

Title 25. State Government

Chapter I. Division of State Services for the Blind, Division of Workforce Services, Department of Commerce

Subchapter A. Generally

Part 2. Vocational Rehabilitation Policy Manual

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"1.2 LEGISLATIVE BASIS

The Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) is the federal law that became effective in 2014 and replaced the Workforce Investment Act. Title IV of the WIOA law and 34 C.F.R. § 361 pertain to the requirements for the Vocational Rehabilitation program."

Subpart 1. General Requirements

25 CAR § 2-101. Introduction.

(a) The principles and guidelines presented in this subpart extend over all Division of State Services for the Blind policies.

(b) The following principles generally apply to the division's consumers and potential consumers:

- (1) Timeliness of services, decisions, and notifications;
- (2) Nondiscriminatory availability of services;
- (3) Confidentiality of consumer files;
- (4)(A) Informed choice.

(B) See 25 CAR § 2-201 et seq.;

(5) Allowances for exemptions to policy limitations under reasonable extenuating circumstances; and

(6) An opportunity to appeal decisions regarding to their planned services or their eligibility for such services.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-102. Confidentiality.

(a)(1) All Division of State Services for the Blind staff are responsible for ensuring that personal information regarding applicants and recipients of services furnished to this agency are held confidential.

(2) This includes information such as:

- (A) Lists of names and addresses;
- (B) Records of agency evaluation;
- (C) Reports of medical examination and treatment;
- (D) Financial information; and
- (E) Photographs.

(b) Release of information.

(1)(A) Release of information to any individual, agency, or organization shall be conditioned upon satisfactory assurance by such individual, agency, or organization that the information:

- (i) Will be used only for the purpose for which it is provided; and
- (ii) Will not be released to any other individual, agency, or

organization.

(B) Information will not be disclosed, other than in the administration of the VR program, unless the informed consent of the consumer has been obtained in writing.

(C) Any release of information must be in accordance with 34 C.F.R. § 361.38.

(2) Upon written request, information shall be released to the consumer or, as appropriate, the parent/guardian or other representative.

(3) For purposes regarding any proceeding or action for benefit or damages, only information that is relevant to the needs of the consumer may be released.

(4) If the division has obtained personal information from another agency or organization, it may be released only by the other agency or organization from which it originated.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "VR" means vocational rehabilitation.

25 CAR § 2-103. Competitive integrated employment.

(a) All individuals working with the vocational rehabilitation program must intend to achieve a competitive integrated employment outcome.

(b) The requirements for competitive integrated employment are as follows:

(1)(A) The job must be in an integrated environment.

(B)(i) The individual's supervision and level of involvement and interaction with others should be comparable to nondisabled employees performing the same or similar work in businesses typically found in the community.

(ii) This means the individual interacts with others with and without disabilities while performing the duties of the job within the work unit and worksite.

(iii) This is not based on a ratio of nondisabled employees, but rather interaction with nondisabled coworkers and customers.

(C) The level of integration of some work environments, including enclaves and mobile work crews, must be reviewed on a case-by-case basis, as one situation may be nonintegrated while another seemingly similar situation is integrated;

(2)(A) The individual must be receiving competitive earnings.

(B)(i) The individual must be receiving a wage that is comparable to the prevailing wage for work performed at that location and must not be below the minimum wage set in that location.

(ii) The individual's level of training, skills, and experience must be considered when determining if the individual is being compensated at a level comparable to individuals without disabilities working in a similar position.

(C)(i) The rate of pay is based on the local prevailing wage of the job consistent with wages paid for comparable work in the community.

(ii) Minimum wage is not the default starting wage; and

(3)(A) The individual must have an opportunity for advancement similar to other employees.

(B) The individual must be provided the equal potential for raises in pay, paid vacation, sick leave, and insurance benefits as other employees without disabilities who work for the employer.

(C)(i) Opportunities for advancement are not limited to a promotion to more advanced positions.

(ii) They can also include increased job responsibilities or increased work hours.

(c) If there is any indication the individual's employment may be noncompetitive or nonintegrated, the counselor must determine the following information through consultation with the individual and the employer:

(1) The nature of the work and duties the individual is performing;

(2) The level of interaction the individual has with others who have and do not have disabilities;

(3) The wage the individual is receiving; and

(4) The opportunities for advancement available.

(d) After consultation with the individual and employer, the counselor will determine whether or not the individual is in competitive integrated employment.

(e) Documentation that supports the determination must be in the case record.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-104. Nondiscrimination.

Referrals or applicants will not be excluded from applying for services or be found ineligible for services on the basis of:

- (1) Race;
- (2) Age;
- (3) Sex;
- (4) Color;
- (5) National origin;
- (6) Type of expected employment outcome;
- (7) Source of referral;
- (8) Particular service needs or anticipated cost of services;
- (9) Income level of the applicant or their family;
- (10) Applicant's employment history or current employment status; or
- (11) Applicant's educational status or current educational credential.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-105. Reasonable accommodations.

(a)(1) Accommodations shall be provided, as needed, during the vocational rehabilitation process to enable individuals to participate in their services to the fullest extent possible.

(2) Accommodations may include:

- (A) Aids;
- (B) Devices;
- (C) Services; and
- (D) Technology.

(b) The Division of State Services for the Blind must use comparable benefits if they are available to the individual at the time needed to ensure progress towards the employment outcome towards the cost of any accommodations.

(c) If the required accommodations are not available to the individual at the time needed to ensure progress towards an employment outcome specified in the

individualized plan for employment, then the division must provide the accommodations until the comparable benefits become available.

(d) More about accommodations can be found in DSB Policy Chapter 7, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102 et seq.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-106. Foreign language and sign language access.

(a) The United States Rehabilitation Services Administration requires that consumers receive information through appropriate modes of communication that are accessible to and preferred by them.

(b) Therefore, the Division of State Services for the Blind must provide foreign language interpretation and translation services, including sign language interpretation, to consumers if the individual cannot access the VR program without that service.

(c) If available, only certified interpreters will be used.

Authority. Arkansas Code § 25-10-204.

Codification Notes. “VR” means vocational rehabilitation.

25 CAR § 2-107. Notification of rights.

(a) Consumers, including potentially eligible students with a disability, will be notified of their rights including the availability of the Client Assistance Program and the manner in which a mediator or impartial hearing officer may be selected throughout the vocational rehabilitation process.

(b) The consumer or representative must be notified of their rights in writing at each of the following times:

- (1) During their application or intake;
- (2) When the individual is assigned to a priority category in order of selection;

- (3) When a determination of ineligibility for services is made;
- (4) When an individualized plan for employment (IPE) or Pre-ETS Service Agreement is developed or amended; and
- (5) When the Division of State Services for the Blind decides to initiate a reduction, suspension, or termination of any services being provided under an IPE or Pre-ETS Service Agreement.

(c) Client Assistance Program.

- (1) While the applicant or eligible consumer may at any time call the following numbers, it is encouraged that they first pursue the agency's informal appeal process.
- (2) The numbers are:
 - (A) The division's toll-free number, 1-800-960-9270; and
 - (B) Client Assistance Program's toll-free number, 1-800-482-1174.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "ETS" means employment transition services.

25 CAR § 2-108. State residency/out-of-state individuals.

- (a)(1) Individuals are not required to be Arkansas residents or to show documentation of residency to receive an eligibility determination or services.
 - (2) However, individuals must be present in Arkansas and be available to receive and participate in services.
 - (3) Examples of being present in Arkansas, but not a state resident, may include post-secondary students and migrant workers.
- (b) When an individual moves out of state after their individualized plan for employment (IPE) is developed and approved, it may be advantageous for the individual to continue receiving services from the Division of State Services for the Blind if the:
 - (1) Individual plans to return to Arkansas; or

(2) Provision of services would be jeopardized if the individual applied for services in the other state (e.g., through order of selection delays or unique state policies).

(c) There may be times when it would be beneficial for the individual to apply for services in their current state of residence:

(1) If the individual desires regular access to face-to-face communication with a rehabilitation counselor; or

(2) If the IPE requires extensive coordination of services.

(d)(1) In these situations, the division can coordinate services with other state vocational rehabilitation agencies.

(2) It is important to ensure both states are not providing the same services.

(e)(1) There are times when individuals come from out of state to attend World Services for the Blind.

(2) It may be to the individual's benefit to apply for services at the division, especially if they plan to stay in the state after finishing their program.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-109. Legal residency and citizenship.

(a) The Division of State Services for the Blind does not require an individual to have legal residency or citizenship in order to apply for services and receive an eligibility determination.

(b) However, individuals who apply for vocational rehabilitation services must intend to achieve a competitive integrated employment outcome.

(c) The other conditions of eligibility required by policy must be met.

(d) See 25 CAR § 2-108, and 2 CAR § 2-403.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-110. Knowledge of laws.

(a)(1) Division of State Services for the Blind staff will keep current in their knowledge of state and federal laws that affect consumers.

(2) Division staff must comply with all state and federal laws, rules, and regulations, including state purchasing requirements.

(b)(1) Division staff who have reasonable cause to believe a child, elderly person, or person with a disability is being abused, neglected, or exploited are mandatory reporters and shall report the information.

(2) For individuals in a facility, the incident is to be reported to the authority having responsibility for the facility.

(3)(A) For other situations, the local office of Adult Protective Services (State Abuse Hotline 1-800-482-8049) will be notified if the individual is an adult.

(B) If the individual is a child, then Child Protective Services (Child Abuse Hotline 1-800-482-5964) will be notified.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-111. Allowable costs and cost effectiveness.

(a)(1) All rehabilitation services must be provided in the most cost-effective manner possible, consistent with the individual's needs and informed choice.

(2) The cost must be:

- (A) Allocable;
- (B) Allowable;
- (C) Reasonable; and
- (D) Necessary.

(3) This means the cost must:

- (A) Be necessary for the performance or administration of the vocational rehabilitation program;
- (B) Follow sound business practices;
- (C) Follow procurement processes;
- (D) Be prudent under state and local laws;

(E) With fair market prices;

(F) Be in accordance with informed choice as outlined in 34 C.F.R. § 361.52; and

(G) Fall within the terms of the vocational rehabilitation grant award.

(4)(A) This includes using comparable benefits when applicable.

(B) See DSB Policy 6.9.

(b)(1) The division must not place absolute dollar limits on specific service categories or on the total cost of services provided to an individual.

(2) Staff must comply with the established fee schedules and rates put in place for goods and services.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-112. Dual case files with other vocational rehabilitation agencies.

(a)(1) In the unique circumstance where the specific expertise of another vocational rehabilitation agency is necessary to best meet the needs of an individual, there can be a dual case file.

(2) The Division of State Services for the Blind has a dual service agreement with Arkansas Rehabilitation Services that uses a team approach with consumers who have disabilities in addition to blindness or visual impairment.

(b)(1) The expectation in any dual case situation is that there will be sufficient communication between the vocational rehabilitation counselors involved from each agency to prevent duplication of services and funding on the IPE.

(2) When a counselor determines that a consumer has a case with another agency, they must notify Quality Assurance of the dual case.

(3) Quality Assurance will then coordinate with the other agency to assign one (1) unique identifier to the participant for both agencies on all federal reports.

(4) This will ensure both agencies correctly identify the participant to the United States Rehabilitation Services Administration and correctly include them in all performance measures.

(c)(1) When a participant must be contacted for supplemental wage information, each agency will send their form to the consumer at the appropriate time after closure.

(2) It is possible that the case will close at different times for each agency, and this will allow both agencies to track their participant's performance measures as needed.

(d) When supplemental wage information is received by the agency for a shared consumer, the agency will provide a copy of that information to the other agency for federal reporting purposes.

(e) If the individual has a Ticket to Work, both vocational rehabilitation agencies may seek cost reimbursement from the Social Security Administration.

(f)(1) Reimbursement payments will not be made more than once for the same service or cost.

(2) This is per 20 C.F.R. pt. 404, Subpart V.

(3) See United States Rehabilitation Services Administration Technical Assistance Circular titled Provision of Vocational Rehabilitation Services to an Individual by More Than One Agency.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "IPE" means individualized plan for employment.

25 CAR § 2-113. Timeliness.

(a) Division of State Services for the Blind staff must ensure that all individuals who are referred to, apply for, or receive vocational rehabilitation services are responded to in a timely manner.

(b) Timeliness will be defined individually, based on individual needs and readiness for services.

(c) This includes:

- (1) Respond to emails and phone calls within one (1) business day of receiving or within one (1) business day of returning to the office;
- (2) Documented contact with individuals at least every forty-five (45) days;
- (3) Contact all referrals within one (1) business day to schedule the orientation contact;
- (4) Contact all newly assigned cases, including case transfers, within five (5) business days of the assignment;
- (5) An orientation meeting conducted by the vocational rehabilitation counselor completed within ten (10) days from the date of referral;
- (6)(A) Eligibility completed within sixty (60) days of application.
 - (B) Extensions must follow 25 CAR § 2-402(d);
- (7) Weekly contact with individual during the comprehensive assessment period;
- (8)(A) IPE developed within ninety (90) days of eligibility.
 - (B) Extensions must follow DSB Policy 6.3.2; and
- (9) Authorizations processed and paid within ninety (90) days of being issued, unless documented, extenuating circumstances apply.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "IPE" means individualized plan for employment.

