

STATEMENT OF EMERGENCY

781 KAR 1:030

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a) and is necessary to address an imminent threat to public welfare, ensure continued compliance with federal vocational rehabilitation requirements, and implement the mandates of SB 103 RS 25. The Office of Vocational Rehabilitation (OVR) is currently operating under an Order of Selection (OOS) because available resources are insufficient to serve all eligible individuals with disabilities. Under the existing regulatory framework, OVR cannot correctly assign priority categories or administer OOS in a manner consistent with 34 CFR §§ 361.36, 361.41, and 361.42. As a result, individuals with the most significant disabilities are being placed on waitlists under outdated and noncompliant criteria. Immediate regulatory correction is required to avoid continued improper prioritization and further delay in service delivery.

Immediate action is also required to prevent jeopardizing federal funding for the OVR program. Continued administration of an unlawful OOS constitutes federal noncompliance and poses a direct risk to Kentucky's ability to draw federal vocational rehabilitation funds. This creates an imminent threat to public welfare, as OVR is currently unable to serve new eligible individuals and cannot release any of the approximately 3,000 individuals now waiting for services until the regulations are corrected.

In addition, SB 103 RS 25 amended KRS 151B.195 to require OVR to promulgate administrative regulations that established a preference for in-state services and set forth its policy and procedure used to establish service fees.

Ordinary administrative regulation procedures are inadequate to prevent this harm, because the delay inherent in the ordinary process would prolong improper administration of the OOS and extend service denials for individuals with the most significant disabilities. Therefore, this emergency regulation is necessary to establish the legally required framework for OVR to comply with federal and state law and to protect public welfare.

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

Andy Beshear, Governor
Commonwealth of Kentucky

Vickie Wise, Deputy Secretary
Education and Labor Cabinet

1 EDUCATION AND LABOR CABINET

2 Department of Workforce Development

3 Office of Vocational Rehabilitation

4 (Emergency Amendment)

5 781 KAR 1:030E. Order of selection[~~and economic need test for vocational rehabilitation~~

6 ~~services~~].

7 RELATES TO: KRS 151B.190, 34 C.F.R. 361.36, 361.53, 361.54, 29 U.S.C. 721(a)(5), (15),

8 (21)(A)

9 STATUTORY AUTHORITY: KRS 151B.185(2), (3), 151B.195(1), 29 U.S.C. 709(c), 34 C.F.R.

10 361.36, 361.54

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195(1) requires the Executive

12 Director of the Office of Vocational Rehabilitation to promulgate administrative regulations

13 governing the services, personnel, and administration of the State Vocational Rehabilitation

14 Agency. 34 C.F.R. 361.36(c) requires the office to determine, prior to the beginning of each fiscal

15 year, whether to establish and implement an order of selection for state vocational rehabilitation

16 services. 34 C.F.R. 361.36(d) requires federal guidelines for the imposition of an order of selection.

17 [34 C.F.R. 361.54(b) authorizes the office to consider an individual's financial need for vocational

18 rehabilitation services.] This administrative regulation establishes when an order of selection[~~and~~

19 ~~an economic need test~~] shall be applied to the provision of vocational rehabilitation services in

20 order to distribute limited funds more equitably over the entire population of otherwise eligible

21 individuals.

1 Section 1. [Definitions.

2 (1) "Eligible individual" means an individual who has been determined by the office to meet the
3 basic conditions of eligibility for vocational rehabilitation services.

4 (2) "Executive director" means Executive Director of the Office of Vocational Rehabilitation.

5 (3) "Individual with a most significant disability" means an individual who has a disability that
6 limits two (2) or more areas of functional capacity.

7 (4) "Functional capacity" means the capacity to perform tasks required in employment including:

8 (a) Mobility;

9 (b) Communication;

10 (c) Self care;

11 (d) Self direction;

12 (e) Interpersonal skills;

13 (f) Work tolerance; or

14 (g) Work skills.

15 (5) "Office" means the Office of Vocational Rehabilitation, and its appropriate staff members
16 who are authorized under state law to perform the functions of the state regarding the state plan
17 and its supplement.

18 (6) "Non significant disability" means a disability that does not limit a functional capacity.

19 Section 2. Economic Need.

20 (1) Economic need shall be considered in determining whether to grant vocational rehabilitation
21 services.

