C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection**

When resources make it possible, DVR sends a list of eligible consumers to be contacted to start IPE development activities. This list contains the names of consumers who have been determined eligible for DVR services on or before the date specified on the list. Once an employment plan is initiated, DVR must avoid potential disruption of services. *[Order of Selection Information, Fall/Winter 2004, Tab 12]*

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection**

Consumers not immediately activated for development of an employment plan are offered referral services and the option to be placed on a waiting list until employment plan development services can be initiated.

### **E. Maintenance of Records**

Each consumer on the OOS Wait List is contacted annually to determine if additional information is available. Consumers who no longer wish to remain on the Wait List are closed and notified in writing of the closure and their right to appeal the closure. This information is documented in the case record (IRIS).

The results of the Functional Assessment to determine OOS category placement and any changes in category placement are documented in IRIS. All letters, referrals to other agencies, and contacts with consumers regarding their OOS category determination and/or placement on the Wait List are also documented in IRIS.

### **F. Role of the State Rehabilitation Council**

The Wisconsin Rehabilitation Council (WRC) provides advice on goals and priorities to DVR. DVR consults with WRC regarding the need to have and implement an Order of Selection as well as provides updates at least quarterly regarding the Order of Selection and Wait List. DVR also provides WRC with data regarding Order of Selection including caseload projections and resource projections. A WRC representative is also a member of the DVR Policy Academy along with statewide DVR staff representatives. This academy discusses, reviews, and recommends policy and procedures including policy and procedures related to Order of Selection.