25 CAR § 2-114. Quality services.

(a) It is intended that consumers of this agency receive the quality services necessary and appropriate to the achievement of their vocational goal.

(b) The Division of State Services for the Blind will strive to maximize the potential for consumers to prepare for, obtain, retain, and advance in high-quality jobs and high-demand careers.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-115. Representatives.

(a) A representative means a person designated by an individual, by law, or by the court system to represent the individual in any matter pertaining to a request for or receipt of rehabilitation services.

(b) Types of representation of the individual may include:

(1)(A) Parent or parents.

(B) For minors under eighteen (18) years of age, as long as there are no other court appointed representatives or a legal emancipation, the parent has the right to make decisions regarding the minor's education, health care, and religion, among other things;

(2)(A) Legal guardian.

(B) A legal guardian is appointed by the court to make the personal decisions of a protected person or "ward".

(C) The guardian has the authority to make decisions on behalf of the protected person about such things as where to live, medical decisions, training and education, etc.

(D) A ward who has a legal guardian has been determined by the courts to have:

(i) A lack of sufficient understanding or capacity to make or communicate responsible personal decisions; and

(ii) An inability to meet personal needs for:

(a) Medical care;

(b) Nutrition;

(c) Clothing;

(d) Shelter; or

(e) Safety;

(3)(A) Conservator.

(B) A conservator is appointed to make financial decisions for the protected person or "conservatee".

(C) The conservator typically has the power to enter into contracts, pay bills, invest assets, and perform other financial functions for the protected person.

(D) Conservatees have had conservators appointed for them because they lack similar capacity and have demonstrated an inability to make decisions regarding their financial affairs or estate;

(4)(A) Power of attorney.

(B) A power of attorney is written permission for someone to take care of property or money matters for the individual, in whatever way they want.

(C) With power of attorney, the individual can still act for themselves and they cannot be forced to do anything they do not agree to.

(D) An individual can give the power of attorney the ability to sign papers about property and money matters; and

(5)(A) Designated representative.

(B) An individual who is eighteen (18) years of age or older can designate a representative to represent the individual in any matter pertaining to a request for or receipt of rehabilitation services.

(C) The designated representative must be a person designated by an individual in writing, and only one (1) representative can be designated at one (1) time.

(c)(1) All signature requirements placed on an individual are satisfied by the signature of an individual's representative.

(2) The individual is encouraged to also sign official documents to the extent possible, as this is the individual's vocational rehabilitation program, regardless of representation.

(3) All written notices that must be provided to an individual must also be provided to the individual's legal representative.

(d) Documentation must be kept in the file showing the representation, including guardianship and conservatorship documentation.

(e) Legal representatives do not require a release of information so long as they are actively designated to represent the individual.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-116. Counselor change requests.

(a)(1)(A) An individual may request a change in counselor.

(B) An individual can request a change for a variety of reasons, and the request should not be viewed negatively.

(C) The counseling relationship is important, and some individuals respond differently to certain counseling approaches.

(2) All change requests will be given consideration.

(3)(A) If the Field Administrator grants the change request, there must be a case transfer meeting with the individual, the newly assigned counselor, and any involved supervisors to discuss expectations moving forward.

(B) If the change request is denied, the supervisor must consult with the individual and explain the reasons for the decision.

(C) At that time, the individual is provided their appeal rights.

(b) Change in counselor procedure:

(1)(A) Individual requests a new counselor.

(B) If the call is to someone other than a counselor's direct supervisor, that staff person will listen and talk to the individual regarding the request to gather initial information and relay that information to the counselor's supervisor.

(C) The receiver of the request must case note the discussion;

(2) The supervisor will:

(A) Talk to the individual to gather the facts;

(B) Talk to the counselor to gather the facts;

(C)(i) Review case documentation and information collected.

(ii) The supervisor will then offer consultation with the individual and the counselor to try to resolve the situation.

(iii) If this is not successful, the remaining procedure is applied;

(D) Consult with the Field Administrator to review and discuss the situation; and

(E) Case note the information collected and the decision of the Field Administrator;

(3) If the decision is to transfer the case to another counselor, an exchange meeting will take place with the individual, the counselor, and the involved supervisors to discuss expectations moving forward; and

(4) If the decision is not to transfer the case to another counselor:

(A)(i) A consultation with the individual must occur to explain the reason or reasons for the decision.

(ii) The supervisor must provide the appeal rights to the customer; and

(B) A meeting with the individual, the counselor, and the supervisor must occur to discuss the situation and next steps.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-117. Case transfers.

(a) If an individual's case is transferred to a new counselor, the individual must be sent a letter notifying them.

(b) The letter will include:

(1) Reason for the transfer; and

(2) The new counselor's contact information.

(c) Staff must contact all newly assigned cases, including case transfers, within five (5) business days of the assignment.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-118. Case management support for counselor-vacant caseloads.

The caseloads for vacant counselor positions may be managed in the following ways at the direction of the area manager or Field Administrator, based on the nature of the caseload and length of vacancy:

- (1) Primary case management by the area manager until vacancy is filled; or
- (2) Temporary or permanent reassignment of specific cases to another rehabilitation counselor.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-119. Exceptions to policy.

(a) Policies may be waived on a case-by-case basis depending on the individual's needs and circumstances.

(b) The Division of State Services for the Blind recognizes that occasionally medical emergencies or other circumstances beyond the consumer's control occur preventing the consumer from completing an activity within allotted timeframes or causing a need for additional services.

(c) In these situations, the consumer may request an exemption to policy limits.

(d) Depending on the policy affected, a VR counselor, area manager, or Field Administrator would review the situation and determine:

- (1) If reasonable extenuating circumstances existed; and
- (2) Whether an exemption to policy limitations should be approved.

(e) Any exception made to policy must be documented as such in the case record of the individual, and the documentation must include justification on why the exception was made.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "VR" means vocational rehabilitation.

25 CAR § 2-120. Right to review and mediation.

(a) Recipients of services, including students receiving preemployment transition services, applicants, and eligible individuals, have the right to a review and mediation if they are dissatisfied with any determination made by Division of State Services for the Blind staff that affects the provisions of rehabilitation services.

(b) The individual has a right to:

(1) An informal review of the decision conducted by division staff not involved in the decision;

(2) Mediation; and

(3) An impartial hearing before an administrative law judge.

(c)(1) A request for a review and mediation may be made by the affected individual or the individual's representative.

(2) The request must be in writing and must be sent to the Director of the Division of State Services for the Blind as follows:

Director

Arkansas Division of Services for the Blind

P.O. Box 3237

Little Rock, AR 72203

(d)(1) The written request for review or mediation must be received by the director no more than sixty (60) calendar days after the appellant is notified of the action for which the review is requested.

(2) The appellant must identify the determination with which the appellant is dissatisfied.

(e) The division must not institute a suspension, reduction, or termination of rehabilitation services being provided to an appellant until completion of the review process unless requested by the appellant or if the division has evidence that the

services have been obtained through misrepresentation, fraud, collusion, or criminal conduct by the appellant.

(f)(1) The division must contact the appellant within five (5) calendar days following receipt of the written request and explain review and mediation options.

(2) This contact and all other matters related to the process of review and mediation will be done by the Assistant Director of the Division of State Services for the Blind.

(g) The division must also provide the appellant a description of services available from and information on how to contact the Client Assistance Program to assist the appellant in the review of determinations.

(h)(1) If the appellant is dissatisfied with the results of an informal review or mediation, or chooses an impartial hearing initially, an impartial hearing must commence within sixty (60) calendar days of the initial written request unless the parties agree to a specific extension of time.

(2) The assistant director is responsible for scheduling mediators and impartial hearing officers.

(i) **Informal review.**

(1)(A) An appellant may request an informal review.

(B) An informal review must not be used to deny the right of an appellant to pursue mediation or an impartial hearing.

(C) Participation in the informal review is voluntary on the part of the appellant and on the part of the division.

(D) The appellant or the division may terminate the informal review at any time.

(E) In the event an informal review is terminated, the appellant or the division may pursue resolution through mediation or an impartial hearing.

(2) The informal review must be conducted by supervisory staff not involved in the original determination that caused the appellant to ask for a review.

(3) An appellant may choose either:

(A)(i) An informal review of written materials only.

(ii) Supervisory staff conducting the review must consider all written evidence presented from the time the request for informal review is received until the final decision is made; or

(B)(i) An informal review of written materials with a review conference.

(ii) Supervisory staff conducting the informal review must consider all written and oral evidence presented from the time the request for review is received until the final decision is made.

(4)(A) The final decision regarding the informal review must be made by the reviewing supervisory staff either within ten (10) calendar days following the request for an informal review of written materials only, or within ten (10) calendar days following the conclusion of an informal review conference, unless the parties agree to a specific extension of time.

(B) The supervisory staff conducting the informal review must notify the appellant in writing by mail of the informal review decision.

(C) The informal review decision must contain a summary of the nature and basis of the decision and the appellant's review rights under this part.

(j) Mediation.

(1)(A) An appellant may request mediation at any time.

(B) Mediation must not be used to deny the right of an appellant to pursue an impartial hearing.

(C) Participation in the mediation process is voluntary on the part of the appellant and on the part of the division.

(2)(A) The appellant, division, or mediator may terminate mediation at any time.

(B) In the event mediation is terminated, the appellant or the division may pursue resolution through an impartial hearing.

(3)(A) All mediation shall be conducted by a qualified and impartial mediator as defined in 34 C.F.R. § 361.5(c)(43).

(B) The mediator will be selected from a list maintained by the State of Arkansas as required in Section 102 of the Rehabilitation Act of 1973, 29 U.S.C. § 701

et seq., as amended by the Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101 et seq.

(C) Selection will be on a random basis and agreed upon by both the division and the applicant/client, or their representative.

(D) The division will offer a list of three (3) names of mediators and their qualifications to the applicant/client, who may then choose from those names.

(E) The list of mediators will be maintained by the Quality Assurance Unit.

(F) In mediation, decision-making authority rests with the parties agreeing to mediate.

(G) The role of the mediator includes, but is not limited to:

(i) Assisting the parties to identify issues;

(ii) Facilitating communication;

(iii) Focusing the parties on their interests;

(iv) Maximizing the exploration of alternatives; and

(v) Helping the parties reach voluntary agreements.

(H) The mediator may offer options for the parties to consider as to settlement terms but will not impose settlement terms on the parties.

(I) Mediation sessions must be held in a timely manner and at a location convenient to both parties.

(4)(A) Mediation discussions are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties may be required to sign a confidentiality pledge prior to the commencement of mediation.

(B) Any agreement resulting from mediation must be in writing with the assistance of the mediator, signed by both parties, and copies provided to both parties.

(C) The division must pay for the cost of mediation but is not required to pay for any costs related to the representation of an appellant.

(k) **Impartial hearing.**

(1)(A) An appellant may choose an impartial hearing.

(B) The impartial hearing officer for a particular case must be selected on a random basis from a list of qualified impartial hearing officers who have been identified by the division.

(C) The hearing must be initiated and conducted according to 34 C.F.R. § 361.57(e).

(2)(A) The impartial hearing officer must provide by mail to both parties a full written report of the findings and grounds for the decision within thirty (30) calendar days of the completion of the hearing.

(B) The impartial hearing officer's decision is final unless a review is requested by either party.

(3) An appellant may request a review of the impartial hearing officer's decision using the following process:

(A)(i) A party who is dissatisfied with the impartial hearing officer's decision may request a review of the decision within twenty (20) calendar days of the mailing of the impartial hearing officer's decision.

(ii) The review must be conducted by the director, who may not delegate the review to any employee of the division;

(B) The director must provide both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review;

(C) The director may not overturn or modify the impartial hearing officer's decision, or any part of the decision, that supports the position of the appellant unless the commissioner concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to:

(i) The approved state plan;

(ii) Federal law and regulations; or

(iii) State rules and policies that are consistent with federal requirements;

(D) The director must make an independent, final decision within thirty (30) calendar days of the request after reviewing the entire hearing record and provide

the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision to both parties;

(E) The director's decision is final unless either party disagrees and brings a civil action, in which case the director's decision must be implemented pending review by the court; and

(F) Any party dissatisfied with the director's decision after reviewing the impartial hearing officer's decision may bring a civil action with respect to the matter in dispute.

(I) Representation and auxiliary aids.

(1) The individual may designate in writing any representative (e.g., parent, guardian, Client Assistance Program, etc.) to assist them in the informal review, mediation, or impartial hearing activities.

(2) Costs associated with representation will not be borne, in whole or in part, by the division.

(3) Auxiliary aids and services required for the individual to communicate directly with the division or for communication needs at any scheduled meeting involving the division will be provided by the division.

(4) Required auxiliary aids and services will be provided by the division during all stages and elements of the appeals process up through an impartial hearing.