22 (2) The executive director shall exempt services from the economic needs test if the office is able
23 to provide services to all eligible individuals with significant disabilities pursuant to Section 3 of

1 ~~this administrative regulation, with consideration of applicable comparable benefits as provided in~~
2 ~~34 C.F.R. 361.53.~~

3 ~~(3) An economic needs test as established in subsection (5) of this section shall be applied as a~~
4 ~~condition for furnishing the following vocational rehabilitation services:~~

5 ~~(a) Physical and mental restoration services;~~
6 ~~(b) Tuition and registration fees for vocational or college training;~~
7 ~~(c) Maintenance other than diagnostic;~~
8 ~~(d) Transportation other than diagnostic;~~
9 ~~(e) Services, other than diagnostic, to members of an individual's family necessary to the~~
10 ~~adjustment or rehabilitation of the individual with a disability;~~
11 ~~(f) Occupational licenses, tools, equipment, or initial stock (including livestock) or supplies;~~
12 ~~(g) Postemployment services except as provided in subsection (4)(a) (m) of this section;~~
13 ~~(h) Other goods and services which can reasonably be expected to benefit an eligible individual in~~
14 ~~terms of employment outcomes;~~
15 ~~(i) Initial vehicle and property modifications in excess of \$10,000;~~
16 ~~(j) Second or subsequent vehicle modifications regardless of cost;~~
17 ~~(k) Vehicle modification repair or upgrades; or~~
18 ~~(l) Hearing aid in excess of \$1,000.~~

19 ~~(4) The following services shall be excluded from an economic needs test:~~

20 ~~(a) Assessment for determining eligibility and vocational rehabilitation needs;~~
21 ~~(b) Counseling and guidance;~~
22 ~~(c) Placement;~~
23 ~~(d) Services provided by staff at state owned and operated rehabilitation facilities;~~

- 1 (e) Rehabilitation technology except as specifically provided in subsection (3) of this section;
- 2 (f) Communication assistance in the individual's native language;
- 3 (g) Books, supplies, tools, or equipment for vocational or other training;
- 4 (h) Supported employment;
- 5 (i) Interpreter services for the deaf;
- 6 (j) Reader services for the blind;
- 7 (k) Personal assistance services;
- 8 (l) Tutors, note takers, or assistive technology education aids; or
- 9 (m) Other training, including driver training, on-the-job training, job coaching, job development,
10 or job training.
- 11 (s) The office's economic needs test shall be based on the most current Kentucky Median Adjusted
12 Gross Income developed by the U.S. Department of Commerce. If the individual has a monthly
13 income that exceeds 100 percent of the most current median gross income, the individual shall
14 apply the excess income to rehabilitation services necessary to achieve the employment goal
15 except as provided for in 34 C.F.R. 361.54.
- 16 Section 3.] Order of Selection. (1) If the executive director determines that the office's projected
17 fiscal or personnel resources are insufficient[shall be unable] to provide the full range of services
18 as required by the Rehabilitation Act of 1973, as amended, to all eligible individuals[applicants],
19 the office shall inform the Statewide Council and implement the order of selection on a state-wide
20 basis in compliance with 34 CFR 366.36.
- 21 (2)[(1)] An eligible individual previously declared eligible for and receiving vocational
22 rehabilitation services under an individualized plan for employment shall not be affected if the
23 office implements an order of selection.

1 [② The order of selection shall not regulate the provision of information or referral services.]

2 (3) On implementation of the order of selection, the office shall continue to accept referrals of and

3 applications from individuals with disabilities and continue determining eligibility for services.

4 (4) The order of selection shall not impact[regulate] the provision of information, referral services,

5 or authorization of assessment for determining eligibility.

6 (5) [An applicant shall be declared eligible or ineligible as appropriate.]

7 (6)

8 (a) An eligible individual entering accepted status after implementation of the order of selection

9 shall be assigned to a priority category.

10 (b) If the priority category is open, the individual shall be served.

11 (c) If the priority category is closed, the individual's case shall be held on a waitlist in accepted

12 status until the priority category assigned is opened or the order of selection is lifted.

13 (7) The order of selection shall permit immediate reclassification into a higher priority category if

14 circumstances justify the reclassification.

15 (8) If the office is unable to provide services to all eligible individuals[with significant

16 disabilities], the office shall first serve [eligible]individuals with the[a] most significant disability

17 in the highest open priority category. Within each priority category, individuals shall be served in

18 order of application date[first and then serve eligible individuals with a significant disability on a

19 first applied, first served basis, as established by the date of application within a category. If funds

20 become available, the executive director and Statewide Council for Vocational Rehabilitation shall

21 adjust the priority categories to be served as appropriate to provide services to as many consumers

22 as funds allow].

1 (6)[(9)] The order of selection established in this section shall be followed with the categories to
2 be served designated at the time of implementation.