Authority. Arkansas Code § 25-10-204.

Subpart 2. Informed Choice

25 CAR § 2-201. Definition.

(a) Informed choice is a process where individuals or their designated representatives make informed decisions, based on information provided by the counselor and gathered from various sources, to explore options and determine career goals when the individual is applying for or receiving vocational rehabilitation services.

(b) This process consists of:

- (1) Identifying available options;
- (2) Identifying both favorable and unfavorable consequences of each option;
- (3) Discussing relevant laws and policies;
- (4) Selecting an option; and
- (5) Committing to and acting on the selected option.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-202. Informed choice in the VR process.

(a) The process of vocational rehabilitation is a consumer-centered process with key decision points focused on quality outcomes.

(b) Informed choice begins with the consumer's referral to the Division of State Services for the Blind, is involved in the first meeting between consumer and counselor, and continues as the consumer moves toward an employment outcome while working with his or her counselor.

(c) The individualized plan for employment is the tool for focusing and organizing informed choices toward the goal of competitive integrated employment.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "VR" means vocational rehabilitation.

25 CAR § 2-203. Implementation.

(a)(1) Potentially eligible students, as well as individuals who apply for or who are eligible to receive vocational rehabilitation services have the opportunity and responsibility to make appropriate informed choices during the vocational rehabilitation process.

(2) Division of State Services for the Blind staff will strive to assist individuals in a fair and objective manner to acquire the information needed to exercise informed choice.

(3) Staff must provide factual information and support throughout the rehabilitation process, and they must treat the individual as an active and full partner.

(b)(1) Counselors must provide opportunities to all potentially eligible students and individuals applying for or receiving vocational rehabilitation services to make decisions based on informed choice throughout the rehabilitation process.

(2) These opportunities will, as appropriate, also be provided to the designated representative.

(c) Division staff must provide information about opportunities and options regarding the informed choice process in the individual's preferred language and mode of communication.

(d)(1) The counselor will provide the consumer with information about the parameters which may affect the range of available career goals or service options.

(2) It is the consumer's responsibility to take the information provided and make sound career decisions and to accept ownership of the decisions that he or she has made.

(e)(1) Informed choice refers to choices that facilitate a successful competitive integrated employment outcome and that are consistent with the individual's:

- (A) Strengths;
- (B) Resources;
- (C) Priorities;
- (D) Concerns;
- (E) Abilities; and
- (F) Capabilities.

(2) While an individual has the right to make decisions regarding the services they receive, it does not mean division staff will unilaterally support those decisions.

(3) The division is responsible, as a designated state agency for vocational rehabilitation in Arkansas, for ensuring that vocational rehabilitation funds are spent in an allowable, responsible, and effective manner.

(f) If the individual and the division disagree during the process, the individual has the right to:

- (1) Question decisions that appear unclear or unfair;
- (2) Exercise both informal and formal appeals; and
- (3) Seek the assistance of the CAP.

(g) Documentation.

(1) The case record must contain the following documentation requirements, as applicable:

(A) A description of the information the individual received to help make an informed choice;

(B) Any discussion division staff and the individual had regarding the choice; and

(C) A description of how or why an individual made their choices.

(2) If a counselor does not support the individual's choice or choices, the record must contain:

(A) The reasons for the counselor's decision; and

(B) A statement indicating the individual was given information about their appeal rights and the availability of the Client Assistance Program.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "CAP" means Client Assistance Program.

25 CAR § 2-204. Opportunities for informed choice.

Opportunities for Division of State Services for the Blind staff to provide informed choice as part of the rehabilitation counseling relationship include, but are not limited to:

(1) Informing each individual about the availability of and opportunities to exercise informed choice;

(2) Assisting potentially eligible and eligible students in exercising informed choice in decisions related to the provision of preemployment transition services;

(3) Assisting individuals in exercising informed choice in decisions related to the provision of assessment services; and

(4) Assisting individuals in exercising informed choice in the development and any subsequent amendment of their IPE in the areas of:

(A) Employment goal;

(B) Specific vocational rehabilitation services needed to achieve the employment goal;

(C) Who will provide the services;

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

(E) Methods for getting and paying for the services.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "IPE" means individualized plan for employment.

25 CAR § 2-205. Methods for providing information for informed choice.

Division of State Services for the Blind staff can provide this information in several different ways, including:

(1) Lists of services and service providers;

(2) Periodic consumer satisfaction surveys and reports;

(3) Provision of relevant accreditation, certification, or other information about the qualifications of service providers;

(4) Referrals to other individuals;

(5) Referrals to local, regional, and state consumer organizations of the blind;

(6) Referral to local and regional advocacy organizations and disability advisory councils qualified to discuss the services or service provision;

(7) Opportunities to visit or experience various work and service provider settings; or

(8) Provision of information about the cost of services and the degree to which services are provided in integrated settings.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-206. Information made available during assessment and IPE development.

(a) During the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, Division of State Services for the Blind staff must provide or help the individual obtain the information necessary to make an informed choice about specific vocational rehabilitation services needed to achieve the individual's job goal.

(b) This must include, at a minimum, information relating to the:

- (1) Purpose and need for the service;
- (2) Cost, accessibility, and duration of potential services;
- (3) Consumer satisfaction with those services to the extent that information is available;
- (4) Qualifications of potential service providers;
- (5) Types of services offered by the potential providers;
- (6) Degree to which services are provided in integrated settings; and
- (7) Outcomes achieved by individuals served by or working with service providers, to the extent that such information is available.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "IPE" means individualized plan for employment.

25 CAR § 2-207. Opportunities for informed choice when considering center-based adjustment to blindness (ATB) training.

(a) Adjustment to blindness (ATB) training teaches individuals who are blind, visually impaired, or deaf-blind the skills necessary to function as independently as possible.

(b) ATB training is critical to an individual's success in both their career and their lives.

(c) The Helen Keller National Center is available to those individuals who require specific deaf-blind skills training:

Helen Keller National Center
141 Middle Neck Road
Sands Point, NY 11050
Voice:(516) 944-8900 x 1299
hkncinfo@hknc.org

(d) The Division of State Services for the Blind counselor can inform consumers or applicants regarding the Helen Keller National Center and other ATB options as needed.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-208. Choosing segregated or noncompetitive employment.

(a) Generally speaking, individuals who are not pursuing competitive integrated employment are not eligible to receive vocational rehabilitation services.

(b) However, if they reverse their decision later, they can reapply for Division of State Services for the Blind services.

(c) The division cannot rely on vocational rehabilitation funding to place or support consumers in subminimum wage jobs.

(e) Individuals who make an informed choice to pursue employment in a segregated or noncompetitive environment will be referred to other organizations or agencies, such as the Department of Human Services' programs for people with disabilities and the Centers for Independent Living.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-209. Partnership between consumer and counselor.

(a)(1) The individual has the ultimate responsibility for making their own life choices and realizing the consequences of those choices.

(2) It is the responsibility of the vocational rehabilitation counselor to encourage the development of an individual's ability to make informed choices.

(3) It is the individual's responsibility to:

- (A) Ask questions;
- (B) Engage in realistic self-evaluation;
- (C) Seek out information;
- (D) Take initiative;
- (E) Follow through on tasks;
- (F) Gain experience in the world of work;
- (G) Commit to an employment outcome; and
- (H) Challenge the system when necessary.

(b)(1) The relationship between the individual and the vocational rehabilitation counselor is a partnership based on:

- (A) Mutual respect;
- (B) Mutual cooperation;
- (C) Shared information; and
- (D) Shared responsibility for achieving outcomes.

(2) The Division of State Services for the Blind's goal is to help develop the individual's ability to make informed choices and to take effective charge of their life so they can achieve a successful competitive integrated employment outcome.

(3) The division's efforts to facilitate the individual's exercise of informed choice includes:

- (A) Providing encouragement;
- (B) Offering objective and factual information; and

(C) Assisting the individual in exploring their potential and range of possibilities.

Authority. Arkansas Code § 25-10-204.

Subpart 3. Referral and Intake Policy

25 CAR § 2-301. Referrals.

(a) A referral is an individual who has contacted or been placed in contact with the Division of State Services for the Blind to inquire about the possibility of obtaining vocational rehabilitation services but has not applied for services.

(b) To be considered a referral, the division must have the individual's name and contact information.

(c) Referrals may come:

- (1) By phone;
- (2) By email;
- (3) Through the division's website; or
- (4) In person.

(d) Referral information should include:

- (1) Social Security number (if available);
- (2) Name;
- (3) Date of birth;
- (4) Address, including county;
- (5) Telephone number;
- (6) Email;
- (7) Gender;
- (8) Date of referral;
- (9) Source of referral;
- (10) Reported disability; and

(11) Any information provided by the consumer or referral source about their needs or concerns.

(e) Completing a referral.

(1) When a consumer is referred to the division, the DSB 8065 (referral form) should be completed at the time of initial contact.

(2) This form should be used to complete the referral in the AWARE Referral Module.

(3) This information should be entered immediately upon receipt of a referral.

(4) Once entered, the referral will be assigned to the appropriate area manager by the person entering the referral.

(5) The paper referral is then sent to that area manager and their administrative assistant, by email, notifying them that the referral has been entered in AWARE.

(6) The area manager will review the referral and assign it to the VR counselor for that area within one (1) business day.

(7) The VR counselor then has one (1) business day to contact the consumer and arrange an orientation meeting for the consumer.

(8) This meeting should occur within ten (10) business days of the first contact.

(9) The purpose of this meeting is to provide the consumer with information to allow them to make an informed choice about applying for VR services.

(10) This meeting should include:

(A) Eligibility criteria;

(B) Expectations;

(C) Rights and responsibilities of VR participants; and

(D) Information on the division's services.

(11)(A) The consumer may then decide to apply or not for the division's services.

(B) See 25 CAR § 2-302.

(12) If for any reason the consumer cannot meet within ten (10) business days, the request for a later appointment must be documented in AWARE with the justification.

(13) All new cases in AWARE must begin in the referral module.

(f) Types of referrals.

(1) For students with a disability who wish to apply for VR services, 25 CAR § 2-301 should be followed.

(2) For those students who are interested in only pre-ETS services and may be potentially eligible, see 25 CAR § 2-603.

(3) Referrals for the Older Individuals Who Are Blind Program should follow 25 CAR § 1-110.

(g) Contact with consumer.

(1)(A) The counselor is expected to keep in contact with the consumer throughout the vocational rehabilitation process beginning with the referral to provide counseling and guidance, deliver services, prevent or resolve problems, check progress, follow up on actions, maintain the relationship, share information, etc.

(B) All contacts or attempted contacts must be documented in AWARE.

(C) If the counselor is unable to reach the consumer, they may follow the unable to locate guidelines.

(2)(A) During the VR process the consumer and counselor will have regular contact with contact occurring at least once every forty-five (45) days.

(B) While face-to-face contacts between counselor and consumer are preferred, there will be times when that may not be possible.

(C) During these times, email, phone, and written correspondence are acceptable ways of making contact.

(D) Should the VR counselor need to obtain a signature from the consumer and is unable to meet face to face the counselor must work with the consumer to obtain either an electronic signature or signature by mail on the required documents.

(E) The documents will not be considered complete until the signature is received.

(3)(A) Staff do have the ability to obtain electronic signatures to reduce the need for printing or mailing of documents.

(B) If the consumer is unable to sign electronically, staff may email or mail the form to the consumer to sign and return by email or mail.

(C) If staff have a delay in obtaining signatures due to this process, it must be documented in a case note.

(D) If a consumer is unable to sign electronically or return the printed signature to you, an email record of the consumer's agreement to the form may be documented in AWARE.

(E) This email from the consumer should include a detailed indication of what they are agreeing to and this must be placed into the case file.

(F) Staff must document the date the application was taken and the date the form was mailed to the consumer in a case note.

(h) Closing a referral.

(1)(A) All contacts and attempted contacts must be documented in the Referral Note section of the AWARE referral for that consumer.

(B) If the counselor is unable to contact the consumer, they must make at least three (3) attempts by phone over different days and send an official contact letter giving the consumer ten (10) business days to respond before closing the referral for lack of contact.

(C) It is recommended the counselor also reach out via any additional contact options (i.e., email) and to the referral source to try and reach the consumer.

(D) Once this has been completed and documented the counselor may mark the referral closed.

(2)(A) If the consumer wishes to apply for services, the consumer and counselor may complete or set up a time to complete an application for services.

(B) Once the application has been completed, the counselor will create a new case in AWARE, and this will close the referral file.

(C) For information on applications, see 25 CAR § 2-302.

(i) **Developing referral sources.**

(1) Developing referral sources is the process of locating individuals who may need and be eligible for services from the Division of State Services for the Blind.

(2)(A) Division staff should develop good working relationships with physicians' offices, workforce centers, employers, consumer groups, colleges, nonprofits, and other local and state government agencies to make them aware of the division's services and encourage referrals.

(B) Division staff will also set up informational booths at health fairs and other events to increase awareness and referrals.

(C) Staff should follow up with referral sources at least once a quarter and maintain open communication.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "ETS" means employment transition services.

"VR" means vocational rehabilitation.

25 CAR § 2-302. Applicants.

(a)(1) An individual is considered an applicant when the individual or individual's representative, as appropriate, has completed and signed the Division of State Services for the Blind application form (DSB-8006).

(2) It is the responsibility of the counselor to complete the application with the consumer and have the consumer sign the application.

(3) Any applications that are received by mail must be date stamped upon receipt by the division, and this date will be the formal date of application.

(4) The application with date stamp must be scanned into AWARE and placed in the case file.

(b) The purpose of the application is to gather diagnostic information to make a determination of one (1) of the following:

(1)(A) Eligibility for placement in trial work experience.

(B) See 25 CAR § 2-402(f); or

(2)(A) Eligibility status.

(B) See 25 CAR § 2-401 et seq.

(c) Applying for services.

(1)(A) After completing their orientation meeting, the consumer may choose to apply for VR services.

(B) See 25 CAR § 2-301(h).

(C) This intake meeting may be conducted at the same time as the orientation or may be scheduled for a later date, no more than thirty (30) business days from the original referral.

(2)(A) An individual has the right to:

(i) Apply for vocational rehabilitation services;

(ii) Have an intake interview with a rehabilitation counselor; and

(iii) Have a decision made regarding their eligibility for services.

(B) The refusal to accept an application or to interview the individual constitutes a "denial of access" to a public program and is a violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., as amended.

(3)(A) All individuals referred for vocational rehabilitation services must be informed that services are for individuals who intend to achieve a competitive integrated employment outcome.

(B) This means work, with or without supports, in a competitive labor market making at least minimum wage.

(4)(A) During the application process the applicant will provide the information necessary to initiate an assessment to determine eligibility and be available to complete the assessment process.

(B) The VR counselor will assist the consumer in obtaining the information necessary to determine eligibility.

(d) **Consumer resources and information.** At the time of their application, the VR counselor is responsible for providing the consumer with information on:

- (1)(A) The Client Assistance Program.
 - (B) See 25 CAR § 2-107(c);
- (2) Arkansas Information Reading Services for the Blind;
- (3) Talking Book Services;
- (4) Consumer groups, including ACB and NFB;
- (5) Voter registration;
- (6) The VR process;
- (7)(A) Consumer's rights.
 - (B) See 25 CAR § 2-101 et seq.; and
- (8) Additional relevant resources as necessary.

(e) **Sixty-day timeline.**

- (1) The United States Rehabilitation Services Administration requires that eligibility for services be determined within sixty (60) calendar days from the date of application.
- (2) Any extension requires approval of the consumer and area manager.
- (3) See 25 CAR § 2-402(d).

(f) **Documentation required.** When documenting the application process, the following items must be included in the AWARE case record:

- (1) DSB Application (DSB 8006) signed by the consumer;
- (2) Release of Information (DSB 8021) to obtain medical/psychological information signed by the consumer;
- (3) CAP Form (DSB 8033) signed by the consumer;
- (4) Medical insurance information;
- (5)(A) Documentation of the consumer's legal authority to work.
 - (B) See 25 CAR § 2-403;
- (6)(A) Initial narrative.
 - (B) See 25 CAR § 2-303;

(7) Voter registration form signed by the consumer, or consumer's documented decline of form;

(8)(A) Visual Acuity Report (DSB 8012) from a visit within the last twelve (12) months, required prior to eligibility determination.

(B) See 25 CAR § 2-402;

(9) Medical documentation related to either primary or secondary disability;

(10) Any additional relevant documentation as part of the process; and

(11) Authorizations necessary for assessment and justification narratives for each authorization.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "ACB" means American Council of the Blind.

"NFB" means National Federation of the Blind.

"VR" means vocational rehabilitation.

25 CAR § 2-303. Initial narrative.

(a) The initial interview narrative builds the foundation and sets the platform for the documentation of the case service record.

(b) It gives the reader a snapshot view of the consumer's history, perceptions, and living and work situations at intake.

(c) The following outline should be followed when completing the initial narrative:

(1)(A) Opening paragraph.

(B) Include:

(i) The referral, initial contact, orientation meeting, and application dates;

(ii) Who referred the individual; and

(iii) Where you met with the consumer.

- (C) Indicate the date the application was signed;
- (2)(A) Consumer's statement of disability.
 - (B) State the consumer's perception of:
 - (i) The problem, including their disability;
 - (ii) Barriers to employment;
 - (iii) Any proposed solutions; and
 - (iv) Any future goals;
- (3)(A) Family arrangements and income.
 - (B) List:
 - (i) The consumer's type of residence (private home, institution, halfway house, etc.);
 - (ii) Other who live in the home;
 - (iii) The household income; and
 - (iv) The source of income;
- (4)(A) Education.
 - (B) List the individual's highest level of education at application;
- (5)(A) Work history.
 - (B) State the individual's work history for the past ten (10) years, if possible;
- (6)(A) Similar benefits.
 - (B) List all benefits the consumer has at the time of application.
 - (C) This may include, but is not limited to:
 - (i) Medical insurance;
 - (ii) United States Veterans Administration benefits;
 - (iii) Pell Grants;
 - (iv) Scholarships;
 - (v) Workers' compensation;
 - (vi) Supplemental Security Income/Social Security Disability Insurance; and
 - (vii) Transitional Employment Assistance;

(7)(A) Presumed eligibility.

(B) If the individual receives Supplemental Security Income or Social Security Disability Insurance due to visual problems, and meets Criterion II (requires VR services to prepare for, enter, engage in, or retain gainful employment), the counselor may presume the applicant eligible for VR services and immediately proceed with the case.

(C) An applicant's history and counselor observation that the person is obviously totally blind and has received previous services from the Division of State Services for the Blind, or the person has bilateral ocular prosthesis also give the counselor reason to presume eligibility;

(8)(A) Informed choice.

(B) State how informed choice was explained to the applicant.

(C) See 25 CAR § 2-201 et seq.; and

(9)(A) Explanation of services.

(B) Document that the following items were discussed and explained to the applicant:

(i) Services available through the division;

(ii) What the division can and cannot do;

(iii) Confidentiality of information;

(iv) Eligibility guidelines;

(v) Consumer's rights and responsibilities;

(vi)(a) The appeal process and how to contact the supervisor and CAP personnel if needed.

(b) State that the applicant signed the CAP form and was given a copy;

(vii) Arkansas Information Reading Services for the Blind;

(viii) NFB Newsline;

(ix) Talking books;

(x) Voter registration; and

(xi) Consumer organizations.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "CAP" means Client Assistance Program.

"NFB" means National Federation of the Blind.

"VR" means vocational rehabilitation.

25 CAR § 2-304. Services provided during referral and intake.

(a)(1) An applicant or referral may receive auxiliary aids and services in order to access the vocational rehabilitation program.

(2) This would include interpreters and translators.

(b)(1) An applicant may also receive assessment services related to eligibility determination.

(2) See 25 CAR § 2-401(e).

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-305. Internal controls.

(a)(1) Area managers are responsible for ensuring that staff are addressing referrals within the time frame designated by policy.

(2) Staff can run regular reports on referrals and applications to determine dates and timelines that may be approaching using AWARE.

(3) Staff should review their referrals and applications at least once a week using any of the available reports.

(4) Each VR counselor is responsible for ensuring that their cases are following all Division of State Services for the Blind policies and procedures.

(b)(1) All authorizations require approval by the VR counselor and area manager before they may be issued and sent to vendors or paid.

(2) If the counselor or area manager is unavailable their supervisor may approve in their place.

(c)(1) Additionally, all cases are subject to random and routine audits by Quality Assurance, area managers, or administration to ensure that division policies and procedures are being followed.

(2) See DSB AWARE Quality Assurance Tool Procedure Guide.

(3) These audits will ensure all required documentation are in the case files, and corrective action will be required when deficiencies are found.

(4) Staff will be responsible for correcting any issues found during these audits.

Authority. Arkansas Code § 25-10-204.

Codification Notes. “VR” means vocational rehabilitation.

Subpart 4. Eligibility Policy

25 CAR § 2-401. Overview.

(a)(1) The primary purpose of determining eligibility for VR services is to identify applicants of the VR program with visual disabilities who require VR services to prepare for, secure, retain, advance in, or regain employment.

(2)(A) There are three (3) criteria for determining an individual’s eligibility for VR services that a consumer must meet.

(B) See 25 CAR § 2-402(e).

(3) This process is designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in competitive integrated employment and achieve economic self-sufficiency.

(b)(1) An eligibility decision can only be made by a vocational rehabilitation counselor, subject to review, as needed, by the counselor's supervisor or the Director of the Division of State Services for the Blind.

(2) During the first twelve (12) months of a VR counselor's employment, the counselor must have his or her supervisor's approval before he or she can certify Division of State Services for the Blind applicants eligible for services.

(3) The supervisor should review the visual acuity report and applicable assessments used to determine eligibility and provide written approval of the VR counselor's determination (either in a narrative or email) for certifying the applicant eligible.

(c)(1) The vocational rehabilitation counselor shall determine eligibility for services within a reasonable period of time, not to exceed sixty (60) days of receiving a signed application.

(2) Any exceptions to the sixty-day timeline require a formal Eligibility Extension.

(3) See 25 CAR § 2-402(d).

(d) **Individuals to be served.** To receive VR services from the division, an individual must be classified as having one (1) of the following that results in a substantial impediment to employment at the time of eligibility:

(1)(A) Total blindness.

(B) Any permanent visual condition resulting in total loss of vision;

(2)(A) Legal blindness.

(B) Any visual condition resulting in either:

(i) A visual acuity for distance vision in the best eye with the best correction of 20/200 or less; or

(ii) The widest diameter of visual field subtending an angle of less than twenty (20) degrees; or

(3)(A) Visual impairment.

(B) Having either of the following:

(i)(a) Visual acuity of 20/50 in the best eye after correction that is progressive.

(b) "Progressive" means a visual condition that is more likely than not to result in legal blindness; or

(ii) Imminent danger that the individual may become totally or legally blind within six (6) months as documented by a physician who is skilled in diseases of the eye.

(e) Assessment for determining eligibility.

(1)(A) To the maximum extent possible, the comprehensive assessment for determining eligibility will be based on a review of existing data, including the vocational rehabilitation counselor's observations.

(B) Information should be obtained from:

(i) Other programs and providers, such as:

(a) Educational institutions;

(b) The Social Security Administration;

(c) Physicians; and

(d) Hospitals; and

(ii) Information provided by the individual or members of their family.

(2) When existing data is not current or are unavailable, insufficient, or inappropriate to make an eligibility determination, additional data must be obtained.

(3) In the event the individual is determined ineligible based on the fact the applicant does not have a physical or mental impairment that results in a substantial impediment to employment that requires VR services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice, supporting documentation must be included in the case file.

(4)(A) Documentation may include an eye report that shows the individual does not meet the visual criteria.

(B) This determination must be thoroughly documented in AWARE.

(C) See 25 CAR § 2-404(a).

Authority. Arkansas Code § 25-10-204.

Codification Notes. “VR” means vocational rehabilitation.

25 CAR § 2-402. Determination of eligibility.

(a) Introduction.

(1)(A) The VR counselor has the responsibility for determining an individual's:

- (i) Eligibility for VR services;
- (ii) Need for a trial work period; or
- (iii) Ineligibility for VR services.

(B) An eligibility decision may be subject to review by the counselor's supervisor or the Director of the Division of State Services for the Blind.

(2) VR eligibility is decided in accordance with the three (3) criteria in 34 C.F.R. § 361.42(a):

(A) A determination by qualified personnel that the applicant has a physical or mental impairment;

(B) The determination that the impairment results in a substantial impediment to employment for the applicant; and

(C) A determination by a qualified VR counselor that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with their:

- (i) Unique strengths;
- (ii) Resources;
- (iii) Priorities;
- (iv) Concerns;
- (v) Abilities;
- (vi) Capabilities;
- (vii) Interests; and
- (viii) Informed choice.

(b) Documenting eligibility and functional limitations.

(1)(A) Division of State Services for the Blind staff must obtain a medical eye or optometric examination report or Social Security verification to determine eligibility.

(B) Staff must also obtain all other relevant medical and mental health documentation to complete a comprehensive assessment.

(2) The case record must contain, as applicable:

(A) All assessment information used to determine eligibility and priority for services, including medical and mental health records;

(B) A copy of the eligibility letter that includes the individual's appeal rights;

(C) A written extension for eligibility determination that is signed by the individual;

(D) A copy of the ineligibility letter; and

(E)(i) Eligibility Determination Narrative.

(ii) See subsection (l) of this section.

(3) When documenting an eligibility decision, the following items must be done before a determination is complete:

(A) Enter disability into AWARE with documentation included;

(B)(i) Complete the Disability Priority and Eligibility Determination Data pages in AWARE.

(ii) Print and sign the Eligibility Determination page.