3 (7) The executive director may serve individuals from the waitlist, open, or close one or more
4 priority categories as appropriate, to provide services to as many individuals as funds allow.

5 ~~(10) The order of selection shall have priority categories as follows:~~

6 ~~(a) Priority Category I—eligible individuals with a most significant disability that limits three (3)~~
7 ~~or more functional capacities;~~

8 ~~(b) Priority Category II—eligible individuals with a most significant disability that limits two (2)~~
9 ~~functional capacities;~~

10 ~~(c) Priority Category III—eligible individuals with a significant disability that limits (1) one~~
11 ~~functional capacity;~~

12 ~~(d) Priority Category IV—Eligible individuals with a non-significant disability.]~~

781 KAR 1:030E. Order of selection

As approved by:

Vickie Wise, Deputy Secretary, Education and Labor Cabinet

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on February 26, 2026 at 1:00 pm, at Mayo-Underwood Hearing Room 133CE, 500 Mero Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2026. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

781 KAR 1:030E. Order of Selection.

Contact Person: Brooke McDaniel, Administrative Specialist Senior, Office of Vocational Rehabilitation, 500 Mero Street, First Floor, Frankfort, KY 40601

Phone: 502-782-2539

Email: brooke.mcdaniel@ky.gov

Subject Headings: Disability and Disabilities, Workforce Development, Education

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for the determination of eligibility for the receipt of goods and services from the Office of Vocational Rehabilitation (OVR) in compliance with the federal Rehabilitation Act and KRS 151B.180, *et seq.*, specifically the order of selection regarding priority categories.

(b) The necessity of this administrative regulation: This administrative regulation is required to implement order of selection as required by 29 U.S.C. 721(a)(5), 34 CFR § 361.36.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation ensures order of selection is compliant with 29 U.S.C. 721(a)(5) and 34 CFR § 361.36.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the requirements for the implementation of order of selection as mandated by 29 U.S.C. 721(a)(5) and 34 CFR § 361.36.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendment changes the definitions for the priority categories to bring them into compliance with federal law, specifically 29 U.S.C. 721(a)(5) and 34 CFR § 361.36.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations are required to ensure compliance with 29 U.S.C. 721(a)(5) and 34 CFR § 361.36.

(c) How the amendment conforms to the content of the authorizing statute: This amendment brings Kentucky's priority categories into compliance with federal law.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is required to ensure Kentucky's priority categories are compliant with federal law.

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

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The approximately 46,000 individuals served by the Office of Vocational Rehabilitation.

(5) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation does not require action by any entity or individual. It merely sets forth the guidelines for implementation of order of selection.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not grant benefits; it establishes the requirements for implementation of order of selection.

(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal vocational rehabilitation funds and state match funds received by the Office of Vocational Rehabilitation.

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this proposed amendment.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(10) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all affected individuals.

FISCAL IMPACT STATEMENT

781 KAR 1:030E. Order of Selection.

Contact Person: Brooke McDaniel, Administrative Specialist Senior, Office of Vocational Rehabilitation, 500 Mero Street, First Floor, Frankfort, KY 40601

Phone: 502-782-2539

Email: brooke.mcdaniel@ky.gov

Subject Headings: Disability and Disabilities, Workforce Development, Education

(1) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 13B.170, 151B.017, 151B.185, 151B.190, 151B.195, 151B.200; 29 U.S.C. 721(a)(5); 34 C.F.R. 361.36.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: KRS 13B.170, 151B..017, 151B.185, 151B.190, 151B.195, 151B.200.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: The Office of Vocational Rehabilitation is the promulgating agency, and no other agencies are affected.

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

1. Expenditures:

For the first year: None

For subsequent years: None

2. Revenues:

For the first year: None

For subsequent years: None

3. Cost Savings:

For the first year: None

For subsequent years: None

(4)(a) Identify affected local entities (for example; cities, counties, fire departments, school districts): No local entities are affected.

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

1. Expenditures:

For the first year: None

For subsequent years: None

2. Revenues:

For the first year: None
For subsequent years: None

3. Cost Savings:
For the first year: None
For subsequent years: None

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): None

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

1. Expenditures:
For the first year: None
For subsequent years: None
2. Revenues:
For the first year: None
For subsequent years: None
3. Cost Savings:
For the first year: None
For subsequent years: None

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a) and (5)(a):
Not applicable.

(a) Fiscal impact of this administrative regulation: None.

(b) Methodology and resources used to reach this conclusion: Not applicable.

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

(a) Whether this administrative regulation will have a “major economic impact,” as defined by KRS 13A.010(13): This proposed amendment will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: Not applicable.