(iii) A copy should be scanned into the file and a copy given to the consumer;

(C) Eye report must be uploaded into AWARE;

(D) All other medical and psychological information used in the determination of eligibility uploaded into AWARE (e.g., Social Security benefits letter, psychological evaluation); and

(E) Signed copy of the Eligibility Notification Letter uploaded into AWARE.

(c) Notification.

(1) The counselor will notify the applicant by letter when he or she has been determined either eligible or ineligible for services.

(2)(A) If an applicant is determined eligible for services, they must also be notified of their Disability Priority Category and how to appeal this placement when an order of selection has been implemented.

(B) See 25 CAR § 2-501(g).

(3) Once an eligibility determination has been made the VR counselor will complete the Eligibility Determination Data page in AWARE.

(4) The counselor must then print and sign the certificate, giving a copy to the consumer and scanning a copy back into AWARE.

(5) The date on the Eligibility Certificate, Eligibility Letter, and Eligibility Determination Data page in AWARE must match to ensure accurate reporting to the United States Rehabilitation Services Administration.

(d) Eligibility timeline.

(1) Eligibility determinations for either active VR services or for a trial work period (see subsection (f) of this section) must be made within sixty (60) calendar days after the consumer has applied for VR services.

(2) Exceptions can only occur if the consumer is notified in writing that exceptional and unforeseen circumstances beyond the agency's control prevent making a determination within the prescribed sixty-day timeframe, and the consumer agrees that the extension of time is necessary.

(3) This notification must include a timeframe for completion of eligibility determination as well as the reason for the extension request.

(4) The determination of need for this exception must be made within forty-five (45) calendar days after application for VR services and requires approval by the VR counselor's area manager.

(5) The consumer must sign the request for extension, which is then scanned into AWARE and included in the case file.

(e) Eligibility criteria for VR services.

(1)(A) It is important to remember that individuals are not eligible based on a diagnosis alone.

(B) The division counselor will need to:

(i) Assess what the impact of their disability is to that particular individual;

(ii) Determine whether or not the disability creates a substantial impediment to employment for that individual based on their occupational goals; and

(iii) Determine whether the individual will require VR services to obtain or retain employment.

(2) When determining eligibility, the VR counselor is responsible for ensuring that the applicant meets all three (3) eligibility criteria:

(A)(i) The individual has a visual impairment that for such individual constitutes, or results in, a substantial impediment to employment and meets the division's criteria stated in 25 CAR § 2-401(d).

(ii) A substantial impediment refers to a consequence of a physical or mental impairment (in conjunction with medical, psychological, vocational, educational, and other related factors) that impedes an individual's occupational performance by preventing or making extremely difficult obtaining, retaining, advancing in, or preparing for employment consistent with the individual's capacities and abilities;

(B)(i) The individual can benefit in terms of an employment outcome from vocational rehabilitation services.

(ii)(a) The vocational rehabilitation counselor will presume the individual can benefit from the provision of vocational rehabilitation services in terms of competitive integrated employment, unless clear and convincing evidence demonstrates the individual is incapable of benefiting in terms of an employment outcome.

(b) Prior to any determination that an individual is incapable of benefiting because of the severity of the individual's impairment, the consumer must be given the opportunity to participate in trial work experience.

(c) See subsection (f) of this section; and

(C)(i) The individual requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment.

(ii)(a) Vocational rehabilitation services are required when an individual needs the specialized services offered by the vocational rehabilitation program in order to prepare, secure, retain, regain, or advance in employment. Individuals must have the intention of entering employment at the end of their rehabilitation process.

(b) Individuals who intend to enter noncompetitive or nonintegrated employment are not eligible for vocational rehabilitation services.

(3) A consumer can be closed with a "disability too severe" only if there is clear and convincing evidence that the individual is not capable of an employment outcome.

(4)(A) There must be evidence that establishes such a conclusion with a high degree of certainty.

(B)(i) This determination is made only after conducting exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations through trial work experiences.

(ii) See subsection (f) of this section.

(C) Supported employment services must also be considered.

(5)(A) Clear and convincing evidence may include assessments from service providers who provide documentation of why they would be unable to meet the needs of the consumer due to the severity of their disability.

(B) This evidence must include the assessments from real life settings with any necessary supports provided to the consumer.

(f) Trial work experience.

(1) The purpose of a trial work experience is to determine if there is clear and convincing evidence that an individual cannot benefit from VR services in terms of an employment outcome due to the severity of the individual's disability.

(2) If the counselor has reason to doubt that the consumer can benefit from VR services, the consumer should be provided with a trial work experience of sufficient

variety in a competitive integrated employment setting to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual.

(3) Trial work experiences can include:

(A) Supported employment;

(B) On-the-job training; and

(C) Other experiences using realistic integrated work settings.

(4) Trial work experiences must be of sufficient variety and period of time to determine that there is:

(A) Sufficient evidence to conclude that the individual can benefit from services in terms of competitive integrated employment; or

(B) Clear and convincing evidence that the individual is incapable of benefiting from services in terms of a competitive, integrated employment outcome due to the severity of the individual's disability.

(5)(A) The agency must provide appropriate supports, including, but not limited to, assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(B)(i) The consumer's progress must be monitored using a comprehensive assessment at least every thirty (30) days to ensure the consumer is making sufficient progress and to determine if any additional supports are necessary.

(ii) See 25 CAR § 2-401(e).

(g) Presumed eligibility.

(1)(A)(i) Individuals are presumed eligible for VR services if, based on their own visual impairment, they are Social Security Disability Insurance beneficiaries under Title II or Supplemental Security Income recipients under Title XVI, and they meet the division's criteria stated in 25 CAR § 2-401(d).

(ii) See 34 C.F.R. § 361.42(a)(1) and (a)(2).

(B)(i) They are also considered individuals with a significant disability.

(ii) See 25 CAR § 2-501(e).

(C) Any applicant's assertion of eligibility for Social Security benefits under Title II (Social Security Disability Insurance) or Title XVI (Supplemental Security Income) of the Social Security Act, 42 U.S.C. § 301 et seq., must be verified before presumption of eligibility may be applied.

(D) However, should the applicant be unable to produce this information, eligibility may move forward using the standard process while attempts are made to obtain verification.

(2) Applicants who are presumed eligible based upon their Social Security benefits must still intend to achieve an employment outcome to be eligible for VR services.

(3) Although Social Security Disability Insurance beneficiaries and Supplemental Security Income recipients are presumed to be eligible for VR services, the presumption of their benefit from VR services in terms of an employment outcome can be rebutted based on clear and convincing evidence.

(4) This evidence must show that the individual is incapable of benefiting from VR services in terms of an employment outcome due to the severity of the individual's disability.

(5) The required "clear and convincing evidence" must be produced through the provision of trial work experiences.

(6) See subsection (f) of this section.

(h) **Residency.**

(1) In accordance with 34 C.F.R. § 361.42(c)(1), the division must not impose, as part of determining eligibility, a duration of residence requirement that excludes an applicant who is present in the state from receipt of VR services.

(2) The division may not require the applicant to demonstrate a presence in the state through the production of any documentation that under state or local law, or practical circumstance, results in a de facto duration of residence requirement.

(3) The other conditions of eligibility required by policy must be met.

(i) **Dual caseloads.**

(1) The June 11, 2012, Technical Assistance Circular 12-04, Provision of Vocational Rehabilitation Services to An Individual by More Than One Agency, clarifies that an individual may receive vocational rehabilitation services from more than one (1) VR agency simultaneously, including those in different states, when appropriate, and in accordance with the implementation of an order of selection, as applicable, in each state.

(2) In this way, the individual can receive the services that best support his or her vocational needs and the achievement of an employment outcome.

(3) The consumer must disclose that he or she is receiving VR services in another state, so the counselors handling the case can coordinate benefits and avoid duplication of services.

(4) Examples might include:

(A) Student from one (1) state attending college in another state;

(B) Students from other states attending World Services for the Blind; or

(C) Consumers living in one (1) state and working in another.

(j) Eligibility and order of selection.

(1) Eligibility for VR services and the individual's priority for VR services must be determined prior to applying an order of selection for receipt of services.

(2) Refer to Order of Selection, 25 CAR § 2-501 et seq., for additional information.

(k) **Nondiscrimination.** In determining eligibility, the division will ensure that eligibility requirements are applied without regard to:

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

(2) Type of expected employment outcome;

(3) Source of referral;

(4) Particular service needs or anticipated cost of services;

(5) Income level of the applicant or their family;

(6) Applicant's employment history or current employment status; or

(7) Applicant's educational status or current educational credential.

(l) Eligibility Determination Narrative.

(1)(A) The Eligibility Determination Narrative documents the eligibility determination for the case and the reasons for the determination.

(B) A summary of the visual report and any additional medical or psychological reports as necessary will be included in this narrative, including the functional skills assessment.

(C)(i) This information should be provided to directly address the consumer's eligibility based on the three (3) eligibility criteria.

(ii) See subsection (e) of this section.

(D) A consumer must meet all three (3) criteria to be determined eligible.

(2)(A) The narrative should include confirmation that all necessary documentation has been completed and placed in the case file.

(B) This includes the:

(i) Eligibility notification letter;

(ii) Signed eligibility determination page (for eligible consumers); and

(iii) Functional skills assessment.

(C) Additionally, this narrative must address any concerns with determining a vocational goal or scope of services for the consumer and what steps will be taken to address these prior to the development of the individualized plan for employment.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "VR" means vocational rehabilitation.

25 CAR § 2-403. Employment eligibility verification documents.

Required documents for working in the United States may include:

(1) Valid Social Security card;

(2) Valid driver's license;

(3) Valid nondriver ID card (issued by the Office of Motor Vehicle);

(4) United States passport;

- (5) Certificate of naturalization; or
- (6) Certificate of citizenship.

Authority. Arkansas Code § 25-10-204.

Codification Notes. “ID” means identification.

25 CAR § 2-404. Ineligibility for VR services.

(a) Ineligibility determination.

(1)(A) It may be determined that an applicant is not eligible for VR services.

(B) If so, a notification letter will be sent to the consumer.

(C) The date of the determination of ineligibility must be consistent with the AWARE closure date to ensure accurate reporting.

(D) **Note.** Notification letters are also sent when a consumer is determined eligible.

(2)(A) A VR counselor may decide, after complying with the requirements of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., that a youth that seeks only subminimum wage work is ineligible for VR services.

(B) Before making that ineligibility determination in accordance with the requirements of 34 C.F.R. § 361.43, however, a VR counselor would need to provide an opportunity for full consultation with the youth or, as appropriate, the youth’s representative (34 C.F.R. § 361.43(a)).

(C) Exercising informed choice in selecting an employment outcome includes the right to decide not to seek an employment outcome.

(3) Any of the following reasons may constitute the basis for a determination of ineligibility with proper documentation and justification in the case file:

(A) Diagnostics indicate there is no disabling condition;

(B) There is a disabling condition, but it does not present an impediment to an employment outcome;

(C)(i) The individual’s disability is too severe to allow gainful employment.

(ii) However, a case cannot be closed due to the severity of a disability unless the consumer has participated in trial work experience (see 25 CAR § 2-402(f)), or the consumer is being closed from service status; or

(D) The individual does not require VR services to prepare for, secure, retain, advance in, or regain employment.

(b) Criteria for closing an applicant's case.

(1) A case is closed from applicant status when:

(A) An applicant is determined ineligible for VR services; or

(B) An eligibility determination cannot be made.

(2)(A) For example, an applicant may decline to participate in an assessment.

(B) If the VR counselor has made at least three (3) unsuccessful attempts by phone, email, and registered letter to encourage the applicant's participation, the case may be closed.

(C) Each of these attempts must be well documented in AWARE.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "VR" means vocational rehabilitation.

25 CAR § 2-405. Annual reviews of ineligible cases.

(a) Annual review of cases.

(1) Individuals who are determined ineligible for VR services are to be provided an opportunity for a review of the ineligibility determination no later than twelve (12) months after the decision is made.

(2) The VR counselor should contact the prior applicant to determine if they would like an annual review and document this review in AWARE.

(b) When is an annual review not required?

(1) Annual reviews of eligibility are required for any closures based on a determination that the individual is incapable of achieving an employment outcome (applicant status, "Disability Too Significant to Benefit from Service").

(2) However, annual eligibility reviews are not required in the following circumstances:

(A) The individual refuses the opportunity for review;

(B) The individual is no longer present in the state or his or her whereabouts are unknown;

(C) Medical information upon which the ineligibility decision was based indicated the condition was rapidly progressive or terminal; or

(D) The individual is deceased.

Authority. Arkansas Code § 25-10-204.

Codification Notes. “VR” means vocational rehabilitation.

Subpart 5. Order of Selection

25 CAR § 2-501. Overview.

(a) Introduction.

(1) The order of selection is a set of criteria prioritizing the order in which VR-eligible individuals will be served if the Division of State Services for the Blind cannot provide services to all eligible individuals.

(2) If an order of selection is implemented and one (1) or more priority categories are closed, eligible consumers (regardless of their category) will continue receiving services so long as they were receiving VR services under an individualized plan for employment (IPE) prior to implementation of the order of selection.

(b) Purpose.

(1) The Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., as amended by Title IV of the Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101 et seq., requires the VR program to serve individuals with the most significant disabilities first when there are not enough resources to serve everyone who is eligible for VR services.

(2) In a process called the order of selection, individuals with the most significant disabilities are given priority over those with less significant disabilities.

(c) **Individuals eligible for services generally.** In order to receive services from the division, an individual must be classified in one (1) of the following categories:

(1) Blindness;

(2) Legal blindness; or

(3)(A) Visual impairment.

(B) See 25 CAR § 2-401(d).

(d) **Services while eligibility is assessed.**

(1) Applicants for VR services are entitled to an assessment to determine eligibility and priority for VR services.

(2) Diagnostic services, provided in application status, are used to determine eligibility and priority classification.

(3) Services during the eligibility determination process are provided without regard to order of selection.

(e) **Significant disability.** According to Section 7(21)(A) of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, an individual with a significant disability is someone:

(1)(A) Who has a significant 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, or work skills) in terms of an employment outcome.

(B) See subsection (h) of this section;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3)(A) Who has one (1) or more physical or mental disabilities as identified in the Rehabilitation Act of 1973, or any other disability or disabilities that cause comparable substantial functional limitation.

(B) This includes an individual 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, intellectual disability, 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, that cause comparable substantial functional limitations.

(f) Priority categories.

(1) The Director of the Division of State Services for the Blind will determine the priority levels that will remain open prior to the start of the federal fiscal year based on the availability of its resources.

(2)(A) Individuals in Priority 1 will be selected first for VR services.

(B) Individuals in Priority 2 will be served only if it is determined that all individuals in Priority 1 can receive services using the resources available.

(C) Individuals in Priority 3 will receive services only if resources are available to serve all individuals in Priorities 1 and 2.

(3) The division will apply the order of selection in the following manner, if needed:

(A)(i) Priority 1, most significant disability.

(ii) Priority 1 includes individuals eligible for the division's services with the most significant disability whose impairment severely limits four (4) 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 requires substantial VR services over an extended period of time;

(B)(i) Priority 2, more significant disability.

(ii) Priority 2 includes individuals eligible for the division's services with a significant disability whose impairment limits three (3) functional capacities in terms of employment outcome and requires substantial VR services over an extended period of time; and

(C)(i) Priority 3, significant disability.

(ii) Priority 3 includes individuals eligible for the division's services with a significant disability whose impairment limits one (1) or two (2) functional capacities in terms of an employment outcome and requires substantial VR services over an extended period of time.

(g) **Job retention.**

(1)(A) Individuals who are at immediate risk of losing employment may be served outside of the order of selection.

(B) See 34 C.F.R. § 361.36(a)(3)(v).

(2) Immediate need means that an individual would almost certainly lose his or her current job if not provided specific services or equipment in the very near future that would enable him or her to retain that employment.

(3) Only services or equipment needed to maintain that current employment may be provided outside of the order of selection.

(4) If the individual loses their job or chooses a different employment outcome, they will be subject to the order of selection.

(5) Likewise, the order of selection will be applied to any services for the consumer that are not job retention services.

(h) **Functional capacities.**

(1) Individuals who are eligible for the division's services have a disability that limits their functional capacities in terms of an employment outcome.

(2) The capacities that should be considered include the following:

(A)(i) Mobility.

(ii) Mobility refers to the ability to move from place to place inside and outside the home.

(iii) A serious limitation in mobility exists if, due to the disability, the person:

(a) Requires assistance from others to get around in the community;

(b) Requires modifications, adaptive technology, or accommodations (not typically made for other workers) in order to move around the community; or

(c) Needs specialized training to learn to move around in the community.

(iv) The following circumstances do not constitute serious, disability-related limitations in mobility, though they may be considered in rehabilitation planning as related factors:

(a) Absence of or limitations in public transportation available in a geographic area;

(b) Loss of driving privileges because of accumulation of points and/or charges such as DWI; or

(c) Lack of a personal vehicle;

(B)(i) Communication.

(ii) Communication is the ability to effectively exchange information through words or concepts (writing, speaking, listening, sign language, or other adaptive methods).

(iii) 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.

(iv) Upon first contact, the individual may not be readily understood by others or may not understand others.

(v) Communication 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;

(C)(i) Self-care.

(ii) Self-care is the ability to manage oneself or one's 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.

(iii) Limitations may occur because of physical, cognitive, or emotional impairments and could impact all tasks or only specific tasks.

(iv) 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.

(v)(a) Lack of or limited financial resources affecting self-care would not constitute serious limitations in self-care because it is not disability related.

(b) However, such factors would need to be considered in rehabilitation planning;

(D)(i) Self-direction.

(ii) 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.

(iii) 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:

(a) Perform tasks;

(b) Monitor his or her own behavior; and

(c) Make decisions.

(iv) 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;

(E)(i) Interpersonal skills.

(ii) Interpersonal skills refers to the ability to establish and maintain personal, family, community, and work relationships.

(iii) 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 coworkers without exhibiting inappropriate behaviors.

(iv)(a) 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.

(b) Such traits, however, should be considered in rehabilitation planning;

(F)(i) Work tolerance.

(ii) 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.

(iii) 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.

(iv) For example, the individual may not be able to:

(a) Sustain an eight-hour work day;

(b) Meet production standards; or

(c) Perform at a consistent pace without frequent rest breaks.

(v) 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; and

(G)(i) Work skills.

(ii) Work skills refers to the:

(a) Ability to perform specific tasks required to carry out job functions;

(b) Capacity to benefit from training in the necessary skills; and

(c) Capacity to practice the work habits needed to stay employed.

(iii) 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:

- (a) Age;
- (b) Education;
- (c) Training; or
- (d) Experience.

(iv) In order to acquire work skills, the person requires:

- (a) Modifications;
- (b) Adaptive technology; or
- (c) Accommodations not typically made for other workers.

(v) 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.

(vi) 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.

(vii)(a) 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.

(b) 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.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "AT" means adaptive technology.

"DDS" means Disability Determination Services.

"DWI" means driving while intoxicated.

"VR" means vocational rehabilitation.

25 CAR § 2-502. Applying the order of selection.

(a) Determining priority category.

(1)(A) Once an applicant is determined eligible for VR services, the VR counselor will use the AWARE Disability Priority Page to indicate the number of functional limitations.

(B) Based on information provided during assessment of the applicant, the VR counselor will determine if extensive services are necessary over an extended period of time on the AWARE Disability Priority Page.

(C) The consumer will then be assigned a disability priority category based on the definitions in 25 CAR § 2-501(f).

(2)(A) In determining the priority category, the consumer will be placed in the category with the most functional limitations for which he or she qualifies.

(B) However, if a consumer's disability condition changes or additional documentation becomes available after being assigned a priority category, reevaluation may cause a reclassification to a higher or lower priority.

(3)(A) Individuals will be assigned to the appropriate priority category when eligibility determination is made prior to being placed on any waiting list for services if the assigned priority category is currently closed.

(B) Once the individual's category is open and they are able to be served, they will be immediately placed in eligibility status and ready to work with their VR counselor in developing their career goals and services needed on an IPE.

(4)(A) Consumers will be notified of their disability priority category, and their status on the waiting list in their eligibility for VR services notification letter.

(B) Any applicant or eligible consumer who is dissatisfied with the order of selection category assigned them may request an administrative review for reevaluation.

(C) Both VR counselors and the eligibility determination letter will inform consumers of this right and how to contact the Client Assistance Program for further assistance.

(b) Preemployment transition services for waitlisted students.

(1)(A) VR-eligible students are not exempt from order of selection or the waiting list.

(B) However, they may be able to receive pre-ETS while on the waiting list.

(2)(A) If a student received any of the five (5) required pre-ETS, through the Division of State Services for the Blind or as part of a joint program between the division and the local education agency, prior to applying for vocational rehabilitation services, they can continue to receive the five (5) required pre-ETS while on the waiting list.

(B) They cannot receive any other services while on the waiting list.

(3)(A) If a student did not receive any pre-ETS from the division prior to applying for vocational rehabilitation services, they can only receive services to groups while they are on the waiting list.

(B) Services to groups are those services that are available to all individuals with disabilities and require no authorization.

(C) For example, a student on the waiting list can attend a division-hosted career expo or mentorship fair.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "ETS" means employment transition services.

"IPE" means individualized plan for employment.

"VR" means vocational rehabilitation.

25 CAR § 2-503. Procedure for managing order of selection and the waiting list.

(a) The Field Administrator manages the waiting list and is responsible for tracking and communicating with individuals placed on a waitlist.

(b) The following procedures are in place for managing OOS and the waiting list.

(c) **OOS report.** By the tenth of each month, the statistician provides a report to the Director of the Division of State Services for the Blind and the Field Administrator with the following information:

(1) Number of applications received that month;

(2) Number of individuals determined eligible, by priority for services category (cumulative since the last time the waiting list was opened and subsequently closed);
and

(3) Number of individuals on the waiting list who are sixteen (16) through twenty-one (21) years old.

(d) Procedure for opening the waiting list:

(1)(A) Each quarter, the director will review the status of funds and personnel to determine which, if any, categories can be opened.

(B) If the director determines there are sufficient funds and personnel, they will notify the Field Administrator fifteen (15) calendar days in advance of the:

(i) Individuals who can come off the waiting list or the categories that will be open based on the date individuals applied for services (earliest to most recent);
and

(ii) Start date the waiting list will be open, or if entire categories will be open.

(C) Priority categories will only be open when all individuals under the priority category can be served;

(2)(A) When an individual is moved off the waiting list, the Field Administrator or designee will send an Off the Waiting List notification letter and place a copy into the individual's case record in AWARE.

(B) The notification letter indicates the individual can begin receiving vocational rehabilitation services and has fifteen (15) calendar days to respond.

(C) The area manager for each area will receive a list of individuals by caseload that are moved off the waiting list for their area;

(3)(A) On the start date of the open waiting list, all affected individuals will be moved to the "Off the Waiting List" status.

(B) This status means the individuals have been removed from the waiting list and have been contacted to determine if they are still interested in receiving services.

(C) The ninety-day countdown for developing an individualized plan for employment begins when the individual has been removed from the waitlist, and not when the individual has contacted the Division of State Services for the Blind expressing interest in receiving services;

(4)(A) If the individual does not respond within fifteen (15) calendar days, the Field Administrator or designee will attempt two (2) additional contacts over the course of fifteen (15) additional calendar days.

(B) Each contact must be documented in the case management system; and

(5) If the individual does not respond within thirty (30) calendar days from the start date of the open waiting list or they indicate they are no longer interested in receiving services, their case must be closed.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "OOS" means order of selection.

25 CAR § 2-504. Order of selection implementation.

(a)(1) If an order of selection is implemented, the Director of the Division of State Services for the Blind will determine the priority levels that will remain open for services.

(2) This determination will be made before the start of the upcoming federal fiscal year, based on the projected availability of resources.

(b)(1) The Division of State Services for the Blind will provide services to all eligible individuals until an order of selection must be imposed due to a shortage of funds, staff, or other resources.

(2) In the event such a shortage occurs, the division will implement OOS for services that will potentially impact individuals who are not receiving services under an IPE on the implementation date.

(3) The division will consider any cost saving measures that can be implemented prior to closing any priority categories.

(c)(1) Services will continue to be provided without restriction to all individuals who have begun to receive services under an IPE prior to the implementation date of the OOS.

(2) There will be no restriction of services to individuals receiving post-employment services.

(3) There will be no restriction of services to individuals receiving services as part of a trial work experience.

(d)(1) A waiting list will be established and maintained by priority category and application date for all eligible individuals.

(2) Within categories, individuals will begin receiving services based on their date of application.

(e)(1) The director and Field Administrator will review the projected fiscal and personnel resources to determine if all individuals can be served.

(2) This includes a review of projected number of successful closures for the upcoming year, costs for serving current customers, personnel and other non-personnel services.

(f)(1) Based on availability of funds, individuals in Category 1 will be served first.

(2) Individuals in other categories will be served in descending order (from Category 1 through Category 3).

(3) OOS requirements will be applied uniformly throughout the state.

(g) In the event the division needs to enter into an OOS, division staff must amend the state plan to include:

- (1) Which categories are subject to the waiting list;
- (2) A justification for the order of selection;
- (3) Identified service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under 34 C.F.R. § 361.29(c)(5); and
- (4) Assurance that:
 - (A) Individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and
 - (B) Individuals who do not meet the order of selection criteria are provided information and referrals to access other available services.

(h)(1) Throughout the federal fiscal year, the OOS decision and categories must be evaluated whenever there is a change in circumstances.

- (2) A change in circumstances could include a change in funding or personnel.
- (3) The division may at some point determine that it is no longer necessary to continue to implement the OOS.
- (4) In such case, the division must establish that it will be able to provide all needed services to all eligible individuals in the coming fiscal year.
- (5) This determination must be based on circumstances that have changed that will allow the vocational rehabilitation agency to provide the full range of services to all eligible individuals, including:

- (A) An estimate of the number of such individuals and the cost of services;
- (B) The costs of administering the program, including:
 - (i) Personnel costs;
 - (ii) Outreach activities; and
 - (iii) Required statewide studies; and
- (C) The projected revenue.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "IPE" means individualized plan for employment.

"OOS" means order of selection.

25 CAR § 2-505. Notice and administration of order of selection.

(a)(1) Individuals must be notified about OOS during the referral, orientation, and intake process.

(2) Definitions of priority categories and the criteria used in assigning individuals to these categories will be provided to the individual in writing and will be explained by Division of State Services for the Blind staff.

(b)(1) At the time an individual is determined eligible for services, the vocational rehabilitation counselor will assign the individual to the priority category with the most functional limitations for which they are qualified.

(2) The priority category and the rationale for the decision will be documented in the case record.

(3) A detailed description of how the functional limitations restrict the individual's capacity to obtain, maintain, advance in, or prepare for employment must be included in the case file.

(c)(1) The individual will be notified in writing of their assigned priority category and which priority categories are currently being served.

(2) The individual will be notified in writing of their right to appeal the decision and will be given information about the Client Assistance Program (CAP).

(d)(1) Once assigned to a specific priority category, an individual cannot be moved from that priority category unless changes in the individual's functional limitations occur that would put them in a different priority category.

(2) If such a change results in placement in a different priority category, the individual will be advised in writing of the change.

(3) The individual will also be notified in writing of their right to appeal that decision and will be given information about the CAP.

(e)(1) All individuals without an IPE prior to the date the OOS is implemented will be advised in writing of its implementation and their assignment to a specific priority category.

(2) Individuals will be:

(A) Notified in writing of their right to appeal the decision; and

(B) Given information about the CAP.

(f) The division will inform all consumer groups, referral sources, and vendors in a timely manner of the start date OOS will be implemented.

(g) The OOS vocational rehabilitation counselor will be responsible for reviewing assignments of individuals to priority categories and monitoring the provision of services to individuals based on the principles of the OOS.

(h)(1) Priority categories will be opened on the basis of the availability of resources.

(2) Individuals within categories will be served in order of their date of application for services.

(i) The Director of the Division of State Services for the Blind will monitor the activities of the OOS to determine any needed changes of the number of individuals served by opening or closing additional priority categories.

(j)(1) Information and referral services will be made available and provided to all eligible individuals on a waiting list.

(2) These services are designed to ensure that individuals on a waiting list are provided accurate vocational rehabilitation information and guidance to assist them in preparing for, securing, advancing in, or regaining employment.

(3) Individuals will be appropriately referred to other federal and state programs, including other components of the statewide workforce investment system.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "IPE" means individualized plan for employment.

"OOS" means order of selection.

Subpart 6. Preemployment Transition Services (Pre-ETS)

25 CAR § 2-601. Introduction.

(a) In collaboration with state local educational agencies, the Division of State Services for the Blind shall provide or arrange for the provision of preemployment transition services (pre-ETS) for students with disabilities in need of such services.

(b)(1) Pre-ETS, as defined in Title IV of the Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101 et seq., offer students an early start with identifying career interests but are not intended to be focused on an employment outcome.

(2) Pre-ETS includes:

- (A) Job exploration;
- (B) Work-based learning;
- (C) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs;
- (D) Workplace readiness training; and
- (E) Self-advocacy skills instruction.

(c)(1) All students with disabilities who are potentially eligible or eligible for the VR program and in need of pre-ETS may receive the pre-ETS they need.

(2) A potentially eligible student is any student with a disability who has not applied and been determined eligible for the VR program.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "VR" means vocational rehabilitation.

25 CAR § 2-602. Student with a disability.

(a)(1) The Division of State Services for the Blind defines a student with a disability in accordance with federal regulations.

(2) Under 34 C.F.R. § 361.5(c)(51), a student with a disability is an individual in a secondary, postsecondary, or other recognized education program receiving services through the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (IDEA, also known as special education), or an individual with a disability for purposes of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.

(b)(1) In Arkansas, a student may not be younger than sixteen (16) and not older than twenty-two (22).

(2) This is in accordance with IDEA in Arkansas.

(c)(1) Pre-ETS may only be provided to those that meet the definition of a student with a disability.

(2) Those that are not within the defined age range cannot receive pre-ETS, but they may receive VR transition services once they apply for and are determined eligible for the VR program.

(d) **Note.**

(1) The definition of a "student with a disability" differs from the definition of a "youth with a disability".

(2) A youth with a disability is an individual with a disability, age fourteen (14) to twenty-four (24) who may or may not be enrolled in an education program.

(e) Definition of "enrolled in school":

(1) Examples include high school, home school, post-secondary education programs, GED programs, charter school, or other programs considered educational in nature;

(2) To be considered enrolled in a recognized post-secondary education program, there must be:

(A) Documentation of graduation from secondary education;

(B) Documentation of the intent or confirmed acceptance of the invitation to enter a post-secondary program, such as a class registration form; and

(C) Documentation from an institution that the seat or spot is being held for them, such as a letter of acceptance; and

(3) The summer between high school and additional education is still considered enrollment as long as the student has applied for and has been accepted into a program.

(f)(1) Students who need pre-ETS are not required to apply for vocational rehabilitation (VR) services to receive pre-ETS.

(2) If a student requires other services in addition to pre-ETS, they must be informed that in order to receive those additional services, the student must:

(A) Apply for services;

(B) Receive an eligibility decision; and

(C) Have an active individualized plan for employment (IPE).

(3) If the student has an active IPE, any pre-ETS provided must be on their IPE.

(4) At referral, all students with disabilities must be provided the opportunity for informed choice on whether or not to apply for VR services.

(g)(1) Students with disabilities connected with the division for the provision of pre-ETS will have one (1) of two (2) case types:

(A) Potentially eligible (PE); or

(B) Vocational rehabilitation (VR).

(2) Students with disabilities who have not applied for the VR program will have a PE case.

(3) Students who have applied to the VR program and are in the eligibility determination process or have been determined eligible will have a VR case.

(h)(1) The term "potentially eligible" applies only in the context of pre-ETS.

(2) Therefore, if students with disabilities require individualized services beyond the scope of pre-ETS, they must apply and be determined eligible for the VR program, be assigned to the appropriate priority category, and develop an approved IPE to receive the additional VR services they need.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "ETS" means employment transition services.

"GED" means general education development test.

25 CAR § 2-603. Referrals.

(a)(1)(A) When a consumer is referred to the Division of State Services for the Blind, the DSB 8065 (referral form) should be completed at the time of initial contact.

(B) This form should be used to complete the referral in the AWARE Referral Module.

(2) This information should be entered immediately upon receipt of a referral.

(3) Once entered, the referral will be assigned to the appropriate area manager by the person entering the referral.

(4) The paper referral is then sent to that area manager and their administrative assistant, by email, notifying them that the referral has been entered in AWARE.

(5) The area manager will review the referral and assign it to the VR counselor for that area within one (1) business day.

(6)(A) The VR counselor then has one (1) business day to contact the consumer and arrange an orientation meeting for the consumer.

(B) This meeting should occur within ten (10) business days of the first contact.

(C) The purpose of this meeting is to provide the consumer with information to allow them to make an informed choice about applying for services.

(D) This meeting should include:

(i) Eligibility criteria;

(ii) Expectations;

(iii) Rights and responsibilities of participants; and

(iv) Information on the division's services.

(7) The consumer may then decide to apply or not for the division's services.

(8) If for any reason the consumer cannot meet within ten (10) business days, the request for a later appointment must be documented in AWARE with the justification.

(9) All new cases in AWARE must begin in the referral module.

(10) This applies to both VR and PE case types.

(b)(1) Information for the AWARE Referral Module will come from one (1) of two (2) forms:

(A) The VR/PE Referral; or

(B) The Pre-ETS Referral, Consent, and Release Form.

(2) The VR/PE Referral is the form completed by staff monitoring phone lines or when the consumer is not the referring party.

(3) However, should a VR counselor be able to take a referral in person for a consumer who desires only pre-ETS services, they may complete the entire Pre-ETS Referral, Consent, and Release Form at that time.

(4) After completing a referral, if a consumer chooses to apply for services, the consumer will identify whether they are applying for VR services or only asking to receive pre-ETS services.

(5) At that time the VR counselor will open the correct case type in the AWARE Participant Module.

(6) Consumers who desire only pre-ETS services will be opened under the potentially eligible (PE) case type (subsection (h) of this section).

(7) However, consumers who desire additional vocational rehabilitation (VR) services will need to be opened under the VR case type (subsection (g) of this section).

(8) The VR counselor will be responsible for ensuring that the consumer meets the criteria for the specified case type before moving past the application status.

(c)(1) The division provides copies of the Pre-ETS Referral, Consent, and Release Form to schools to assist with referrals.

(2) Referrals do require consent of a parent/legal guardian where applicable.

(3) Pre-ETS counselors also share referral information through:

- (A) Parent nights;
- (B) Open houses;
- (C) Transition fairs;
- (D) Summits; and
- (E) Group meetings with students.

(4) Referrals may also happen over the phone or from a VR counselor with a consumer that now meets the definition of a student with a disability and would meet the division's eligibility criteria for vision loss to make them eligible or potentially eligible for the division's vocational rehabilitation services.

(5)(A) If the student has other disabilities, they must be referred to Arkansas Rehabilitation Services.

(B) See 25 CAR § 2-602.

(d)(1) For a consumer who already has an IPE and is now in need of pre-ETS, the division will work with the consumer to reassign them to a counselor with knowledge of pre-ETS and add the necessary pre-ETS to their IPE.

(2)(A) The consumer will then receive both pre-ETS and additional VR services under their existing IPE with their new pre-ETS counselor.

(B) Referral information should include:

- (i) Social Security number (if available);
- (ii) Date of birth;
- (iii) Race and ethnicity; and
- (iv) Disability.

(C) To complete a referral and intake process, the division counselor must receive documentation of a disability, which may be provided through any of the following:

(i) Referral form for pre-ETS that identifies the student's disability and is signed by school staff and parent/guardian, if the student is under the age of majority in a state (parental consent to participate in pre-ETS is governed by state law, as well as policies of the educational programs and the designated state unit); and

(ii) Copy of the IEP or 504 plan, Social Security Administration beneficiary award letter, school psychological assessment documenting the student's diagnosis, or documentation of a disability determination related to section 504 accommodation or accommodations.

(D) Documentation of enrollment in a secondary, postsecondary, or other recognized educational program.

(e)(1) Please note that an order of selection, if implemented, may affect the ability of an individual eligible for VR services to receive pre-ETS.

(2) See 25 CAR § 2-501(a).

(f) Potentially eligible students do not need to complete an application for VR services unless they are:

(1) In need of services beyond the scope of preemployment transition services; and

(2) Requesting VR services in addition to pre-ETS.

(g) Potentially eligible case type.

(1)(A) Potentially eligible consumers are those students with a disability that have not applied and been determined eligible for the VR program.

(B) If a student with a disability applies for VR services and is determined ineligible for VR, the student no longer qualifies to receive pre-ETS because he or she is no longer considered potentially eligible.

(C) However, a consumer who is determined eligible for VR services would receive pre-ETS under the VR case type (subsection (h) of this section).

(2)(A) When a referral for a potentially eligible consumer is received outside of the Pre-ETS Referral, Consent, and Release Form, the division will enter the consumer's information into the Referral Module of the AWARE system and assign it to the appropriate area manager.

(B) The area manager will then assign a counselor to the case.

(C) The division counselor has one (1) business day to contact the consumer after being assigned the referral.

(D) Area managers should review referrals in AWARE daily to ensure they are being processed in a timely manner.

(E) Any referrals received using the Pre-ETS Referral, Consent, and Release Form will be entered into the AWARE Referral Module and can be moved immediately into the AWARE Participant Module as an applicant by their VR counselor.

(3)(A) Once the Referral, Consent, and Release Form has been received and assigned to a division counselor, a PE case may be opened and preemployment transition services may be arranged and provided according to the student's needs.

(B) Upon receipt of this information, the division will move the consumer from the Referral Module to the Participant Module in AWARE as a PE case.

(C) At this point, AWARE will generate a twelve-digit unique identifier for the student, which will be used when reporting pre-ETS service delivery, as required by federal law.

(4) Once confirmation is received that the consumer meets the definition of a student with a disability (25 CAR § 2-602), the counselor will send a letter notifying the student that they are able to receive preemployment transition services at this time.

(5)(A) In order to be potentially eligible for services from the division, blindness or severe vision loss must be documented in the IEP, 504, or in a letter from the school, if an IEP/504 is not available.

(B) If a consumer is determined to not meet the definition of a student with a disability, their PE case must be closed, and services cannot be provided.

(6)(A) If the consumer has not responded to the letter notifying them that they are able to receive pre-ETS services within ten (10) business days, the assigned counselor must contact them to confirm the desire for services.

(B) Each attempt to contact the consumer must be documented in AWARE.

(C) If the counselor is unable to contact the student within thirty (30) days of mailing the letter, the case may be closed without providing services after review and approval from the division's pre-ETS area manager.

(7)(A) The counselor will discuss service options with the student, in either an individual or group setting, at the school, the division office, or a mutually agreed upon location in the community or via phone conversation as appropriate.

(B) This conversation will begin the process to prepare the Pre-ETS Agreement Form, which is the agreement between the division and the consumer on what preemployment transition services will be provided.

(8) During the initial discussion, the division counselor shall:

(A) Provide basic job exploration counseling and document this in AWARE in an Actual Service record;

(B) Discuss next steps, including identifying additional appropriate preemployment transition services and providers, consistent with the student's informed choice and that may be completed before the student no longer qualifies for preemployment transition services; and

(C) Verify the student qualifies for preemployment transition services.

(9)(A) Once a consumer's documentation has been received the counselor and consumer (with applicable parent/guardian) may complete the Pre-ETS Agreement Form using informed choice.

(B)(i) Lists services, providers, and estimated begin and end dates.

(ii) The division will provide services based on a twelve-month timeline.

(iii) A new agreement form will be signed at least once a year while services are being received.

(C)(i) Have the student, parent/legal guardian (if necessary), and counselor sign the printed form.

(ii) Student should receive one (1) signed copy.

(iii) Signed copy should be scanned into AWARE and placed in the consumer's hard copy file.

(D)(i) Provide services in accordance with the agreement.

(ii) Services should be documented in AWARE using either the Actual Service feature or case notes and authorizations as necessary.

(E) Notify student and parent/guardian of available resources to them.

(10)(A) As long as the student qualifies to receive preemployment transition services, services will be provided through the Pre-ETS Agreement Form or, in the case a student has been determined eligible, in accordance with the student's IPE.

(B) At any time, new agreements may be written as additional services are identified through ongoing coordination activities with the education providers and other interested parties.

(11)(A) Students with disabilities are not required to apply or be determined eligible for vocational rehabilitation services before receiving preemployment transition services.

(B) Students who have provided adequate documentation of their disability and enrollment in a recognized education program shall not have their participation in preemployment transition services delayed by the process of applying for vocational rehabilitation services.

(C) Students assigned division counselors will discuss vocational rehabilitation services with them and their parent/legal guardian and encourage interested students to apply by the time they have two (2) years remaining in high school to facilitate a smooth transition into vocational rehabilitation services.

(12) Students who do not apply for vocational rehabilitation services may continue to receive preemployment transition services under the pre-ETS case type as long as they continue to satisfy the definition of a "student with a disability".

(h) Pre-ETS under the VR case type.

(1) If a student with a disability applies for VR services and is determined eligible, they may generally receive any pre-ETS as part of their individualized plan for employment on the VR case type.

(2) This may occur in two (2) distinct ways:

(A) A consumer may already be receiving VR services before requesting pre-ETS; or

(B) A potentially eligible student with a disability may decide to apply for VR services and be determined eligible.

(3) Any PE consumer who applies for VR services and is determined ineligible will be closed from the PE case type as they are no longer potentially eligible.

(4) Eligible students may have preemployment transition services included on the individualized plan for employment and provided for as long as the individual continues to meet the definition of a "student with a disability".

(5) If the division should need to implement order of selection, any eligible students assigned to a closed order of selection category and placed on a waiting list for vocational rehabilitation after receiving preemployment transition services may continue to receive preemployment transition services using the PE case type.

(6)(A) If an eligible student is assigned to a closed order of selection category and placed on a waiting list for vocational rehabilitation before receiving preemployment transition services, they may not receive pre-ETS using the PE case type.

(B) These students will be required to wait for preemployment transition services until they are removed from the waiting list and an individualized plan for employment can be developed.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "ETS" means employment transition services.

"IPE" means individualized plan for employment.

25 CAR § 2-604. Coordination with schools.

(a)(1) The Division of State Services for the Blind will coordinate services with the Department of Education at a state level and with schools and school districts at the local level.

(2) Pre-ETS counselors should work closely with the department's Educational Services for the Visually Impaired Consultants, who are located around the state and

provide support and assistance to students who are blind and visually impaired in the schools.

(3) School officials continue to be responsible for providing a free and appropriate public education to include transition services required under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

(b)(1) To better serve consumers, pre-ETS counselors should be familiar with legislation affecting students who are blind or visually impaired and school programs available to them.

(2) Important programs and terms include:

(A)(i) Section 504 Plan.

(ii) A school's written statement of services provided in accordance with Section 504 of the federal Rehabilitation Act of 1973 is called a 504 Plan (<https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973>).

(iii) Section 504 requires school districts that receive federal funding to provide a "free and appropriate public education" to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability.

(iv) Appropriate educational services are designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met; and

(B)(i) Individualized education program (IEP).

(ii) The school's written plan to meet educational goals and objectives for a student with a disability is called an individualized education program (IEP).

(iii) The IEP must include a statement of the student's present levels of academic achievement and functional performance.

(iv)(a) It must also include how the student's disability affects his or her involvement and progress in the general education curriculum.

(b) That is, the same curriculum as for students without disabilities.

(c) The IEP must be revised at least once a year.

(c) The counselor will make every effort to attend all IEP meetings scheduled for consumers on their caseload either in person or electronically.

(d) Attendance at IEP meetings will allow the VR counselor to understand what additional services the consumer is receiving from comparable benefits and develop an appropriate set of services for the consumer.

Authority. Arkansas Code § 25-10-204.

Codification Notes. "ETS" means employment transition services.

"VR" means vocational rehabilitation.

25 CAR § 2-605. Preemployment transition services.

(a)(1) The primary purpose of pre-ETS provided or coordinated by the Division of State Services for the Blind is to help students begin to identify career interests and to learn skills in preparation for transition to employment and/or post-secondary education.

(2) The division will make every effort to provide or coordinate the following services to ensure statewide availability.

(3) Section 110 of the Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101 et seq., requires that a minimum of fifteen percent (15%) of federal vocational rehabilitation funds be spent on pre-ETS services.

(b) Division staff will make every effort to develop and maintain cooperative working relationships with state and local secondary education staff (including alternative school programs), post-secondary education staff, state operated programs, and workforce development partners (i.e., American Job Centers, etc.) to coordinate preemployment transition services.

(c) Pre-ETS comprise five (5) required activities that must be made available to all students with disabilities who may need them, four (4) coordination activities that must

be carried out, and nine (9) authorized activities that may be provided if the agency can demonstrate funds remain after the provision of the required and coordination activities.

(d) **Pre-ETS required activities.**

(1)(A) Pre-ETS includes five (5) required services.

(B) These services must be made available statewide to students and can be provided individually or in a group setting.

(C) These services must be in collaboration with the local education agency and the individualized educational program (IEP) team.

(D) Determining which of the five (5) services a student receives is based on their individual needs.

(2) **Job exploration counseling.** Using customized tools, this process helps students discover their skills, abilities, and interests by:

(A) Helping students complete interest inventories and explore careers using various paper and online resources;

(B) Providing opportunities for work on career exploration tools such as:

(i) Explore-Work.com helps students with disabilities explore the five (5) preemployment transition services;

(ii) My Next Move is a career exploration tool designed for use by students to learn about careers and match their interests to career options; and

(iii) Assist students to explore O*NET Online (<https://www.onetonline.org/>), a tool for career exploration and job analysis;

(C) Completing a career interest inventory that provides insight into vocational paths;

(D) Participating in training on informational interviews;

(E) Making site visits to businesses; and

(F) Connecting with a network of blind and visually impaired mentors who are in a variety of occupations and workplace settings.

(3) **Work-based learning experiences.** This program provides work opportunities and experiences outside of the traditional school setting:

- (A) Attending workplace tours and job shadowing opportunities;
- (B) Participating in internships (when determined appropriate by staff);

and

(C) On-site work-based experiences (paid or unpaid), i.e., volunteering, practicums, service learning, or apprenticeships (excluding preapprenticeships and registered apprenticeships), located in the community.

(4) **Counseling on opportunities for enrollment.** Provides counseling on opportunities for enrollment in local community college/post-secondary education programs:

(A) Visiting local colleges;

(B) Meeting with offices of disability services at colleges and learning about the process for applying for accommodations; and

(C) Receiving individualized advising on:

(i) Course selection;

(ii) Admission requirements (when applicable);

(iii) Financial aid; and

(iv) Degree guidance.

(5) **Workplace readiness training.** This training is designed to develop social skills and independent living skills:

(A) Receiving individual and small group instruction on soft skills including how to interact with supervisors and coworkers;

(B) Developing documents including a resume, cover letter, an online presence, and practicing mock interviews by responding to common interview questions;

(C) Having access to a network of blind and visually impaired individuals who are already in college or gainful employment;

(D) Receiving formal training from a certified orientation and mobility specialist;

(E) Using public transportation options to navigate independently to work sites; and

(F) Following workplace guidelines with respect to attendance, punctuality, professionalism, and productivity.

(6) **Instruction in self-advocacy.** Students are shown the knowledge and skills to effectively communicate, convey, negotiate, or assert their own interests and/or desires:

(A) Learning about their rights and responsibilities as a consumer;

(B) Practicing how to discuss their disability and necessary accommodations with different audiences such as:

(i) Professors;

(ii) Peers; and

(iii) Potential employers;

(C) Learning about their:

(i) Skills;

(ii) Interests; and

(iii) Abilities; and

(D) Gaining experiences and acquiring skills to build their confidence and sense of self.

(e) **Pre-ETS coordination activities.**

(1) The four (4) coordination activities may be necessary for arranging and providing direct preemployment transition services and are therefore included under the implementation of preemployment transition services in 34 C.F.R. § 361.48(a)(4).

(2) They are as follows:

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

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

(C) Working with schools, including those carrying out activities under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., to coordinate and ensure the provision of pre-ETS under this section; and

(D) When invited, attending person-centered planning meetings for individuals receiving services under Title XIX of the Social Security Act, 42 U.S.C. § 301 et seq.

Authority. Arkansas Code § 25-10-204.

Codification Notes. “ETS” means employment transition services.

25 CAR § 2-606. Reasonable accommodations/auxiliary aids and services.

(a)(1) The Division of State Services for the Blind will ensure that no qualified student with a disability is denied the benefit of preemployment transition services on the basis of the individual’s disability.

(2) Therefore, if a student with a disability requires reasonable accommodations, auxiliary aids, or services to access or participate in any of the required preemployment transition services, the division may pay for such costs when no other public entity is required to provide such aid or service.

(b) Reasonable accommodations, aids, and services for students include:

- (1) Qualified readers;
- (2) Audio recordings;
- (3) Braille materials and displays;
- (4) Screen reader software;
- (5) Magnification software;
- (6) Large print materials;
- (7) Accessible electronic and information technology; and
- (8) Other effective methods of making visually delivered materials available to individuals who are blind or have low vision.

Authority. Arkansas Code § 25-10-204.

25 CAR § 2-607. Pre-ETS case closure and discontinuation of services.

(a)(1) Preemployment transition services shall be discontinued once an individual no longer satisfies the definition of a “student with a disability”, regardless of whether those services were being provided consistent with a Pre-ETS Agreement or an individualized plan for employment.

(2) Pre-ETS services can be discontinued when:

(A) All needed pre-ETS services have been provided to the student; and

(B) The student no longer needs any other pre-ETS services.

(3) All pre-ETS open authorizations should be paid or resolved before the case is closed with proper documentation.

(4) All the provided services must be documented in the client’s case file in AWARE.

(b) Potentially eligible (PE) case type.

(1) The records of services for students receiving preemployment transition services under the pre-ETS case type shall be closed when the individual:

(A) No longer meets the definition of a “student with a disability”;

(B) Has become eligible for VR services under an open order of selection category and has had an individualized plan for employment approved; or

(C) Chooses not to participate in, or continue participating in, preemployment transition services, as confirmed by student and/or guardian either verbally or in writing.

(2)(A) At the time of service discontinuation, the Division of State Services for the Blind counselor or manager will make every attempt to contact the individual to notify them and document these attempts in AWARE.

(B) The consumer must be sent a letter (documented in AWARE) notifying them of any discontinuation of services along with an explanation.

(C) Then the PE case type in AWARE may be closed and services discontinued.

(c) Pre-ETS in the VR case type.

(1)(A) Preemployment transition services shall cease to be provided under an IPE once the individual no longer meets the definition of a “student with a disability”.

(B) All other VR services may continue as planned.

(C) Preemployment transition services shall not be provided to any student age twenty-two (22) and beyond.

(2) When closing the record of a student in an open order of selection category receiving preemployment transition services as part of an individualized plan for employment, refer to Section xxx, Record of Services Closure – Vocational Rehabilitation.

Authority. Arkansas Code § 25-10-204.

Codification Notes. “ETS” means employment transition services.

"IPE" means individualized plan for employment.

"VR" means vocational rehabilitation.